

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

JESUS TOMAYO and GLORIA
AQUINO,

Plaintiffs,

v.

GORDON TRUCKING, INC., et al.,

Defendants.

No. 2:13-cv-1652 TLN DAD PS

FINDINGS AND RECOMMENDATIONS

Plaintiffs Jesus Tomayo and Gloria Aquino are currently proceeding pro se in this action. Accordingly, the case has been referred to the undersigned pursuant to Local Rule 302(c)(21).

On January 31, 2014, the court issued an order setting a Status (Pretrial Scheduling) Conference for March 28, 2014. (Dkt. No. 19.) Pursuant to that order, plaintiffs were to file and serve a written status report on or before March 14, 2014. The order setting the status conference also advised plaintiffs that:

failure to file a timely status report, or failure to appear at the status conference either in person or telephonically, may result in an order imposing an appropriate sanction. See Local Rules 110 and 183.

(Id. at 2.)

/////
/////

1 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of
2 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
3 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that
4 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d
5 at 1260.

6 Failure of a party to comply with the any order of the court “may be grounds for
7 imposition by the Court of any and all sanctions authorized by statute or Rule or within the
8 inherent power of the Court.” Local Rule 110. Any individual representing himself or herself
9 without an attorney is nonetheless bound by the Federal Rules of Civil Procedure, the Local
10 Rules, and all applicable law. Local Rule 183(a). A party’s failure to comply with applicable
11 rules and law may be grounds for dismissal or any other sanction appropriate under the Local
12 Rules. Id.

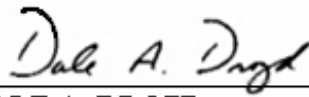
13 Here, plaintiffs failed to file a status report and failed to appear at the Status Conference.
14 The court issued an order to show cause that provided plaintiffs with an opportunity to show good
15 cause for their failure to comply with the court’s order setting the Status Conference and their
16 failure to appear at the Status Conference. Nonetheless, plaintiffs failed to respond to that order
17 in any way. The order to show cause warned plaintiffs that failure to file a written response to
18 that order would result in a recommendation that this matter be dismissed.

19 Plaintiffs’ lack of prosecution of this case renders the imposition of monetary sanctions
20 futile. Moreover, the public interest in expeditious resolution of litigation, the court’s need to
21 manage its docket, and the risk of prejudice to the defendants all support the imposition of the
22 sanction of dismissal. Only the public policy favoring disposition on the merits counsels against
23 dismissal. However, plaintiffs’ failure to prosecute the action in any way makes disposition on
24 the merits an impossibility. The undersigned will therefore recommend that this action be
25 dismissed due to plaintiffs’ failure to prosecute as well as failure to comply with the court’s
26 orders. See FED. R. CIV. P. 41(b).

27 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
28 prejudice.

1 These findings and recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
3 days after being served with these findings and recommendations, plaintiffs may file written
4 objections with the court. A document containing objections should be titled “Objections to
5 Magistrate Judge’s Findings and Recommendations.” Plaintiffs are advised that failure to file
6 objections within the specified time may, under certain circumstances, waive the right to appeal
7 the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

8 Dated: May 13, 2014

9 

10 _____
11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

13 DAD:6
14 Ddad1\orders.pro se\tomayo1652.dlop.f&rs.docx