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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DOC TRANSPORTATION, INC.,	}	Case No. ED CV 17-1176 FMO (DTBx)
Plaintiff,	}	
v.	}	ORDER TO SHOW CAUSE
S AND J PIXLEY INVESTMENTS, LLC,	}	
<u>et al.</u> ,	}	
Defendants.	}	

Plaintiff filed his operative First Amended Complaint (“FAC”) in state court on May 11, 2017, which added the Franchise Tax Board (“FTB”) as a defendant. (See Dkt. 1-1, FAC). Defendant United States of America removed that action on June 14, 2017. (See Dkt. 1, Notice of Removal). By order dated August 1, 2017, plaintiff was ordered to show cause, on or before August 8, 2017, why the FTB should not be dismissed for lack of prosecution for failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure.¹ (See Dkt. 9, Court’s Order of August 1, 2017). Plaintiff was advised that the court may dismiss the action prior to the 90 days required by Rule 4(m) if plaintiff has not diligently prosecuted the action. (See id.).

On August 4, 2017, plaintiff’s counsel responded to the Order to Show Cause stating that he had spoken to the FTB’s counsel and that it was his understanding that the FTB would be

¹ Unless otherwise indicated, all “Rule” references are to the Federal Rules of Civil Procedure.

1 releasing its claims against plaintiff and would thus not be making an appearance in this action.
2 (See Dkt. 13, Declaration of Daniel J. Hyun in Response to the Order to Show Cause Re:
3 Dismissal Re: Lack of Prosecution at ¶¶ 4-5). Plaintiff requested an extension of time to file an
4 entry of default against FTB to allow the parties to negotiate dismissal of the FTB. (See id. at ¶
5 6).

6 Based on the foregoing, IT IS ORDERED THAT:

7 1. Plaintiff shall file a proof of service or application for entry of default against FTB no later
8 than **September 14, 2017**.

9 2. Plaintiff is admonished that failure file a proof of service or application for entry of default
10 against FTB by the September 14, 2017, deadline will result in the FTB being dismissed without
11 prejudice for lack of prosecution and/or failure to comply with the orders of the court. See Fed.
12 R. Civ. P. 41(b); Link v. Wabash R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962).

13 3. The Order to Show Cause Re: Dismissal Re: Lack of Prosecution, is hereby continued
14 pending compliance with paragraph one above.

15 Dated this 15th day of August, 2017.

17 /s/

18 Fernando M. Olguin
19 United States District Judge
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