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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT N. JOHNSON,

Plaintiff,

No. 2:10-cv-02001 KJM KJN

v.

WASHOE MOTEL, LLC, Individually  
and d/b/a Washoe Motel; PINE CONE  
ACRE MOTEL, LLC, Individually and  
d/b/a Pine Cone Acre Motel,

Defendants.

ORDER

\_\_\_\_\_ /  
This order addresses the many events and filings that have occurred since the undersigned entered proposed findings and recommendations in this case earlier this year. On February 7, 2011, the undersigned entered proposed findings and recommendations in this case, which recommended that: (1) plaintiff’s motion for default be granted, and that (2) plaintiff be awarded \$8,000 in statutory damages and injunctive relief. (Findings & Recommendations, Feb. 7, 2011, Dkt. No. 13.) Because of defendants’ complete failure to appear in this action or respond to plaintiff’s lawsuit in any respect despite having actual knowledge of the lawsuit, the undersigned had submitted plaintiff’s motion for default judgment on the briefs and record in this case and vacated the February 10, 2011 hearing on plaintiff’s motion.

On February 10, 2011, Robert M. Twomey, the agent for service of process for

1 defendants, and Daniel Freemon, listed as an “LLC member,” filed a one-page, handwritten  
2 document with the court. (Letter, Feb. 10, 2011, Dkt. No. 14.) Based on that filing, it appears  
3 that Messrs. Twomey and Freemon showed up to the undersigned’s courtroom with the intent of  
4 participating in the already-vacated hearing on plaintiff’s motion. According to the filed note,  
5 these gentlemen were informed by court staff that the hearing was vacated. The note also  
6 references the findings and recommendations entered on February 7, 2011. Messers. Twomey  
7 and Freemon “would like to have the default vacated and reschedule [*sic*] a hearing so that [they]  
8 can plead [their] case.” The note also states that “the Washoe Motel was taken back by the  
9 lender on 1/19/11.”

10           The undersigned did not withdraw the pending findings and recommendations in  
11 response to defendants’ representative’s filing. (See Order, Feb. 15, 2011, at 2-3, Dkt. No. 15.)  
12 However, on February 15, 2011, the undersigned entered an order, which, among other things,  
13 required plaintiff to file, on or before February 17, 2011, a “brief writing expressing [plaintiff’s]  
14 views in regards to defendants’ representative’s request to vacate the proposed findings and  
15 recommendations, which, if granted, would also entail permitting defendants to obtain counsel in  
16 order to appear in this court.” (Order, Feb. 15, 2011.) Plaintiff failed to respond to the court’s  
17 order.

18           As a result of plaintiff’s failure to respond to the court’s order, the undersigned  
19 entered an Order to Show Cause (“OSC”) requiring plaintiff to “show cause in writing why he  
20 failed to respond to the court’s February 11, 2011 order.”<sup>1</sup> (Order to Show Cause, Mar. 15, 2011,  
21 Dkt. No. 16.) On March 18, 2011, plaintiff satisfactorily responded to the OSC, and the  
22 undersigned discharges the OSC.

23           Meanwhile, on March 14, 2011, Mr. Twomey filed a letter with the court, which:  
24 (1) again requests that the pending findings and recommendations entered on February 7, 2011,

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25           <sup>1</sup> Although the undersigned’s order was dated February 11, 2011, it appears that the order  
26 was not docketed until February 15, 2011.

1 be vacated; (2) represents that defendants are prepared to file a response to the complaint, but  
2 cannot do so in light of the pending findings and recommendations; (3) represents that  
3 defendants' representatives understand that a limited liability company may not defend itself or  
4 be defended by non-attorneys in federal court, and that Messrs. Twomey and Freemon have  
5 "found an attorney who will represent the two defendant LLCs if the Court vacates the proposed  
6 findings and recommendations." (Letter, Mar. 14, 2011, Dkt. No. 17.) The undersigned does not  
7 construe the letters filed by defendants' representatives on February 10, 2011, and March 14,  
8 2011, as constituting a formal answer to the complaint because: (a) neither letter actually  
9 purports to be an formal answer; (b) defendants' representatives may not appear in federal court  
10 to defend the defendants, which are limited liability companies; and (c) defendants'  
11 representatives have stated that they intend to file a response to the complaint *if* the court vacates  
12 the pending findings and recommendations. The court will direct the clerk of court to re-label  
13 docket entry number 14, which refers to the letter filed on February 10, 2011, as an "Answer."

14           Additionally, on March 18, 2011, plaintiff filed a "Request for Dismissal With  
15 Prejudice As To Defendant Washoe Motel, LLC Only." (Req. for Dismissal, Dkt. No. 18.)  
16 Federal Rule of Civil Procedure 41(a)(1)(A) provides that "the plaintiff may dismiss an action  
17 without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either  
18 an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all  
19 parties who have appeared." Dismissal under this rule requires no action on the part of the court  
20 and divests the court of jurisdiction once the notice of voluntary dismissal is filed. See, e.g.,  
21 United States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA, 545 F.3d 1134,  
22 1145 (9th Cir. 2008). Because defendants did not file an answer or motion for summary  
23 judgment prior to the filing of plaintiff's request for dismissal, plaintiff's request for dismissal  
24 effectuated a dismissal of defendant Washoe Motel, LLC from this action with prejudice.  
25 Although no court order was required to effectuate such a voluntary dismissal, the undersigned  
26 clarifies the nature of the dismissal of defendant Washoe Motel, LLC here.

1 Finally, on March 18, 2011, plaintiff filed a document entitled "Plaintiff's Non-  
2 Opposition to Defendant's [*sic*] Request to Vacate Findings and Recommendations." (Pl.'s Non-  
3 Opp'n, Dkt. No. 20.) This filing gives notice that "Plaintiff does not oppose Defendant's request  
4 to set aside the Clerk's Entry of Default and to vacate the Court's Findings and  
5 Recommendations." (*Id.* at 1:15-17.) As a result of this filing and defendant Pine Cone Acre  
6 Motel, LLC's representative's statement to the court that it is prepared to respond to the  
7 complaint through an attorney, the undersigned vacates the pending findings and  
8 recommendations and orders defendant Pine Cone Acre Motel, LLC to file a response to the  
9 complaint through an attorney.

10 Based on the foregoing, IT IS HEREBY ORDERED that:

11 1. The Order to Show Cause entered by the undersigned on March 15, 2011  
12 (Dkt. No. 16) is discharged.

13 2. Plaintiff's "Request for Dismissal With Prejudice As To Defendant  
14 Washoe Motel, LLC Only" (Dkt. No. 18) effectuated a voluntary dismissal of defendant Washoe  
15 Motel, LLC from this action with prejudice pursuant to Federal Rule of Civil Procedure  
16 41(a)(1)(A)(i), without the necessity of a court order.

17 3. The proposed findings and recommendations entered on February 7, 2011  
18 (Dkt. No. 13) are vacated.

19 4. This case be re-designated a "pro se" case pursuant to Eastern District  
20 Local Rule 302(c)(21) until such time as defendant Pine Cone Acre Motel, LLC enters an  
21 appearance through counsel. The case number to be used in the caption going forward, and until  
22 defendant Pine Cone Acre Motel, LLC enters an appearance in the action through counsel, shall  
23 be "2:10-cv-2001 KJM KJN PS."

24 5. Within 30 days of the date of this order, defendant Pine Cone Acre Motel,  
25 LLC shall file an answer to plaintiff's complaint through an attorney. Any failure by defendant  
26 Pine Cone Acre Motel, LLC to file a timely answer through an attorney will result in the refiling

