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

TUMLINSON GROUP, INC.,

Plaintiff,

Case No. 2:09-cv-1089 JFM (C)

v.

SCOTT D. JOHANNESSEN, et al.

Defendants.

_____/

SCOTT JOHANNESSEN, et al.,

Counterclaimants,

v.

TUMLINSON GROUP, INC., et al.,

ORDER

Counterdefendants.

_____/

A jury trial was scheduled in this matter on March 12, 2012. On the morning of trial, Douglas MacDonald appeared for plaintiff. No appearances were made by defendants. During the court proceedings, discussion was had regarding defendants' recently-filed second bankruptcy action in Tennessee and plaintiff's intent to file a stipulation of dismissal of defendants' counter-claims. In light of these developments, the court will schedule a status

1 conference in this matter. Before doing so, however, the court finds it necessary to set forth the
2 procedural history of this case in some detail.

3 On July 29, 2008, plaintiff initiated this action in the Sacramento County Superior
4 Court. See Notice of Removal at 1, ¶ 1. Plaintiff brings suit for breach of contract, quantum
5 meruit, an open book account and account stated.

6 On April 20, 2009, defendants removed this case to this court, and on May 11,
7 2009, filed an answer and counter claims. Doc. Nos. 1, 4. Defendants assert that plaintiff and
8 its principal, Kenneth Tumlinson¹, violated Cal. Bus. & Prof. Code § 7159, and further assert
9 that they overpaid on a home improvement contract. They present claims for unlawful business
10 practices, violation of statute, breach of contract, accounting, restitution and declaratory relief.

11 A scheduling order issued on December 1, 2009. Doc. No. 18. In accordance
12 with the scheduling order, the parties filed their pretrial statements in early-July 2010. Doc. Nos.
13 21-22. On July 23, 2010, a pretrial order issued and the case was set for a bench trial on October
14 25, 2010 (the first trial date). Doc. Nos. 27-28.

15 Following issuance of the pretrial order, defendants filed a motion for judgment
16 on the pleadings. Doc. No. 29. Defendants also filed a demand for jury trial on October 8, 2010,
17 and on October 19, 2010 requested a continuance of the trial date pending resolution of their
18 motion for judgment on the pleadings. Doc. No. 46. Following a status conference held on
19 October 21, 2010, the court continued the bench trial to December 14, 2010 (the second trial
20 date), and thereafter denied defendants' motion for judgment on the pleadings. Doc. Nos. 50, 55.

21 On November 30, 2010, defendants filed a motion to disqualify the undersigned.
22 Doc. No. 58. A hearing was held on these motions on December 7, 2010. Following discussion
23 of counsel, the trial date was continued to January 31, 2011 (the third trial date) and set for a jury

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26 ¹ On January 13, 2010, a Notice of Death was filed as to Kenneth Tumlinson. Doc. No.
19.

1 trial. See Doc. No. 61. On December 17, 2010, defendants' motion to disqualify was denied.
2 Doc. No. 63.

3 On January 31, 2011, the morning of trial, counsel for plaintiff appeared, but
4 defendants did not make an appearance. See Doc. No. 72. Instead, defendants filed a notice of
5 stay of proceedings on account of a Chapter 13 bankruptcy petition filed in the Middle District of
6 Tennessee by defendant Lorrie Johannessen. Doc. No. 66. Pursuant to 11 U.S.C. § 362(a), this
7 action was stayed.

8 On April 3, 2011, the stay was lifted when the bankruptcy petition was dismissed.
9 See Doc. No. 76. In light of that dismissal, a status conference was held on November 21, 2011,
10 following which the court re-scheduled the trial for January 23, 2012 (the fourth trial date). Doc.
11 No. 84.

12 On the eve of the January 23, 2012 trial date, defendants filed a request to seal
13 defendants' minor child's medical records and a request to continue the trial. Doc. No. 87. The
14 court held a status conference on January 18, 2012. Doc. No. 89. Following this conference, the
15 court continued the trial date to March 12, 2012 (the fifth trial date).

16 On the morning of the fifth trial date, March 12, 2012, Douglas MacDonald
17 appeared for plaintiff. As had previously occurred, no appearances were made by defendants.
18 Instead, again on the day of trial, defendants filed a Notice of Filing Bankruptcy, which
19 evidences defendant Lorrie Johannessen's filing of her second petition for Chapter 13 relief in
20 the Middle District of Tennessee. Doc. No. 90 (Case No. 3:12-bk-2370).

21 Upon consideration of this history, IT IS HEREBY ORDERED that:

22 1. Plaintiff's December 22, 2011 motions in limine (Doc. Nos. 85-86) are denied
23 without prejudice to their renewal; and

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2. A Status Conference is set for May 3, 2012 at 11:00 a.m. in courtroom #26.

The parties are directed to file a status report on or before April 26, 2012.

DATED: March 13, 2012.


UNITED STATES MAGISTRATE JUDGE

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