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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 TMC Franchise Corporation,

No. CV10-2423 PHX DGC

10 Plaintiff,

ORDER

11 vs.

12 Millennium Vision, LLC, et al.,

13 Defendants.

14 On December 14, 2011, the Court held a hearing on the Langley Law Firm, P.C.
15 motion to withdraw as counsel for defendants. Doc. 58. The Court ordered that
16 Defendant Nastaran Eghtesad and a representative of Millennium Vision LLC appear at
17 the hearing. Doc. 63. They did not appear. As a result, the Court set a show-cause
18 hearing for January 18, 2012, that required Defendants to appear personally and show
19 cause why default judgment should not be entered against them. The order specifically
20 stated: "If defendant Nastaran Eghtesad and a representative of Millennium Vision LLC
21 do not appear on January 18, 2012, the Court will enter default judgment against them."
22 Doc. 65

23 The Court held the order to show cause hearing on January 18, 2012. New
24 counsel for Defendants appeared, but Defendant Nastaran Eghtesad did not appear as
25 ordered. The Court considered entering default judgment against Defendants, but
26 concluded that such a result was not warranted given new counsel's appearance in the
27 case. The Court accordingly entered a revised litigation schedule. Doc. 68.

28 Now, less than three weeks later, new counsel has moved to withdraw. Doc. 69.

1 No substitute counsel is identified. Although the motion suggests that Defendants are
2 aware of the new schedule, the LLC Defendant cannot appear in this Court without legal
3 counsel, *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th
4 Cir.2004), and Defendant Nastaran Eghtesad has previously disregarded this Court's
5 orders to appear. Defendants have had three different attorneys in this case, and yet have
6 succeeded only in delaying the resolution of this case.

7 The Court will enter default judgment against Defendants. Defendants failed to
8 appear on December 14 and January 18. Although new counsel appeared on January 18,
9 that attorney has promptly withdrawn and no attorney has appeared. The Court deems
10 this, effectively, as a non-appearance by Defendants on January 18, 2012.

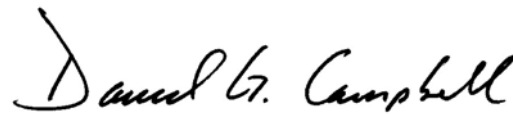
11 The Ninth Circuit has developed a five-part test to determine when case-ending
12 sanctions are warranted: (1) the public's interest in expeditious resolution of the
13 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the party
14 seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and
15 (5) the availability of less drastic sanctions. *Valley Eng'rs, Inc. v. Electric Eng'g Co.*,
16 158 F.3d 1051, 1057 (9th Cir.1998) (quoting *Malone v. USPS*, 833 F.2d 128, 130 (9th
17 Cir.1987)); *see also Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir.1999).
18 Defendants have repeatedly violated Court orders to appear. "[W]here a court order is
19 violated, factors 1 and 2 support sanctions and 4 cuts against case dispositive sanctions,
20 so 3 and 5 . . . are decisive." *Valley Eng'rs*, 158 F.3d at 1057. Factor 5 "involves
21 consideration of three subparts: whether the court explicitly discussed alternative
22 sanctions, whether it tried them, and whether it warned the recalcitrant party about the
23 possibility of dismissal." *Id.* The Court tried the alternative course of accepting new
24 counsel yet again and setting a revised litigation schedule, but that course has again been
25 frustrated by the withdrawal of counsel. The Court warned Defendants that failure to
26 appear at the January 18 hearing would result in default judgment. Doc. 65. Because
27 Defendant Nastaran Eghtesad has repeatedly disregarded this Court's orders to appear
28 and Defendant Millenium Vision LLC cannot appear without counsel, the Court

1 concludes that no lesser sanction than default judgment will suffice. Defendants'
2 disregard of this Court's order and their frequent changes of counsel have made
3 management of this litigation impossible.

4 **IT IS ORDERED:**

- 5 1. Counsel's motion to withdraw (Doc. 69) is **granted**.
- 6 2. The clerk is directed to enter default against Defendants and dismiss the
7 counterclaims. Plaintiff may submit a motion for default judgment and
8 proposed form of judgment requesting the specific amount of damages or
9 injunctive relief sought, supported by appropriate documentation as
10 required by this Court and Ninth Circuit law.

11 Dated this 13th day of February, 2012.

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15 David G. Campbell
16 United States District Judge
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