

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
5 JEFF WEAVER,
6 Plaintiff,

No. C 11-00150 SBA (PR)

ORDER OF DISMISSAL

7 v.

8 STATE OF CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
9 Defendants.

10
11 Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983.

12 On August 12, 2011, Northern District Judge Jeremy Fogel issued an Order permitting
13 Plaintiff's former counsel, Richard Philip Sax, to withdraw appearance and granting a continuance to
14 enable Plaintiff to retain new counsel.

15 On September 28, 2011, this action was reassigned to the undersigned judge. The record
16 shows that Attorney Sax has "lost contact with Plaintiff." (Sax Decl. ¶ 4.) To date, Plaintiff has
17 never communicated directly with the Court because all his filings were made by Attorney Sax.
18 Accordingly, in an Order dated November 7, 2011, the Court determined that it was in the interests
19 of justice and judicial efficiency for the Court to establish Plaintiff's current address and whether he
20 intended to continue to prosecute this action. The Court informed Plaintiff that if he failed to do so
21 within thirty days, this action would be dismissed without prejudice for failure to prosecute. The
22 Court directed the Clerk of the Court to (1) send a copy of its November 7, 2011 Order to Attorney
23 Sax; and (2) contact Attorney Sax to obtain Plaintiff's last-known address. Clerk's Office staff
24 indicates that Plaintiff's last-known address is 1911 Sierra Avenue, Napa, CA 94558. The Clerk also
25 served Plaintiff with the November 7, 2011 Order at the aforementioned address. The Court notes
26 that the Order mailed to Plaintiff was never returned as undeliverable.

27 More than thirty days have passed, and Plaintiff has filed no response to the Court's
28 November 7, 2011 Order. A district court may sua sponte dismiss an action for failure to prosecute


1 or to comply with a court order pursuant to Federal Rule of Civil Procedure 41(b). See Link v.
2 Wabash R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991).
3 The court should consider five factors before dismissing an action under Rule 41(b): (1) the public
4 interest in the expeditious resolution of the litigation; (2) the court's need to manage its docket;
5 (3) the risk of prejudice to the defendants; (4) the availability of less drastic sanctions; and (5) the
6 public policy favoring the disposition of actions on their merits. See Malone v. United States Postal
7 Serv., 833 F.2d 128, 130 (9th Cir. 1987).¹ The first three factors, above, weigh in favor of dismissal
8 in light of the fact that Plaintiff has lost contact with his attorney and has failed to respond to the
9 Court's November 7, 2011 Order. The fourth factor also weighs in favor of dismissal because less
10 drastic sanctions would have little impact in light of Plaintiff's apparent lack of interest in this case.
11 Although the fifth factor appears to weigh against dismissal, dismissal is appropriate in light of the
12 other four factors. See Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) (finding district
13 court did not abuse its discretion in dismissing petition with prejudice where three of the five factors
14 weighed in favor of dismissal).

15 In light of the foregoing, this action is hereby DISMISSED for failure to prosecute, pursuant
16 to Federal Rule of Civil Procedure 41(b).

17 The Clerk shall close the file and terminate any pending motions.

18 IT IS SO ORDERED.

19 DATED: 12/15/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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¹ The court should also afford the litigant prior notice of its intention to dismiss, id. at 133, as this Court has done.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JEFF WEAVER,
5 Plaintiff,

Case Number: CV11-00150 SBA

CERTIFICATE OF SERVICE

6 v.

7 CA DEPT OF CORRECTIONS et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on December 20, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Jeff Weaver AB-7048
16 1911 Sierra Avenue
17 Napa, CA 94558

Dated: December 20, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk