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

BOARD OF TRUSTEES OF THE KERN) COUNTY ELECTRICAL PENSION FUND,) et al.,) <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> CHRISTOPHER BURGONI, et al.,) <p style="text-align: center;">Defendants.</p>	Case No.: 1:08-cv-00498 -- JLT)) FINDINGS AND RECOMMENDATIONS) STRIKING DEFENDANTS' ANSWER AND) ENTERING DEFAULT DUE TO THEIR) FAILURE TO COMPLY WITH THE COURT'S) ORDERS)) ORDER DIRECTING CLERK OF THE) COURT TO ASSIGN A UNITED STATES) DISTRICT JUDGE TO CASE))
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In this matter, Plaintiff has sued an individual, Christopher Burgoni, and two corporations; Tadoc Enterprises and Fulce Enterprises. (Doc. 36). For the following reasons, the Court recommends the action be **DISMISSED**.

I. Background

Initially, Defendants appeared through counsel and answered the First Amended Complaint on July 22, 2010. (Doc. 38) On July 6, 2011, the Court granted the request of Defendants' attorneys to withdraw from their representation. (Doc. 46) On September 29, 2011, withdrawn counsel served Defendants notice of the Court's order granting the requested withdrawal. (Docs. 49-50)

In the meantime, on September 14, 2011, the Court issued its Order of Reassignment, in which the Court informed the parties that the assignment of the action to Senior U.S. District Judge Wanger was withdrawn. (Doc. 47). The parties were ordered "to affirmatively indicate whether they

1 consent to or decline the consent of the U.S. Magistrate Judge pursuant to 28 USC § 636 (c) . . .
2 **WITHIN 30 DAYS OF THIS ORDER.”** *Id.* at 2 (emphasis in original). Consequently, the parties
3 were to file the form attached to the order, indicating their consent or decline no later than October
4 14, 2011. The parties were warned: “Failure to timely comply with this order will result in an Order
5 to Show Cause and may result in sanctions.” (Doc. 47 at 2). The Local Rules, corresponding with
6 Fed. R. Civ. P. 11, provide: “Failure of counsel or of a party to comply with . . . any order of the
7 Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent
8 power of the Court.” LR 110. Further, a court may impose sanctions in exercising the “inherent
9 power to control [its] dockets.” *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831
10 (9th Cir. 1986). To date, defendants Christopher Burgoni, Tadoc Enterprises, and Fulce Enterprises
11 (collectively, “Defendants”) have failed to comply with the Court’s Order.

12 On October 6, 2011, the Court ordered the corporate defendants, Tadoc Enterprises, and
13 Fulce Enterprises, to have their replacement counsel enter an appearance within 21 days. (Doc. 51)
14 Due to an error in the caption, on October 18, 2011, the Court’s issued its amended order to Tadoc
15 Enterprises and Fulce Enterprises, to have their replacement counsel enter an appearance within 21
16 days. (Doc. 52) As of the signing of this order, no appearance has been entered on behalf of either
17 corporate defendant.

18 Also on October 18, 2011, the Court issued an order to *all* of the defendants to show cause
19 within 14 days why their answer should not be stricken based upon their failure to file the form
20 indicating whether they consented to Magistrate Judge jurisdiction. (Doc. 53) To date, Defendants
21 have failed to comply with or otherwise respond to the Court’s Orders.

22 **II. Failure to obey the Court’s orders**

23 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
24 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of
25 any and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have
26 inherent power to control their dockets,” and in exercising that power, a court may impose sanctions
27 including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831
28 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute

1 an action or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
3 requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
4 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421,
5 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

6 **III. Discussion and Analysis**

7 “It is a longstanding rule that [c]orporations and other unincorporated associations must
8 appear in court through an attorney.” *D-Beam Ltd. P’ship v. Roller Derby Skates, Inc.*, 366 F.3d 972,
9 973-74 (9th Cir. 2004) (citation and quotation marks omitted, second modification in original); LR
10 183(a). Further, a court may sanction corporate defendants by striking their answer when they fail to
11 retain counsel to defend themselves. *See Galtieri-Carlson v. Victoria M. Morton Enters., Inc.*, 2010
12 U.S. Dist. LEXIS 95335, at *3 (E.D. Cal. Aug. 26, 2010) (sanctioning corporate defendants by
13 striking their answer when they failed to retain alternate counsel after the withdrawal of their original
14 counsel); *Rojas v. Hawgs Seafood Bar, Inc.*, 2009 U.S. Dist. LEXIS 41435 at *2 (N.D. Cal. May 5,
15 2009) (“When a corporation fails to retain counsel to represent it in an action, its answer may be
16 stricken and a default judgment entered against it”).

17 Pursuant to the local rule and applicable case law, the corporate defendants may not appear in
18 this case without counsel. The corporate defendants’ original counsel withdrew in July 2011 and the
19 corporate defendants have failed to retain alternate counsel since that date. This inaction is in direct
20 violation of the court’s order. As such, the corporate defendants’ answer is recommended to be
21 stricken and default entered against them.

22 Moreover, all three defendants were warned that their failure to comply with the Court’s
23 order to file a notification regarding Magistrate Judge jurisdiction would result in sanctions. (Doc.
24 47 at 2) This warning was echoed in the Court’s order to show cause issued on October 18, 2011 in
25 which the Court warned that failure to timely comply with the would result in the imposition of “any
26 and all sanctions . . . within the inherent power of the Court.” As such, the Court recommends that
27 all defendants’ answers be stricken and default entered against them.

28

1 **III. Order**

2 GOOD CAUSE being established therefor, the Court **HEREBY ORDERS** as follows:

- 3 1. The Clerk of Court is DIRECTED to assign a United States District Judge to this
4 case.

5 **IV. Findings and Recommendations**

6 The corporate defendants failed to comply with the Court's order to appear through counsel.
7 Moreover, all of the defendants failed to comply with the Court's order to consent to or decline the
8 jurisdiction of a magistrate judge, and the Court's order to show cause why the matter should not be
9 dismissed. Accordingly, it is **HEREBY RECOMMENDED**:

10 Defendants' Answer to the Amended Complaint be **STRICKEN** and default entered against
11 them for their failure to obey the Court's orders dated September 14, 2011 and October 18, 2011.

12 These Findings and Recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule
14 304 of the Local Rules of Practice for the United States District Court, Eastern District of
15 California. Within 14 days after being served with these Findings and Recommendations,
16 Plaintiff may file written objections with the Court. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
18 failure to file objections within the specified time may waive the right to appeal the District
19 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 Dated: November 17, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE