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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TRIUMPH FURNITURE PROCESSING-  
EXPORT JOINT STOCK, a Vietnam  
Corporation,  
  
Plaintiff,  
  
v.  
  
EVEREST FURNITURE COMPANY, a  
California Corporation,  
  
Defendant.

No. 1:13-cv-1648-AWI-GSA

**ORDER TO SHOW CAUSE WHY THIS  
CASE SHOULD NOT BE DISMISSED  
FOR FAILURE TO PROSECUTE**

This civil action was initially filed in the United States District Court in the Northern District of California ("Northern District") on April 17, 2013. (Doc. 1). The complaint alleges three causes of action: 1) breach of contract, 2) promissory fraud, and 3) constructive fraud. Defendant, Everest Furniture Company, did not appear after being served with the complaint. Default was entered on June 28, 2013. (Doc. 7). On September 24, 2013, District Court Judge Susan Illston issued an Order to Show Cause Why the Case Should Not be Transferred to the United States Court in the Eastern District of California. (Doc. 12). Plaintiff's counsel did not file a response and the case was transferred to this Court on October 11, 2013. (Docs. 13 and 14).

1           After the transfer, new civil case documents were issued and an initial scheduling  
2 conference as scheduled for January 16, 2014 at 9:00. Counsel was ordered to attend the  
3 scheduling conference and to file a scheduling report one week prior to the hearing. (Doc. 15, pg.  
4 3). No scheduling report was filed. On January 10, 2014, the Court converted the scheduling  
5 conference into a status conference.  
6

7           On January 16, 2014, despite the Court's order, Plaintiff's counsel did not appear at the  
8 status conference, nor has Plaintiff's counsel contacted the Court regarding this matter.  
9 Accordingly, the Court orders Plaintiff's counsel to show cause why this case should not be  
10 dismissed for Plaintiff's repeated failure to comply with this Court's orders and for a failure to  
11 prosecute this case.  
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13           Federal Rule of Civil Procedure 16(f) allows for dismissal of a case for failure to appear at  
14 a scheduling conference. *See Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987).  
15 In addition, Rule 110 of this Court's Local Rules provides that the "failure of counsel or of a  
16 party to comply ... with any order of the Court may be grounds for imposition by the Court of  
17 any and all sanctions ... within the inherent power of the Court." This Court has the inherent  
18 power to manage its docket. *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). In  
19 the exercise of that power, the Court may dismiss an action for a party's failure to obey court  
20 orders and to prosecute the case. *Id*; *also see Malone*, 833 F.2d at 130 (affirming district court's  
21 dismissal of action for a party's failure to comply with court orders); *Henderson v. Duncan*, 779  
22 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986) (the district court has the inherent power to dismiss a case *sua*  
23 *sponte* for lack of prosecution).  
24

25           The Court is required to weigh several factors in determining whether to dismiss an action  
26 for lack of prosecution or failure to obey court orders: (1) the public's interest in expeditious  
27 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
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1 defendant; (4) the public policy favoring disposition of cases on their merits; and (5) the  
2 availability of less drastic sanctions. *Henderson*, 779 F.2d at 1424; *Malone*, 833 F.2d at 132-133.  
3 Furthermore, a dismissal for lack of prosecution must be supported by a showing of unreasonable  
4 delay, which creates a presumption of injury to the defense and prejudices the Court's need to  
5 manage its docket. *Id.*

7 **ORDER**

8 Plaintiff's counsel, Jeffrey Benice, is ORDERED to show cause why the action should not  
9 be dismissed for a failure to prosecute. Plaintiff's counsel shall personally appear at a hearing on  
10 **February 14, 2014** at 10:00 a.m. in Department 10 of this Court to respond to this Order to Show  
11 Cause. Plaintiff's counsel is cautioned that a failure to appear at the hearing as ordered will result  
12 in the dismissal of this action.

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17 IT IS SO ORDERED.

18 Dated: January 17, 2014

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE