

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

)	
)	2:09-cv-00387-GEB-DAD
12 MELISSA KREISS,)	
)	
13 Plaintiff,)	
)	<u>ORDER IMPOSING A SANCTION</u>
14 v.)	
)	
15 FALZONE ASSOCIATES,)	
)	
16 Defendant.)	
_____)	

Plaintiff and her lawyer were issued an Order to Show Cause ("OSC") on June 24, 2009, which required them to explain why sanctions should not be imposed since Plaintiff failed to file a timely status report. On July 8, 2009, Plaintiff's counsel filed a response to the OSC, in which he states:

Due to an inadvertent oversight in Plaintiff's attorneys' case management program, the internal notification to conference with Defendant pursuant to Fed.R.Civ.P 26(f) and to file the parties' Joint Status Report was missed, resulting in Plaintiff's inadvertent failure to initiate the Fed.R.Civ.P. 26(f) conference and file a Joint status report. Accordingly, Plaintiff's attorneys did not intentionally disregard this Court's Order requiring the filing of a Joint Status Report

1 within fourteen (14) days of the status conference
2 previously scheduled for June 29, 2009.

3 (Pl.'s Resp. 2:14-21.)

4 The June 24, 2009 OSC also required a status report be filed
5 no later than fourteen days prior to the now scheduled September 28,
6 2009 status conference. Plaintiff has not yet filed the required
7 status report. It appears Plaintiff's counsel does not have in place
8 a procedure designed to assist counsel comply with court deadlines.

9 It is certainly understandable that attorneys
10 frequently choose to delegate [calendaring filing
11 dates] to paralegals or other associates, leaving
12 to them the task of reading and complying with the
13 applicable rules [and orders] of court. But it
14 should never be forgotten that the attorney of
15 record is ultimately responsible for [timely filing
16 documents]. It is therefore the professional duty
17 of the attorney of record to ensure through proper
18 supervision that all [documents are filed when
19 due].

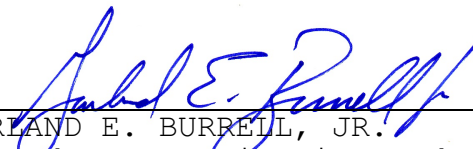
20 Dela Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241,
21 1244 (9th Cir. 1998).

22 Plaintiff's counsel should also know that "[a] scheduling
23 order is not a frivolous piece of paper, idly entered, which can be
24 cavalierly disregarded by counsel without peril Disregard of
25 the order would undermine the court's ability to control its docket
26 . . . and reward the indolent and the cavalier." Johnson v. Mammoth
27 Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992) (internal
28 citation and quotations omitted); see also Ayers v. City of Richmond,
29 895 F.2d 1267, 1270 (9th Cir. 1990) (affirming sanction of lawyer for
30 failure to attend a settlement conference because "*the date 'slipped*
31 *by him'*") (emphasis added). "The cogs of the wheel of justice move
32 much more smoothly when attorneys who practice in this court follow

1 the rules of practice and procedure" Dela Rosa, 136 F.3d at
2 1244.

3 Since Plaintiff's counsel failed to file a timely status
4 report, and the response of Plaintiff's attorney to the OSC is
5 insufficient to avoid imposition of a sanction, a sanction will be
6 imposed. Therefore, Plaintiff's attorney Nicholas J. Bontrager and/or
7 Krohn & Moss, Ltd., is sanctioned four hundred dollars (\$400.00) for
8 failure to timely file a status report. This sanction shall be paid
9 to the Clerk of this Court within ten (10) days from the date on which
10 this Order is filed by a check made payable to the "United States
11 Treasury." Proof of payment shall be sent to the undersigned judge's
12 chambers within five (5) days of payment. This sanction is personal
13 to counsel or his law firm and shall not be transmitted to counsel's
14 client.

15 Dated: September 16, 2009

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GARLAND E. BURRELL, JR.
United States District Judge