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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABDURAHAM MOHAMMED, et. al.,

CASE NO. 5:10-cv-05630 EJD

Plaintiff(s),

**ORDER DENYING MOTION FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION; DENYING
REQUEST FOR DISMISSAL**

v.

CITY OF MORGAN HILL, et. al.,

[Docket Item No. 185]

Defendant(s).

Presently before the court is Plaintiff Jinow Gudal’s (“Gudal”) request for reconsideration of the order filed January 6, 2012, wherein the court denied her second request for an extension of time to file an amended complaint. See Docket Item Nos. 181, 185. The court has construed Gudal’s request as a motion for leave under Civil Local Rule 7-9 despite Gudal’s noncompliance with that rule.¹ As so construed and in light of the discussion held at the Case Management Conference (“CMC”) on January 20, 2012, the motion will be denied.

Defendants have also requested the court dismiss the complaint *sua sponte* due to Plaintiff’s repeated failure to comply with orders requiring them to file an amended pleading. Although the court certainly understands the basis for Defendants’ request, the court will not dismiss the complaint at this time for the reasons explained below.

¹ In the Northern District of California, parties may not file a motion for reconsideration without first obtaining permission from the court to file such a motion. Civ. L.R. 7-9(a) (“No party may notice a motion for reconsideration without first obtaining leave of Court to file the motion.”).

1 clarification.

2 On November 15, 2011, Gudal filed a motion to once again extend the deadline for
3 amending the complaint based primarily on the progress of a probate case proceeding in state court
4 with regard to Mohammed's estate. See Docket Item No. 173. The court granted the motion as
5 requested and extended the deadline to January 5, 2012, but warned that no further extensions would
6 be granted absent extraordinary circumstances. See Docket Item No. 176.

7 On December 28, 2011, Gudal filed a second motion to extend the deadline for amending her
8 pleadings from January 5th to February 6, 2012, again based on the progress of the probate
9 proceedings in state court. See Docket Item Nos. 177, 178. Defendants opposed the motion in a
10 joint filing. See Docket Item No. 180. In denying the requested extension, the court wrote:

11 [Gudal] has already received two extensions of the original deadline
12 ordered by the court, the first from September 29, 2011, to November
13 30, 2011, and the second from November 30, 2011, to January 5,
14 2011. See Docket Item Nos. 172, 176. In receiving the second
15 extension, [Gudal] was specifically warned that further extensions of
16 time would not be granted absent the presentation of extraordinary
17 circumstances. See Docket Item No. 176.

18 Having reviewed the instant motion and other materials filed in
19 support thereof, the court finds that [Gudal] has failed to demonstrate
20 good cause for the relief requested, as has failed to demonstrate the
21 type of extraordinary circumstances contemplated by the court in its
22 prior order. Indeed, [Gudal] has now been provided more than 120
23 days within which to file an amended pleading since the court issued
24 its original order on August 30, 2011. See Docket Item No. 163.

25 See Docket Item No. 181.

26 The court did, however, allow Gudal one final extension of the amendment deadline from
27 January 5, 2012, to January 16, 2012. See id. Although Gudal appeared at the CMC on January 20,
28 2012, she did not file an amended complaint as directed.

29 II. DISCUSSION

30 A. Reconsideration

31 As noted previously, the process for filing a motion for reconsideration is described in Local
32 Civil Rule 7-9. The first step of that process requires a party seeking reconsideration of a prior order
33 to obtain permission to make such a request. Rule 7-9(a) states:

1 Before the entry of a judgment adjudicating all of the claims and the
2 rights and liabilities of all the parties in the case, any party may make a
3 motion before a Judge requesting that the Judge grant the party leave
4 to file a motion for reconsideration of any interlocutory order made by
that Judge on any ground set forth in Civil L.R. 7-9(b). No party may
notice a motion for reconsideration without first obtaining leave of
Court to file the motion.

5 In requesting leave of court, the moving party must at the very least do two things. First, the
6 party must make a specific showing supporting one of the following bases:

- 7 (1) At the time of the filing the motion for leave, a material
8 difference in fact or law exists from that which was presented
9 to the Court before entry of the interlocutory order for which
10 reconsideration is sought. The party also must show that in the
exercise of reasonable diligence the party applying for
reconsideration did not know such fact or law at the time of the
interlocutory order; or
- 11 (2) The emergence of new material facts or a change of law
12 occurring after the time of such order; or
- 13 (3) A manifest failure by the Court to consider material facts or
14 dispositive legal arguments which were presented to the Court
before such interlocutory order. Civ. L.R. 7-9(b).

15 Second, the party must accomplish the appropriate showing without repeating any oral or
16 written argument previously made with respect to the interlocutory order that the party now seeks to
17 have reconsidered. Civ. L.R. 7-9(c). Doing so subjects that party to the possibility of sanctions. Id.

