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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD E. WILMSHURST	CASE NO. 1:08-cv-00858-WBS-SMS
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	RECOMMENDING PROCEEDINGS
	AGAINST PLAINTIFF FOR
	CONTEMPT OF COURT
THE CITY OF ANGELS CAMP, et al.,	
Defendants.	(Docs. 89, 90, 91, 92, and 93)

On December 16, 2009, the Court entered judgment against Plaintiff Richard Wilmshurst. An amended bill of costs was taxed on April 21, 2010. Plaintiff has not paid.

On September 8, 2010, Defendant City of Angels Camp moved for an order compelling Plaintiff to appear at a deposition in aid of execution on October 29, 2010. On October 18, 2010, Plaintiff filed a memorandum of opposition and a declaration in which he stated his intent not to appear on October 29, 2010. Plaintiff asserted a claim against Defendant for an unrelated matter and contended that he was entitled to set-off the amount that he alleged was due to Plaintiff in the other dispute against the bill of costs in this action. On October 20, 2010, the Magistrate Judge re-calendared the hearing for November 19, 2010, and ordered Plaintiff and Defendant’s attorney to appear personally.

On November 18, 2010, the Magistrate Judge removed the motion from the calendar and took the motion under submission pursuant to Local Rule 230(h) (Fed.R.Civ.P. 78). On November 19, 2010, the Magistrate Judge granted Defendant’s motion and ordered Plaintiff to

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1 appear at a deposition on January 14, 2011. The Magistrate Judge refused to stay the deposition
2 in aid of execution pending resolution of Plaintiff's unrelated claim against Defendant.

3 On December 2, 2010, Plaintiff filed objections to the Court's November 19, 2010 order.
4 On December 17, 2010, Plaintiff filed notice of an appeal of the November 19, 2010 order to the
5 United States Court of Appeals for the Ninth Circuit. Because of the pending appeal, the
6 Magistrate Judge vacated the order for the January 14, 2011 deposition. On April 19, 2011, the
7 Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction, entering its mandate on May
8 11, 2011.

9 On May 23, 2011, the Magistrate Judge ordered Plaintiff to appear on July 8, 2011, for a
10 deposition intended to aid in Defendants' collection of the judgment entered against Plaintiff on
11 December 16, 2009; of costs billed after judgment taxed by the Court on April 23, 2010; and
12 additional costs set forth in the Order Granting Defendants' Motion to Compel Plaintiff's
13 Appearance at Deposition in Aid of Execution of Judgment, entered by this Court on November
14 19, 2010.

15 The order directed Plaintiff to produce to Defendant certain documents for inspection and
16 copying. Pursuant to F.R.Civ.P. 34(b)(2), Plaintiff was directed to serve on Defendants a written
17 response to the order, indicating whether he intended to produce the documents listed in the
18 deposition order, no later than fourteen days after the order's date. Plaintiff failed to comply with
19 the order to produce a written response.

20 On July 7, 2011, Plaintiff filed a document entitled "Plaintiff's Response to Defendant's
21 Notice of Plaintiff's Failure to Comply re Docket Number 89 for Appearance and Production of
22 Documents in Aid of Execution of Judgment" in which he stated, "Plaintiff will not be appearing
23 on July 8, 2011 as a matter of law." Plaintiff failed to appear for the deposition on July 8, 2011.

24 Based on the foregoing, the undersigned HEREBY RECOMMENDS that proceedings for
25 contempt of the Court's order be initiated against Plaintiff.

26 These Findings and Recommendations are submitted to the Honorable William B. Shubb,
27 United States District Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fifteen
28 (15) days after being served with these Findings and Recommendations, Plaintiff may file written

1 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
2 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
3 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951
4 F.2d 1153 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 **Dated: July 9, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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