

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JO ANNA CANZONERI,)	CIVIL NO. 08-00245 HG-LEK
)	
Plaintiff,)	
)	
vs.)	
)	
GEORGE W. BUSH, ET AL.,)	
)	
Defendants.)	
_____)	

**FINDING AND RECOMMENDATION THAT
CASE BE DISMISSED WITHOUT PREJUDICE**

Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, on May 27, 2008, Chief United States District Judge Helen Gillmor issued an order setting the Rule 16 Scheduling Conference in this matter for August 25, 2008. Plaintiff Jo Anna Canzoneri ("Plaintiff") failed to appear at this conference. Plaintiff also failed to file a scheduling conference statement, as required by Rule LR16.2(b) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules").

Courts do not take failure to comply with court orders lightly. Federal Rule of Civil Procedure 16(f)(1) provides, in pertinent part:

On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:
 (A) fails to appear at a scheduling or other pretrial conference[.]

Pursuant to Rule 16(f)(1)(A), the district judge may "dismiss[] the action or proceeding in whole or in part" if a party fails to appear at a scheduling conference. See Fed. R. Civ. P. 37(b)(2)(A)(v).

Plaintiff failed to comply with the order setting the Rule 16 Scheduling Conference and, although she has filed a number of motions in this case, she has failed to prosecute her case in the manner required by the Federal Rules of Civil Procedure and the Local Rules. After weighing the five dismissal factors set forth in Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000),¹ the Court finds that the public interest in expeditious resolution of this litigation and the court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced as they apparently have not been served, and there are no less drastic alternatives available at this time.

In accordance with the foregoing, this Court RECOMMENDS that the district judge DISMISS this case WITHOUT PREJUDICE.

¹ The Ninth Circuit has delineated five factors a district court must weigh in determining whether to dismiss a case for failure to comply with a court order: "1) the public interest; 2) the court's need to manage the docket; 3) the risk of prejudice to the defendant; 4) the public policy favoring disposition of cases on their merits; and 5) the availability of less drastic alternatives." Bautista, 216 F.3d at 841 (citation omitted).

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, September 3, 2008.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

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