18 It appears from the argument and declaration which comprise the instant request that Gudal
19 believes the court failed to consider “material facts” in denying her second request for an extension
20 of the amendment deadline. But as indicated by Defendants at the CMC on January 20, 2012, the
21 fact that a probate hearing was to occur on January 27, 2012, was previously presented to the court
22 with Gudal’s second extension motion, and was considered by the court in ruling on that motion.
23 Indeed, the portion of the order quoted above specifically states that the court reviewed Gudal’s
24 motion and the supporting materials provided. No other facts - new or otherwise - are presented or
25 referenced in the request for reconsideration.

26 Gudal has failed to demonstrate the court failed to consider any of the factual information
27 contained in her prior motion. Accordingly, her request for leave to file a motion for reconsideration
28 must be denied.

1 **B. Request for Dismissal**

2 As mentioned above, Defendants have requested an order dismissing the complaint for
3 Gudal’s failure to comply with the orders requiring an amended complaint.

4 Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action
5 for failure to comply with a court order. “In determining whether to dismiss a case for failure to
6 comply with a court order the district court must weigh five factors including: (1) the public’s
7 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
8 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
9 (5) the availability of less drastic alternatives.” Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
10 1991) (citing Thompson v. Hous. Auth. of L.A., 782 F.2d 829, 831 (9th Cir. 1986); Henderson v.
11 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)).

12 In examining the Ferdik factors, this court is mindful of the Supreme Court’s instruction to
13 liberally construe the “inartful pleading” of *pro se* litigants. See Boag v. MacDougall, 454 U.S. 364,
14 365 (1982). Moreover, the court has observed the Ninth Circuit policy of treating *pro se* litigants
15 with “great leniency” when assessing compliance with technical rules of civil procedure. See
16 Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986).

17 Here, the court finds that the first three Ferdik factors weigh in favor of dismissal. This
18 action, which has now been pending since December, 2010, has yet to progress past the initial
19 pleading stage. It has occupied a spot on this court’s docket and calendar in a state of arrested
20 development, requiring Defendants to expend time and incur fees in responding to Gudal’s
21 extension requests and related motions. Defendants have also been required to attend two court
22 conferences at which the only subject discussed was the expectation that Gudal would file an
23 amended pleading. The prejudice to Defendants in maintaining this action is therefore apparent and
24 has not escaped the court’s review.

25 But while there is some support for dismissal, the court finds such support outweighed by
26 other considerations. First, the court cannot ignore the fact that Gudal is a *pro se* litigant, and that
27 her current procedural quandary is a result of her son’s death. Thus, while Gudal is “expected to
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1 abide by the rules of the court in which [she] litigates,” the court must allow for particular leniency
2 under these circumstances. See Carter v. Comm’r of Internal Revenue, 784 F.2d 1006, 1008 (9th
3 Cir. 1986)). Second, the court notes that Gudal filed an amended complaint on January 23, 2012.
4 Although it was filed after expiration of the deadline, the amended pleading nonetheless alleviates
5 the concern that this action will remain stagnant. This case can now proceed on the merits, which is
6 certainly a less drastic alternative than summary dismissal. It is for these reasons that Defendants’
7 request for dismissal is denied.

8 **III. ORDER**

9 Based on the foregoing:

10 1. Gudal’s motion for reconsideration (Docket Item No. 185), construed as a motion for
11 leave to file a motion for reconsideration, is DENIED.

12 2. Defendant’s request for sua sponte dismissal is also DENIED. The court accepts the
13 amended complaint filed January 23, 2012 (Docket Item No. 188), as the currently-operative
14 complaint in this action.

15 3. In light of the orders above, the parties shall comply with the following schedule:

16 a. Gudal shall serve the amended complaint on all defendants forthwith, and
17 shall complete service no later than **February 2, 2012**.

18 b. Defendants shall file an answer or other responsive pleading no later than
19 **February 22, 2012**. All motions to dismiss or other similar motions filed in
20 lieu of an answer shall be noticed for **April 20, 2012, at 9:00 a.m.** The court
21 also sets a Case Management Conference for **April 20, 2012, at 10:00 a.m.**

22 The parties shall file a Joint Case Management Statement which, inter alia,
23 proposes a schedule for this action no later than **April 13, 2012**.

24 Both parties are admonished that compliance with these deadlines is expected, and the dates
25 may not be modified absent an order from this court.

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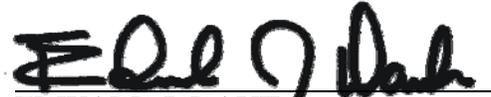
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Gudal is further admonished that failure to observe any requirements imposed by the Federal Rules of Civil Procedure, this district's Local Rules, or any court orders may result in dismissal of this action.

IT IS SO ORDERED.

Dated: January 23, 2012


EDWARD J. DAVILA
United States District Judge