

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

<b>JACOB SALCIDO, a minor by and through his guardian ad litem Jeanine Salcido,</b>	)	<b>1:10-CV-195 AWI BAM</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER VACATING PRE- TRIAL CONFERENCE AND ORDER TO SHOW CAUSE</b>
<b>v.</b>	)	
<b>THE COUNTY OF MADERA, et al.,</b>	)	
<b>Defendants.</b>	)	

Trial in this matter is set for October 30, 2012. The pre-trial conference is set for September 7, 2012. Pursuant to the scheduling order, the parties were required to file a joint pre-trial statement. See Doc. No. 41 at 4:19-21.

On August 31, 2012, Defendant filed a pre-trial statement. See Doc. No. 49. Defendants represent that they have been unable to reach Plaintiff’s counsel regarding a joint pre-trial statement despite numerous letters, e-mails, and phone calls over the past five weeks. See id. at 1:4-10. Defense counsel represents that Plaintiff’s counsel has failed to respond to all attempts to meet and confer, and Plaintiff has provided no information for the pre-trial statement. See id. Nevertheless, defense counsel states that a good faith effort has been made to provide all information that is required for a joint pre-trial statement. See id.

Based on the representations made in Defendant’s pre-trial statement, Plaintiff is in violation of a Court order and the local rules. Plaintiff has filed no pre-trial statement of any

1 kind. Based on the representations made in Defendants' pre-trial statement, it does not appear  
2 that Plaintiff has made any effort to comply with the local rules or the scheduling order. The  
3 failure of Plaintiff to file a pre-trial statement, let alone the ordered and required joint pre-trial  
4 statement, renders the pre-trial procedures incomplete and the pre-trial conference impractical.  
5 Without a meaningful pre-trial conference, a reasonable and efficient jury trial cannot be  
6 accomplished. Thus, this case is now at a stand still.

7         Local Rule 110 provides that "a failure of counsel or of a party to comply with these  
8 Local Rules or with any order of the Court may be grounds for the imposition by the Court of any  
9 and all sanctions . . . within the inherent power of the Court." "District courts have the inherent  
10 power to control their dockets and in the exercise of that power they may impose sanctions  
11 including, where appropriate, dismissal of a case." Bautista v. Los Angeles County, 216 F.3d  
12 837, 841 (9th Cir. 2000); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992); Thompson v.  
13 Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an  
14 action, with prejudice, based on a party's failure to prosecute an action or failure to obey a court  
15 order. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
16 noncompliance with Local Rule); In re Eisen, 31 F.3d 1447, 1456 (9th Cir. 1994) (dismissal for  
17 lack of prosecution); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for  
18 failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
19 (dismissal for lack of prosecution and failure to comply with Local Rules). In determining  
20 whether to dismiss an action for lack of prosecution or failure to obey a court order, a court must  
21 consider several factors, including: (1) the public's interest in expeditious resolution of litigation;  
22 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the  
23 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
24 alternatives. Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Bautista, 216 F.3d at  
25 841; In re Eisen, 31 F.3d at 1451; Ferdik, 963 F.2d at 1260-61; Henderson, 779 F.2d at 1424;  
26 Thompson, 782 F.2d at 831.

27         In light of the Plaintiff's failure to file any pre-trial statement, the apparent failure to  
28 make any attempt to file the ordered and required joint pre-trial statement, and the

1 representations made by Defendants in their timely filed pre-trial statement, the Court has  
2 concerns regarding Plaintiff's prosecution of this case. The Court will vacate the currently set  
3 pre-trial date and order Plaintiff to show cause in writing why he failed to file any pre-trial  
4 statement, why he failed to file the required joint pre-trial statement, and why this case should not  
5 be dismissed for failure to prosecute and/or for failure to follow Court orders and local rules.  
6

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The pre-trial conference date of September 7, 2012, is VACATED;
- 9 2. Plaintiff shall show cause in writing why sanctions should not be imposed, including the  
10 dismissal of this case with prejudice, for the failure to prosecute this case and for the  
11 failure to file the required pre-trial statement in violation of the scheduling order;
- 12 3. Plaintiffs shall file their response to this order no later than 9:15 a.m. on September 10,  
13 2012;
- 14 4. If the Court is satisfied with Plaintiff's response, the Court will discharge the OSC, re-set  
15 the pre-trial conference, and require that a joint pre-trial statement be submitted; and
- 16 5. Plaintiff is warned that the failure to file a timely response to this order will result in the  
17 dismissal of this case with prejudice without further notice.

18 IT IS SO ORDERED.

19 Dated: September 4, 2012

20   
21 \_\_\_\_\_  
22 CHIEF UNITED STATES DISTRICT JUDGE  
23  
24  
25  
26  
27  
28