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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

C.M., et al.,  
Plaintiffs,  
v.  
SCHWARZENEGGER, et al.,  
Defendants.

Case No. 1:15-cv-01709-LJO-SAB  
ORDER DEFERRING RULING ON  
COUNSEL’S MOTION TO WITHDRAW  
AND REQUIRING PLAINTIFFS TO  
APPEAR ON SEPTEMBER 20, 2016 TO  
SHOW CAUSE WHY THIS ACTION  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO COMPLY WITH COURT  
ORDER AND FAILURE TO PROSECUTE

**I.**

**BACKGROUND**

Plaintiffs Ramona Talamantez and minors C. M and I. M (“Plaintiffs”) filed this civil rights action on November 9, 2015, pursuant to 42 U.S.C. § 1983 alleging deliberate indifference in violation of the Eighth Amendment caused the death of their son/father. While the complaint was filed “by and through her guardian ad litem” neither minor plaintiff has sought to have the court appoint a guardian ad litem. On May 23, 2016, Plaintiffs’ counsel filed a motion to withdraw as attorney of record. On June 21, 2016 an order issued continuing the hearing and directing Plaintiffs to provide proof of appointment of guardian ad litem and directing counsel to personally serve Plaintiff Talamantez, Helen Cervantes, and Adelita Montes with notice to appear for the hearing on this motion.

1 On July 5, 2016, Plaintiffs' counsel filed a declaration stating that counsel had sought the  
2 assistance of a probate attorney in filing petitions to appoint the mothers of the minors as  
3 guardian ad litem in state court. The probate attorney has mailed notices to the mothers of the  
4 minors regarding court dates to which they have not responded and this has required the case to  
5 be continued. There is a court date in late October 2016 in probate court and the attorney does  
6 not expect that the court will agree to a further continuance. Therefore, the minors have not been  
7 appointed a guardian ad litem. On this same date, Defendants filed a statement of non-  
8 opposition to the motion to withdraw. On August 17, 2016, counsel filed proofs that Plaintiff  
9 Talamantez, Helen Cervantes, and Adelita Montes had been personally served with the order  
10 requiring them to appear at the August 31, 2016 hearing.

11 The Court held a hearing on August 31, 2016, on the motion to withdraw as counsel.  
12 Plaintiff's counsel Brian Bush appeared and counsel Jon Allin appeared for Defendants. Plaintiff  
13 Talamantez, Helen Cervantes, and Adelita Montes did not appear at the hearing. The Court  
14 heard argument and the matter was taken under submission.

## 15 II.

### 16 DISCUSSION

17 Based on the failure of Plaintiff Talamantez, Helen Cervantes, and Adelita Montes to  
18 appear for the August 31, 2016 hearing, the Court shall issue an order requiring Plaintiffs to  
19 show cause why this action should not be dismissed for failure to comply with the Court's order.  
20 The Court shall defer ruling on the motion to withdraw as counsel pending resolution of this  
21 order to show cause.

22 The Court has the inherent power to control its docket and may, in the exercise of that  
23 power, impose sanctions where appropriate, including dismissal of the action. Bautista v. Los  
24 Angeles County, 216 F.3d 837, 841 (9th Cir. 2000). Further, Local Rule 110 provides that  
25 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may  
26 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of  
27 the Court.”

28 In this instance, Plaintiffs' counsel has indicated that despite numerous extensive

1 attempts to communicate with the plaintiffs in this action, they refuse to respond to his attempts.  
2 Counsel has made arrangements with a probate attorney to pursue having the mothers of the  
3 minor plaintiffs appointed as guardian ad litem for the minor plaintiffs and the probate attorney  
4 has been required to continue the matter due to Helen Cervantes and Adelita Montes failure to  
5 respond to communication. Plaintiff Talamantez, Helen Cervantes, and Adelita Montes were  
6 personally served with an order requiring them to appear on August 31, 2016, at 10:00 a.m. and  
7 they did not comply with the order. Based upon the information received to date, it does not  
8 appear that Plaintiffs intend to prosecute this action.

9           While Helen Cervantes and Adelita Montes have not been appointed as guardian ad litem  
10 for the minors in this action, as the minor's mother they are the guardian of the minor. For that  
11 reason, the Court shall require Plaintiff Talamantez, Helen Cervantes, and Adelita Montes to  
12 respond to this order and personally appear for a hearing to show cause why this action should  
13 not be dismissed for failure to comply with a court order and failure to prosecute. Although the  
14 Court has not granted the request to withdraw at this time, for purposes of this motion, a  
15 response shall be required from Plaintiff Talamantez, Helen Cervantes, and Adelita Montes  
16 individually and not from counsel. If Plaintiffs no longer wish to pursue this action they must so  
17 notify the Court. Further, all due dates in this action are stayed pending resolution of this order  
18 to show cause.

19           Accordingly, IT IS HEREBY ORDERED that:

- 20           1. On or before **September 12, 2016**, Plaintiff Talamantez, Helen Cervantes, and  
21           Adelita Montes shall show cause in writing why this action should not be  
22           dismissed for their failure to comply with the order to appear at the August 31,  
23           2016 hearing and failure to prosecute;
- 24           2. Plaintiff Talamantez, Helen Cervantes, and Adelita Montes shall personally  
25           appear at the **Robert Coyle Federal Courthouse, 2500 Tulare Street, Fresno,**  
26           **California on September 20, 2016, at 10:00 a.m. in Courtroom 9;**
- 27           3. All dates in this action are stayed pending resolution of this order to show cause;
- 28           4. Plaintiffs' counsel may appear telephonically at the September 20, 2016 hearing

1 by contacting Courtroom Deputy Mamie Hernandez prior to the hearing to obtain  
2 the teleconference number and passcode;

3 5. Plaintiffs are advised that failure to comply with this order will result in the  
4 recommendation that this action be dismissed for failure to comply with a court  
5 order and failure to prosecute; and

6 6. The Office of the Clerk is directed to serve a copy of this order on the following  
7 individuals:

8 Ramona Talamantez  
9 203 N. Glenn Avenue, Apt. E  
10 Fresno, California 93701

11 I.M. through his guardian Adelita Montes  
12 2215 W. Holland Avenue  
13 Fresno, California 93705

14 C.M. through his guardian Helen Cervantes  
15 3485 N. Marks Avenue #103  
16 Fresno, California 93722.

17 IT IS SO ORDERED.

18 Dated: August 31, 2016

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21 UNITED STATES MAGISTRATE JUDGE  
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