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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 EARL WARNER,

No. C 11-05039 YGR (PR)

7 Plaintiff,

**ORDER DIRECTING PLAINTIFF TO
FILE A NOTICE OF INTENT TO
PROSECUTE**

8 vs.

9 MATTHEW L. CATE, et al.,

10 Defendants.
_____ /

11
12 On October 13, 2011, Plaintiff filed this *pro se* civil rights complaint pursuant to 28 U.S.C.
13 § 1983. On May 8, 2012, the undersigned judge issued an Order of Service, finding that the
14 complaint stated certain cognizable claims against some of the named Defendants. On May 23,
15 2012, the Court's Order of Service was returned to the Court with a notation that it was
16 undeliverable because it was "unclaimed." (Docket No. 17.) There is also a handwritten notation
17 stating "I/M Trans," which the Court assumes means that Plaintiff has been transferred to another
18 institution.

19 To date, Plaintiff has not updated his address with the Court or submitted any further
20 pleadings in this case. However, the Court notes that on July 12, 2012, Plaintiff filed another civil
21 rights action pursuant to 28 U.S.C. § 1983. *See* Case No. C 12-3657 YGR (PR). Plaintiff initiated
22 the latter action from R. J. Donovan Correctional Facility in San Diego, California, to which
23 institution it appears he has been transferred.

24 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may *sua sponte* dismiss an
25 action for failure to prosecute or to comply with a court order. *See Link v. Wabash R.R.*, 370 U.S.
26 626, 633 (1962); *McKeever v. Block*, 932 F.2d 795, 797 (9th Cir. 1991). But such a dismissal should
27 only be ordered when the failure to comply is unreasonable. *See id.* A court should afford the
28 litigant prior notice of its intention to dismiss. *See Malone v. United States Postal Serv.*, 833 F.2d

1 128, 133 (9th Cir. 1987). Pursuant to Northern District Local Rule 3-11 an attorney or party
2 proceeding *pro se* whose address changes while an action is pending must promptly file and serve
3 upon all opposing parties a notice of change of address specifying the new address. *See* L.R. 3-
4 11(a). The Court may, without prejudice, dismiss an action when: (1) mail directed to the attorney or
5 the *pro se* party by the Court has been returned to the Court as not deliverable and (2) the Court fails
6 to receive within sixty days of this return a written communication from the attorney or *pro se* party
7 indicating a current address. *See* L.R. 3-11(b).

8 It has now been more than sixty days since the Court's notification was returned as
9 undeliverable. The Court has not received a notice from Plaintiff of a new address. However, as
10 mentioned above, Plaintiff has recently instituted a new civil action in which he mailed his
11 complaint and other initial filings from a new address. It seems that Plaintiff has been transferred to
12 and is now incarcerated at the R. J. Donovan Correctional Facility.

13 In light of the foregoing, Plaintiff shall inform the Court of his continued intent to prosecute
14 *this* action no later than **twenty-eight (28) days** from the date of this Order. Failure to timely do so
15 shall result in *dismissal of this action without prejudice* under Federal Rule of Civil Procedure 41(b).

16 The Clerk of the Court shall update Plaintiff's address and mail this Order to:

17 Earl Warner
18 E-32637
19 R. J. Donovan Correctional Facility
20 P.O. Box 799002
21 San Diego, CA 92179-9002

22 IT IS SO ORDERED.

23 DATED: August 21, 2012

24 
25 YVONNE GONZALEZ ROGERS
26 UNITED STATES DISTRICT COURT JUDGE
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