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

MATTHEW PFENNIG, et al.,

Plaintiffs,

No. CIV S-08-2740 JAM EFB

vs.

CITY OF REDDING, et al.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

On October 2, 2009, defendants filed a motion for sanctions under Federal Rule of Civil Procedure 37 “dismissing the action by plaintiffs Robert Beaulieu, Jr. and Alicia Dumlao and the minor children Robert Beaulieu III and Joseph Beaulieu by and through their guardians ad litem Robert Beaulieu Jr. and Alicia Dumlao [(“plaintiffs”)] in its entirety,” for their failure to respond to defendants’ interrogatories and requests for production of documents. Dckt. No. 21 at 1-2.

Defendants contend that “[p]laintiffs have failed to participate in the prosecution of their case necessitating [their attorney’s] withdrawal as their counsel, they have failed to respond to defendants’ discovery requests and correspondence sent to their addresses has been returned unopened.” *Id.* at 5. Defendants noticed the motion for hearing on November 4, 2009.

Because plaintiffs failed to file a response to defendants’ motion to compel, on October 30, 2009, the court continued the November 4 hearing to December 9, 2009; ordered plaintiffs to

1 show cause why sanctions should not be imposed on them for their failure to timely file a  
2 response to defendants' motion; and directed plaintiffs to file an opposition to the motion, or a  
3 statement of non-opposition thereto, no later than November 18, 2009. Dckt. No. 23. The order  
4 further provided that "[f]ailure of plaintiffs to file an opposition will be deemed a statement of  
5 non-opposition to the pending motion, and may result in the granting of defendants' motion  
6 and/or the imposition of sanctions, including dismissal, as requested by defendants." *Id.* at 2.

7 The deadline to respond has passed and the court docket reflects that plaintiffs have not  
8 responded to the order to show cause nor filed an opposition or statement of non-opposition to  
9 defendants' motion.<sup>1</sup> In light of plaintiffs' failure to respond to defendants' properly served  
10 discovery requests, failure to respond to defendants' motion for sanctions, failure to respond to  
11 the October 30, 2009 order to show cause, and failure to keep the court apprised of their current  
12 addresses, the undersigned will recommend that defendants' motion for sanctions be granted and  
13 the claims of plaintiffs Robert Beaulieu, Jr. and Alicia Dumlao and the minor children Robert  
14 Beaulieu III and Joseph Beaulieu by and through their guardians ad litem Robert Beaulieu Jr.  
15 and Alicia Dumlao be dismissed without prejudice.<sup>2</sup> *See* Fed. R. Civ. P. 37(d)(3),  
16 37(b)(2)(A)(v), 41(b); L.R. 110, 183(b).

17 Accordingly, IT IS HEREBY ORDERED that the hearing date of December 9, 2009 on  
18 defendants' motion for sanctions, Dckt. No. 21, is vacated.

19 It is FURTHER RECOMMENDED that:

20 1. Defendants' motion for sanctions, Dckt. No. 21, be granted; and

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23 <sup>1</sup> Although it appears from the docket that plaintiffs' copies of the October 30, 2009  
24 order to show cause were returned undelivered, plaintiffs were properly served. It is plaintiffs'  
25 responsibility to keep the court apprised of their current addresses at all times. Pursuant to Local  
26 Rule 182(f), service of documents at the record address of a party is fully effective.

<sup>2</sup> Because defendants only request monetary sanctions as an alternative to dismissal,  
monetary sanctions are not awarded herein.

1           2. The claims of plaintiffs Robert Beaulieu, Jr. and Alicia Dumlao and the minor  
2 children Robert Beaulieu III and Joseph Beaulieu by and through their guardians ad litem Robert  
3 Beaulieu Jr. and Alicia Dumlao be dismissed without prejudice.

4           These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
9 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11 DATED: December 2, 2009.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE  
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