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

GLORIA PALACIOS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HENRY D. NUNEZ, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

1:08-cv-01996-AWI-SMS  
**ORDER REQUIRING PLAINTIFF TO  
PERSONALLY APPEAR AND SHOW  
CAUSE WHY THIS ACTION SHOULD  
NOT BE DISMISSED FOR LACK OF  
PROSECUTION**  
Date: 8/21/09  
Time: 9:30 a.m.  
Ctrm: 7 ~ 6<sup>th</sup> Floor

This matter was initially set for a Mandatory Scheduling Conference on April 7, 2009 at 9:30 a.m. before the Honorable Gary S. Austin, United States Magistrate Judge, pursuant to the standard Order Setting Mandatory Scheduling Conference, filed January 5, 2009 (Doc. 3). On January 15, 2009, plaintiff filed a Statement of Disqualification as to Judge Austin (Doc. 4). On January 20, 2009, Judge Austin issued an Order disqualifying himself as the Magistrate Judge assigned to the case, and directing that the case be reassigned to the Honorable Sandra M. Snyder, United States Magistrate Judge, thereby changing the case number to 1:08-cv-01996-AWI-SMS (Doc. 5). On January 21, 2009, Judge Snyder issued a

1 Minute Order resetting the scheduling conference on her docket for  
2 April 27, 2009 at 10:00 a.m. (Doc. 6). On April 14, 2009,  
3 plaintiff filed a motion to stay the case or postpone the  
4 scheduling conference for 90 days due to a medical emergency out-  
5 of-state (Doc. 7). On April 20, 2009, Judge Snyder issued a Minute  
6 Order denying plaintiff's motion to stay the case and granting her  
7 request to continue the scheduling conference to August 3, 2009 at  
8 10:30 a.m. (Doc. 8), for which plaintiff did not appear or  
9 otherwise contact the court.

10 A review of the instant action shows that plaintiff has not  
11 diligently prosecuted this case. The court possesses the  
12 discretionary authority to dismiss an action based on plaintiff's  
13 failure to prosecute diligently. Fed. R. Civ. P. 41(b); Schwarzer,  
14 Tashima & Wagstaffe, Fed. Civ. Proc. Before Trial ¶ 16:431 (1997).  
15 Unreasonable delay by plaintiff is sufficient to justify dismissal,  
16 even in the absence of actual prejudice to the defendant (Moore v.  
17 Telfon Communications Corp., 589 F.2d 959, 967-68 (9th Cir. 1978))  
18 since a presumption of injury arises from the occurrence of  
19 unreasonable delay. Fidelity Philadelphia Trust Co. v. Pioche  
20 Mines Consol., Inc., 587 F.2d 27, 29 (9th Cir. 1978). Plaintiff  
21 then has the burden of showing justification for the delay and, in  
22 the absence of such showing, the case is properly dismissed for  
23 failure to prosecute. Nealey v. Transportation Maritima Mexicana,  
24 S.A., 662 F.2d 1275 (9th Cir. 1980).

25 **IT IS HEREBY ORDERED:**

26 1. That this matter is SET for hearing, at which plaintiff  
27 must **PERSONALLY APPEAR**, on Friday, **August 21, 2009 at 9:30 a.m.**, in  
28 Courtroom No. 7 on the Sixth Floor of the United States Courthouse,

1 2500 Tulare Street, Fresno, CA, 93721, before the Honorable Sandra  
2 M. Snyder, United States Magistrate Judge, to show cause why this  
3 action should not be dismissed for plaintiff's lack of prosecution.

4 2. If plaintiff has any reasons why this action should not  
5 be dismissed, they shall be submitted, in advance, by sworn  
6 declaration of facts on or before **August 14, 2009**, to which a  
7 supporting memorandum of law may be appended, to include:

8 (A) an explanation of the lack of activity in this case;

9 and,

10 (B) shall list each specific step plaintiff plans to  
11 take to prepare this case for trial.

12 Plaintiff is advised that a failure to comply with and/or  
13 respond to this order will result in a recommendation to the  
14 District Court Judge that this action be dismissed.

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17 IT IS SO ORDERED.

18 **Dated:** August 10, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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