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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 AURORA CERVANTES,

12 Plaintiff,

13 v.

14 ASJS INVESTMENTS, LLC, et al.,

15 Defendants.

Case No. 1:18-cv-00001-LJO-SAB

ORDER DISCHARGING ORDER TO  
SHOW CAUSE AND IMPOSING  
MONETARY SANCTIONS

(ECF No. 24, 25)

FIVE DAY DEADLINE

16  
17 **I.**

18 **BACKGROUND**

19 On December 29, 2017, Plaintiff Aurora Cervantes filed this action alleging violations of  
20 the Americans with Disabilities Act of 1990 and state law. (ECF No. 1.) On April 4, 2018,  
21 Plaintiff filed a notice of settlement and an order issued requiring Plaintiff to file dispositional  
22 documents within sixty days. (ECF Nos. 12, 13.) More than sixty days have passed and Plaintiff  
23 had not filed dispositional documents or otherwise responded to the Court's order. On June 13,  
24 2018, an order issued requiring Plaintiff to show cause why sanctions should not issue for the  
25 failure to comply with the April 4, 2018 order. (ECF No. 24.) On this same date, Plaintiff filed a  
26 response to the order to show cause and a stipulation to dismiss this action.<sup>1</sup> (ECF Nos. 25, 26.)

27 **II.**

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The stipulation to dismiss will be addressed upon resolution of the sanctions imposed herein.



1 **DISCUSSION**

2 In the instant case, Plaintiff did not timely file dispositive documents in compliance with this  
3 Court’s April 5, 2018 order. As the Court noted in the order to show cause, this is not the first time  
4 that Plaintiff’s counsel has failed to comply with court orders; and it has recently become a more  
5 frequent occurrence. See Hopson v. Ron Simi, Inc., 1:17-cv-00879-DAD-SAB (E.D. Cal.) (orders  
6 to show cause issued on September 20, 2017; November 16, 2017; and November 22, 2017); Hopson  
7 v. American Tire Depot, Inc., 1:17-cv-00880-LJO-SAB (E.D. Cal.) (orders to show cause issued on  
8 September 20, 2017; and November 16, 2017); Hopson v. Nove Plaza, No. 1:17-cv-01746-AWI-  
9 SAB (E.D. Cal.) (order to show cause issued April 20, 2018); Hopson v. Valhalla Property Holdings  
10 LLC, 1:16-cv-01798-AWI-SAB (E.D. Cal.) (order to show cause issued October 4, 2017); Hopson  
11 v. Kaur, 1:15-cv-01477-SAB (E.D. Cal.) (order to show cause issued April 8 2016); Hopson v.  
12 Montanez, 1:15-cv-00803-SAB (E.D. Cal.) (order to show cause issued December 7, 2016);  
13 Cervantes v. Bilson’s Sport Shop, Inc., 1:14-cv-00157-SAB (E.D. Cal.) (order to show cause issued  
14 December 15, 2015).

15 Further, on the same date that the order to show cause issued in this action, the Court also  
16 addressed counsel’s untimely request for an extension of time to file dispositive documents in  
17 another pending action. Hopson v. Village Gas N Mart Inc., 1:17-cv-01758-DAD-SAB, ECF No.  
18 15.

19 Previously, in Hopson v. Ron Simi, Inc., the undersigned discussed Mr. Malakauskas’  
20 office’s issues with scheduling court deadlines. See Hopson v. Ron Simi, Inc., et al., 1:17-cv-00879-  
21 DAD-SAB, ECF No. 14 (E.D. Cal. Nov. 28, 2017). Counsel was advised that “the Court will  
22 exercise its discretion and place requirements on counsel in all future cases that after each order of  
23 this Court he will be required to file formal acknowledgement of the order and an attestation that he  
24 has calendared any dates related to that order.” Hopson, 1:17-cv-00879-DAD-SAB, ECF No. 14.

25 While the Court has provided counsel with the opportunity to address the issue within his  
26 practice which is causing these failures to timely file documents, it is clear that counsel has not  
27 resolved the issues which are causing the failure to timely file. The deadline at issue here was June  
28 4, 2018, and, as stated in his declaration, counsel did not realize he had missed the deadline until

1 June 12, 2018, more than a week after the deadline had passed. (Decl. of Daniel Malakauskas ¶ 24,  
2 ECF No. 25.)

3 In response to the order to show cause, counsel states that he has been involved with another  
4 matter which has consumed his time. (Decl. of Daniel Malakauskas at ¶¶ 18-22.) However, the fact  
5 that counsel was involved in litigating this other matter does not demonstrate good cause for his  
6 failure to either file dispositive documents in this action or request a continuance to do so.

7 The Court is spending an inordinate amount of time in attempting to manage this and other  
8 matters in which Mr. Malakauskas is representing litigants. This has impeded the Court's ability to  
9 address other matters demanding the Court's attention causing delay in decision in other pending  
10 matters. The Court finds that Mr. Malakauskas' failure to comply is willful and warrants the  
11 imposition of monetary sanctions to deter such conduct in the future. Accordingly, the Court finds  
12 that a sanction of \$100.00 is necessary to address the extent of the failure to comply as set forth in  
13 this order and to deter similar conduct by Mr. Malakauskas in the future.

14 Mr. Malakauskas is advised that, should there be similar failures to comply in the future,  
15 increased monetary sanctions shall be imposed to address the failure to resolve the issue which is  
16 resulting in the missed deadlines.

#### 17 IV.

#### 18 CONCLUSION AND ORDER

19 Based on the foregoing, IT IS HEREBY ORDERED that:

- 20 1. The June 13, 2018 order to show cause is discharged;
- 21 2. Pursuant to Rule 16 of the Federal Rules of Civil Procedure, Local Rule 184, and  
22 the Court's inherent authority, monetary sanctions of \$100.00 are imposed against  
23 Daniel Malakauskas for his failure to comply with orders of this Court;

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3. Daniel Malakauskas shall pay the amount of \$100.00 to the Clerk of the United States District Court, Eastern District of California, no later than June 20, 2018;
4. Daniel Malakauskas shall file a proof of payment within five (5) days of payment of the sanction; and
5. Failure to comply with this order may result in the issuance of further sanctions.

IT IS SO ORDERED.

Dated: June 14, 2018



UNITED STATES MAGISTRATE JUDGE

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