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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALL POINTS CAPITAL CORPORATION, a)
New York corporation,)
)
Plaintiff,)
)
v.)
)
FOSTER AND SONS GENERAL)
ENGINEERING CONTRACTORS, INC., a)
California corporation, JAMES B. FOSTER,)
an individual, and OTILIA T. FOSTER, an)
individual,)
)
Defendants.)
_____)

1:10-cv-00801 AWI GSA

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS OF
DECEMBER 12, 2010**

(Document 16)

On December 12, 2010, this Court issued its Findings and Recommendations regarding Plaintiff All Points Capital Corporation’s failure to serve named Defendant Foster and Sons General Engineering Contractors, Inc (“Foster and Sons”) as required by Rule 4(m) of the Federal Rules of Civil Procedure. More particularly, the Court recommended the dismissal of the aforementioned Defendant Foster and Sons because, while Plaintiff had filed belated proofs of service regarding individual Defendants James B. Foster and Otilia T. Foster, it had failed to file any proof of service regarding Defendant Foster and Sons. (Doc. 16 at 2-6.)

1 On December 13, 2010, Plaintiff then filed a Proof of Service indicating that Defendant
2 Foster and Sons had in fact been served with the summons and complaint on May 26, 2010, by
3 way of substitute service. (Doc. 18.) Plaintiff failed to account for its delay of more than 210
4 days or otherwise explain its failure to follow the applicable federal rules and this Court's orders.

5 Nevertheless, despite Plaintiff's unexplained lack of diligence, and in light of the fact
6 Plaintiff has now filed proof of service indicating Defendant Foster and Sons was served with the
7 summons and complaint, this Court VACATES its Findings and Recommendations dated
8 December 12, 2010.

9 Plaintiff is cautioned that unexplained delays and an apparent disregard of this Court's
10 orders (*e.g.*, requiring a written response to an Order to Show Cause [Doc. 10:8-13]) are not
11 acceptable and in the future may result in sanctions. Because the Clerk of the Court has now
12 entered default against all Defendants, Plaintiff SHALL move for default judgment, according to
13 all applicable federal and local rules, no later than sixty (60) days from the date of this Order.
14 Moreover, Plaintiff SHALL serve all Defendants with its motion via United States Mail. Proof of
15 such service shall be filed contemporaneously with the motion for default judgment.

16 *Finally, Plaintiff is advised that any failure to comply with this Order will result in a*
17 *recommendation that this action be dismissed for Plaintiff's failure to comply with a court order.*

18
19 IT IS SO ORDERED.

20 **Dated: December 16, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE