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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZUKEYNA COPELAND,  
Plaintiff,  
v.  
CHALLENGE SECURITY SERVICES,  
INC.,  
Defendants.

No. 2:18-cv-01435-TLN-CKD PS

FINDINGS AND RECOMMENDATIONS

On May 14, 2018, plaintiff filed the present action through counsel. (ECF No. 1) On May 16, 2019, counsel moved to withdraw. (ECF No. 10). Counsel’s motion was granted by the District Judge assigned to this matter on January 21, 2020. (ECF No. 12). Thereafter the undersigned scheduled a status conference and directed plaintiff to file a status report at least fourteen days prior to the conference. (ECF No. 14). Plaintiff was cautioned that “[f]ailure to comply with this order may result in a recommendation that this action be dismissed.” (Id.) Plaintiff failed to file the status report as directed.

In response to plaintiff’s failure to prosecute her case and follow orders from the court, on March 2, 2020, the court issued an order for plaintiff to show cause as to why this case should not be dismissed. (ECF No. 15.) Plaintiff was ordered to respond within 7 days. (Id.) That deadline has passed and plaintiff has not responded.

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1 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply  
2 with these Rules or with any order of the Court may be grounds for imposition by the Court of  
3 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”

4 Moreover, Eastern District Local Rule 183(a) provides, in part:

5 Any individual representing himself or herself without an attorney  
6 is bound by the Federal Rules of Civil or Criminal Procedure, these  
7 Rules, and all other applicable law. All obligations placed on  
8 “counsel” by these Rules apply to individuals appearing in propria  
9 persona. Failure to comply therewith may be ground for dismissal,  
10 judgment by default, or any other sanction appropriate under these  
11 Rules.

12 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the  
13 same rules of procedure that govern other litigants”) (overruled on other grounds). A district  
14 court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to  
15 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or  
16 fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local  
17 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act  
18 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.  
19 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action  
20 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute  
21 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,  
22 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground  
23 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal  
24 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with  
25 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.  
26 1986) (per curiam) (stating that district courts have inherent power to control their dockets and  
27 may impose sanctions including dismissal or default).

28 A court must weigh five factors in determining whether to dismiss a case for failure to  
prosecute, failure to comply with a court order, or failure to comply with a district court’s local  
rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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1 (1) the public's interest in expeditious resolution of litigation; (2)  
2 the court's need to manage its docket; (3) the risk of prejudice to  
3 the defendants; (4) the public policy favoring disposition of cases  
4 on their merits; and (5) the availability of less drastic alternatives.

4 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002).

5 Here, the first two factors weigh in favor of dismissal, because this case has already been  
6 delayed by plaintiff's failure to take the steps necessary to move this case forward. The third  
7 factor does not favor dismissal as the defendants have failed to respond, but the court finds that  
8 this factor is outweighed by the other factors in favor of dismissal.

9 Furthermore, the fifth factor, availability of less drastic alternatives, favors dismissal,  
10 because the court has already attempted less drastic remedies. The court, cognizant of plaintiff's  
11 pro se status, clearly cautioned plaintiff regarding the potential consequences of any continued  
12 failure to comply with the court's orders. However, even after this warning, plaintiff has failed to  
13 respond to the court's order and has failed to prosecute his case.

14 Finally, as to the fourth factor, the public policy favoring disposition of cases on their  
15 merits, that factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff's own failure to  
16 prosecute the case and comply with court orders that precludes a resolution on the merits.

17 Therefore, after carefully evaluating the Ferdik factors, the court concludes that dismissal  
18 is appropriate.

### 19 **FINDINGS AND RECOMMENDATIONS**

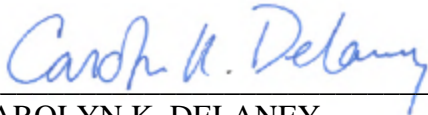
20 Accordingly, IT IS HEREBY RECOMMENDED that:

- 21 1. The action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure  
22 41(b).
- 23 2. The Clerk of Court be directed to close this case.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, any party may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
2 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: November 10, 2020

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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