

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO OSEGUEDA, et al.,

Plaintiffs,

v.

STANISLAUS COUNTY PUBLIC
SAFETY CENTER, et al.,

Defendants.

Case No. 1:16-cv-01218-NONE-BAM

**ORDER REQUIRING COUNSEL FOR
PLAINTIFF TO APPEAR APRIL 19, 2021
TO SHOW CAUSE WHY SANCTIONS
SHOULD NOT BE IMPOSED FOR FAILURE
TO OBEY A COURT ORDER**

Plaintiffs Armando Osegueda and Robert Palomino filed this action on August 16, 2016. (Doc. 1.) On February 5, 2017, a Second Amended Complaint was filed adding David Lomeli and Jairo Hernandez as Plaintiffs. (Doc. 22.) On January 29, 2019, the Court approved the parties' stipulation to stay this matter pending resolution of the state criminal proceedings against Plaintiffs. (Doc. 50.) The Court further directed Plaintiffs to file a written status report every ninety (90) days notifying the Court of the status of the criminal matter. (*Id.*)

On December 27, 2019, after no status reports had been filed, the Court issued an Order to Show Cause why sanctions should not be imposed for failure to comply with an order of the Court. (Doc. 53.) Plaintiffs were required to file either a written response or the required status report by January 10, 2020. (*Id.*) Plaintiffs did not file a written response or status report as required by the Court's December 27, 2019 order. Accordingly, on January 29, 2020, the Court ordered Plaintiffs' counsel Amber Hope Gordon to personally appear before the Court on February 12, 2020, to show cause why the action should not be dismissed for failure to prosecute and failure to comply with the Court's orders. (Doc. 56.) Counsel was permitted to comply with the Court's January 29, 2020 Order to Show Cause by filing the required status report by February 10, 2020. (*Id.*)

1 On January 29, 2020, Plaintiffs filed the required status report. (Doc. 57.) The Court
2 accordingly discharged the Orders to Show Cause issued December 27, 2019, and January 29,
3 2020. (Doc. 58.) However, counsel was reminded of Plaintiffs' ongoing obligation to file a
4 written status report every ninety (90) days notifying the Court of the status of the criminal
5 matter. (*Id.*) Counsel was further cautioned that any future failure to comply with an order of the
6 Court will result in the imposition of sanctions. (*Id.*)

7 On May 4, 2020, after Plaintiffs again failed to file a status report, the Court issued
8 another Order to Show Cause why sanctions should not be imposed. (Doc. 60.) Plaintiffs were
9 ordered to respond in writing within fourteen (14) days and were permitted to comply with the
10 Order to Show Cause by filing the required status report. (*Id.*) On May 22, 2020, Plaintiffs filed
11 the required status report. (Doc. 61.) The Court accordingly discharged the Order to Show Cause
12 issued May 4, 2020. (Doc. 62.) However, the Court noted that Plaintiffs' May 22, 2020 status
13 report was filed well after the deadline for a response to the Order to Show Cause. (*Id.*) Counsel
14 was again reminded of the obligation to file status reports every ninety (90) days and was
15 additionally warned that future failures to comply with the Court's orders would result in the
16 imposition of sanctions against counsel. (*Id.*)

17 On August 26, 2020, after Plaintiffs yet again failed to file a status report, the Court
18 ordered Plaintiffs' counsel Amber Hope Gordon to personally appear via Zoom before the Court
19 on September 10, 2020, to show cause why sanctions, including monetary sanctions and/or
20 dismissal of this action, should not be imposed against her for failure to comply with an order of
21 the Court. (Doc. 63.)

22 On August 27, 2020, Plaintiffs filed a status report indicating that Messrs. Osegueda and
23 Palomino's criminal cases were ongoing. (Doc. 64.) Plaintiffs' counsel further provided a
24 declaration explaining that her failure to file a timely status report was due to the death of her
25 father. (Doc. 64-1.) The Court accordingly discharged the Order to Appear and Show Cause
26 issued on August 26, 2020. (Doc. 65.) However, the Court noted that Plaintiffs' status reports
27 have been tardy on multiple occasions and several orders to show cause have issued in order to
28 secure Plaintiffs' compliance with applicable deadlines. The Court indicated that counsel's

1 delays have caused the Court to unnecessarily expend its resources to gain counsel’s compliance
2 with orders. (*Id.*) Additionally, the Court strongly cautioned counsel against future failures to
3 comply with the Court’s orders because future failures will likely result in the imposition of
4 sanctions. (*Id.*)

5 On November 23, 2020, Plaintiffs’ filed a status report indicating that Messrs. Osegueda
6 and Palomino’s criminal cases were ongoing. (Doc. 66.) The status report was dated January 22,
7 2020. (*Id.* at 2.)

8 More than ninety days has elapsed since the last submission of a status report on
9 November 23, 2020, and Plaintiffs have once again failed to file a timely written status report.

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

15 Accordingly, Plaintiffs’ counsel, Amber Hope Gordon, is **HEREBY ORDERED** to appear
16 before the undersigned on **April 19, 2021, at 9:30 AM** to show cause why sanctions, including
17 monetary sanctions and/or dismissal of this action, should not be imposed against her for failure
18 to comply with an order of the Court. In light of evolving coronavirus protocols, Ms. Gordon
19 shall appear **remotely via Zoom**. Ms. Gordon shall contact Courtroom Deputy, Esther Valdez, at
20 (559) 499-5788 or evaldez@caed.uscourts.gov for the video and dial-in information.

21 Ms. Gordon may submit a written response to this order to show cause on or before **April**
22 **9, 2021**. Notwithstanding any written response, Ms. Gordon will be required to personally appear
23 before the Court via Zoom on April 19, 2021.

24 ///

25 ///

26 ///

27 ///

28

1 **Failure to file a written response or failure to appear before the Court on April 19,**
2 **2021, will result in the imposition of sanctions, including monetary sanctions and/or a**
3 **recommendation that this action be dismissed for failure to prosecute and failure to comply**
4 **with the Court's orders. Counsel is cautioned that this Court is strongly considering**
5 **recommending dismissal of this action for counsel's continuous failure to abide by Court**
6 **orders.**

7 IT IS SO ORDERED.

8 Dated: April 5, 2021

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28