

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL**

CASE NO.: ED CV 10-0702-ABC (PJW)

Date: May 10, 2011

TITLE: *David Upton v. Aref Fakhoury, et al.*

PRESENT:

HON. PATRICK J. WALSH, MAGISTRATE JUDGE

**Celia Anglon-Reed
Deputy Clerk**

**N/A
Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANTS:

None

None

PROCEEDINGS: Order to Show Cause Regarding Plaintiff's Failure to File First Amended Complaint (In Chambers)

On June 9, 2010, the Court dismissed the Complaint and granted Plaintiff leave to file a First Amended Complaint ("FAC"). (Docket No. 8.) The FAC was due to be filed on July 15, 2010. In Plaintiff's other civil rights action pending before this court, he notified the Court that his address changed. On March 2, 2011, the Court sent him an order to show at his new address, giving him until March 22, 2011 to file the FAC. On April 22, 2011, the Court issued a final order to show cause, but the order was returned undelivered because Plaintiff moved without notifying the Court. On May 9, 2011, in the other action pending before this court, he notified the Court that his address had changed again. To date, Plaintiff has not filed a FAC in this case.

Under Federal Rule of Civil Procedure 41(b), an action may be involuntarily dismissed for failure of the plaintiff to prosecute or comply with any order of the Court. See *Omstead v. Dell*, 594 F.3d 1081, (9th Cir. 2010). A plaintiff's failure to file an amended complaint, despite being told of the consequences, warrants dismissal. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

**MINUTES FORM 90
CIVIL -- GEN**

Initials of Deputy Clerk CA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL**

Accordingly, Plaintiff has until **June 10, 2011**, to file his FAC or, alternatively, to show good cause for his failure to timely file the FAC by filing one or more declarations under penalty of perjury and supporting documents, if needed.

Plaintiff is warned that if he does not respond to this order within the time allowed, or if he fails to show good cause for the failure to timely file the FAC, this action will be dismissed without prejudice under Rule 41(b). Plaintiff is further warned that, if he moves again and fails to immediately notify the Court of his new address, the Court will dismiss the case without prejudice under Federal Rule of Civil Procedure 41(b). See C.D. Local R. 41-6 ("A party proceeding pro se shall keep the Court and opposing parties apprised of such party's current address and telephone number, if any, and e-mail address, if any. If mail directed by the Clerk to a pro se plaintiff's address of record is returned undelivered by the Postal Service, and if, within fifteen (15) days of the service date, such plaintiff fails to notify, in writing, the Court and opposing parties of said plaintiff's current address, the Court may dismiss the action with or without prejudice for want of prosecution.").

cc:

David Upton
55860 Haugen-Lehmann Way
Whitewater, California 92282

S:\PJW\Cases-Civil Rights\UPTON 702\MO_OSC FAC 2.wpd

**MINUTES FORM 90
CIVIL -- GEN**

Initials of Deputy Clerk CA
