

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN RADILLO,

Plaintiff, 1:04 CV 05353 GSA (PC)

vs. ORDER TO SHOW CAUSE

M. CHAMALBIDE,

Defendant.

On February 19, 2010, an order was entered, directing the parties to file status reports.

Plaintiff's status report was due within thirty days of February 19, 2010. Plaintiff has failed to file a status report. The parties were specifically cautioned that failure to file a status report may result in the imposition of sanctions, including dismissal.

Local Rule 110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.

1 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v.
2 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
3 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.
4 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
5 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal
6 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.
7 1986)(dismissal for failure to lack of prosecution and failure to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to obey a
9 court order, or failure to comply with local rules, the court must consider several factors: (1) the
10 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
11 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
12 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;
13 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,
14 46 F.3d at 53.

15 In the instant case, the court finds that the public's interest in expeditiously resolving this
16 litigation and the court's interest in managing the docket weigh in favor of dismissal. The third
17 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of
18 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.
19 Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring
20 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal
21 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order
22 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v.
23 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.

24 Accordingly, IT IS HEREBY ORDERED that Plaintiff shall show cause, within thirty
25 days of the date of service of this order, why this action should not be dismissed for his failure to
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1 prosecute. Plaintiff's failure to do so will result in dismissal of this action pursuant to Local
2 Rule 110 for failure to prosecute. IT IS FURTHER ORDERED that Defendant is absolved from
3 her obligation to file a status report until such time as Plaintiff files a status report. Defendant
4 will be granted thirty days from the date Plaintiff's status report is filed in which to file her status
5 report.

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8 IT IS SO ORDERED.

9 **Dated: April 20, 2010**

10 /s/ Gary S. Austin
11 UNITED STATES MAGISTRATE JUDGE
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