

Civil No. 13-1680 (GAG)

1 The court sent manual notification to Plaintiff. (See entry between Docket Nos. 12 & 13.)

2 On January 2, 2014, the court noted that Plaintiff failed to follow the magistrate judge's
3 orders and to retain legal representation in a timely manner and ordered her to do so by January 21,
4 2014. (Docket No. 13.) Manual notification was again sent to Plaintiff. (See entry between Docket
5 Nos. 13 & 14.) On February 19, 2014, the court entered an order stating: "Plaintiff has now failed
6 to comply with two court orders to submit documents. Plaintiff shall submit the requisite
7 documentation to the [C]lerk's office by or before March 7, 2014." (Docket No. 14.) Again, manual
8 notification was sent to Plaintiff. (See entry between Docket Nos. 14 & 15.)

9 On February 27, 2014, Plaintiff filed a motion to appoint counsel, which the court referred
10 to the magistrate judge and which the magistrate judge denied without prejudice with instructions
11 to refile the application and actually answer the questions in the application. (Docket Nos. 15-19
12 & entry between 19 & 20.) Plaintiff complied and refiled the motion, the court referred it to the
13 magistrate judge, and the magistrate judge denied it without prejudice for similar reasons, instructing
14 another refiling. (Docket Nos. 20-22.) Manual notification was again issued to Plaintiff. (See entry
15 between Docket Nos. 22 & 23.)

16 On March 28, 2014, Plaintiff filed another motion to appoint counsel, the court again referred
17 it, the magistrate judge granted it on April 3, 2014, and court published notice of it on the docket and
18 manually notified Plaintiff. (Docket Nos. 23-26 & entry between Docket Nos. 26 & 27.) The
19 magistrate judge then scheduled an initial settlement and scheduling conference on May 16, 2014,
20 which the parties jointly moved to continue and which was rescheduled for June 17, 2014. (Docket
21 Nos. 27-29.) Plaintiff's counsel then moved the court to withdraw as Plaintiff's attorney, which the
22 court granted. (Docket Nos. 31 & 33.)

23 The court next entered a show-cause order that stated: "Based on the information provided
24 [by Plaintiff's counsel in requesting to withdraw,] Plaintiff shall show cause as to why this case
25 should not be dismissed. Accordingly, the Initial Scheduling Conference . . . is vacated. **Plaintiff**
26 **shall show cause by 6/24/2014.**" (Docket No. 34 (emphasis in original).) Manual notification was
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1 court only involuntarily dismisses a case for egregious conduct, as measured by “the severity of the
2 violation, the legitimacy of the party’s excuse, repetition of violations, the deliberateness *vel non* of
3 the misconduct, mitigating excuses, prejudice to the other side and to the operation of the court, and
4 the adequacy of lesser sanctions,” as well as any other relevant factors. Robson v. Hallenbeck, 81
5 F.3d 1, 2-3 (1st Cir. 1996). The court thus grapples with the Robson factors.

6 A. Severity of the Violation

7 Plaintiff failed to follow five court orders: two concerning obtaining representation and three
8 concerning the show-cause order regarding the plausibility of her claim and its sufficiency as a
9 matter of law. (Docket Nos. 13, 14, 34-36.) Mindful that Plaintiff is *pro se* and receiving manual
10 notification, the court extended the period by which she was required to comply. Still, nothing. The
11 court finds this “extremely protracted inaction” violates Rule 41(b) and the district court’s inherent
12 power to regulate its docket. Cosme Nieves v. Deshler, 826 F.2d 1, 2 (1st Cir. 1987). The court
13 warned Plaintiff on multiple occasions to update it and Plaintiff has not complied. Plaintiff’s
14 disregard for this case and failure to comply with the court’s orders constitute extremely severe
15 indifference to attention and the court’s authority.

16 B. Legitimacy of Excuses, Mitigation of Excuses, and Prejudice to the Other Side

17 Plaintiff has lodged no excuses. There are only two the court can envision: (1) she proceeds
18 *pro se* and (2) she has not received manual notification. As the docket demonstrates, however, the
19 court has walked Plaintiff through how to apply for pro bono counsel and even granted such a
20 motion that should have cured any potential disadvantage she endured by not having a legal
21 education or an attorney. Second, Plaintiff responded to manual notifications in the past to comply
22 with other court orders at Docket Nos. 12-14. It appears that she receives the notifications.

23 C. Repetition of Violations and Deliberate Misconduct

24 Plaintiff has been cited as failing to comply with five direct orders with three pertaining to
25 the show-cause order. (Docket Nos. 34-36.) The court does not know whether the conduct was
26 deliberate or negligent.

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1 D. Adequacy of Lesser Sanctions

2 The court could sanction Plaintiff in several ways, including a warning, formal reprimand,
3 a fine, imposition of costs or fees, temporary suspension, and dismissal. The court already warned
4 Plaintiff to submit filings multiple occasions. Fining Plaintiff or imposing costs and fees seems
5 counterproductive and insufficient.

6 E. Other Relevant Factors

7 Plaintiff proceeds *pro se* and so the court is mindful of this fact. But it has instructed her on
8 how to move for appointment of pro bono counsel and Plaintiff is aware of this process.

9 **IV. Conclusion**

10 For the aforementioned reasons, the court **DISMISSES** this case **without prejudice**
11 pursuant to Rule 41(b).

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13 **SO ORDERED.**

14 In San Juan, Puerto Rico this 11th day of August, 2014.

15 /S/ Gustavo A. Gelpí

16 GUSTAVO A. GELPI

17 United States District Judge
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