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

JOHN KENT,

Plaintiff,

No. 2:09-cv-02905 KJM KJN PS

v.

STUART RIND; RICK VILLUCCI;  
DIANA ROACH; RICK LOPEZ;  
STEPHEN TAKIMOTO; LESLIE  
YOAKUM; CARL VEGA; SUE  
STIREWALT; KEVIN KERR; JIM  
KLEIMAN; THOMAS EBLING; SUE  
PAYNE; ANDREA SOUZA; ANITA  
SISNEROS; JACQUELYN MAES;  
PATRICIA NELSON; and UNKNOWN  
CSLB EMPLOYEES 1-15,

Defendants.

ORDER TO SHOW CAUSE

Presently before the court<sup>1</sup> is an unopposed motion for terminating sanctions pursuant to Federal Rule of Civil Procedure 37(b)(2), which was filed by defendants Kevin A. Carr, Thomas Ebling, Jim Z. Kleiman, Rick Lopez, Patricia Nelson, Sue Payne, Diana Roach, Anita Sisneros, Sue Stirewalt, Stephen Takimoto, Carl Vega, Rick Villucci, and Leslie Yocum-

<sup>1</sup> This action proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Howell (collectively, “defendants”).<sup>2</sup> Specifically, defendants request that plaintiff’s case be  
2 dismissed as a result of plaintiff’s discovery-related failure to provide initial disclosures pursuant  
3 to Federal Rule of Civil Procedure 26(a)(1). (See Notice of Mot. & Mot. for Sanctions at 1-2,  
4 Dkt. No. 65.) Alternatively, defendants seek an order “prohibiting Plaintiff from presenting any  
5 witnesses or evidence at hearing or trial,” which is essentially a different formulation of the  
6 requested terminating sanction. (Id. at 2.) Finally, defendants seek monetary sanctions in the  
7 amount of \$850 as an award of reasonable expenses incurred in bringing this motion. (Id.)

8 Plaintiff failed to file a written opposition or any other response to the motion for  
9 terminating sanctions, which constitutes yet another violation of the court’s Local Rules. See E.  
10 Dist. Local Rule 230(c).<sup>3</sup> In light of plaintiff’s failure to respond to defendants’ motion for  
11 terminating sanctions, the undersigned vacates the May 3, 2012 hearing on the motion and orders  
12 plaintiff to show cause why, among other things, his case should not be dismissed for failing to  
13 prosecute his case, comply with the Federal Rules of Civil Procedure, and comply with the  
14 court’s Local Rules and orders. Some relevant factual background is recounted below.

15 Plaintiff’s Tenth Amended Complaint is the current complaint. Generally,  
16 plaintiff alleges that numerous employees or agents of California’s Contractors State License  
17 Board violated his right to work as a contractor following his citation for contracting without a

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18  
19 <sup>2</sup> On December 29, 2011, the court ordered service of plaintiff’s Tenth Amended  
20 Complaint on the remaining three defendants: Jacquelyn Maes, Stuart Rind, and Andrea Souza.  
21 (Order, Dec. 29, 2011, Dkt. No. 55.) Rind’s waiver of service form was filed on February 27,  
22 2012 (Dkt. No. 64), but Rind has not appeared in the action. Nothing in the record suggests that  
23 either Maes or Souza has yet been served with the summons and the Tenth Amended Complaint.

24 <sup>3</sup> Eastern District Local Rule 230(c) provides:

25 **(c) Opposition and Non-Opposition.** Opposition, if any, to the granting  
26 of the motion shall be in writing and shall be filed and served not less than  
fourteen (14) days preceding the noticed (or continued) hearing date. A  
responding party who has no opposition to the granting of the motion shall  
serve and file a statement to that effect, specifically designating the motion  
in question. No party will be entitled to be heard in opposition to a motion  
at oral arguments if opposition to the motion has not been timely filed by  
that party. . . .

1 license. Only four claims remain in this case, which consist of plaintiff's claims that seek relief  
2 for: (1) a violation of the Tom Bane Civil Rights Act, Cal. Civ. Code § 52.1; (2) a violation of  
3 plaintiff's procedural due process rights pursuant to 42 U.S.C. § 1983; (3) intentional infliction  
4 of emotional distress; and (4) negligent infliction of emotional distress. (See Order, Sept. 26,  
5 2011, Dkt. No. 47; see also Order, Dec. 29, 2011, at 1-2; Order, Sept. 29, 2011, Dkt. No. 48.)

6 On February 7, 2012, the court entered a Status (Pretrial Scheduling) Order  
7 ("Scheduling Order"), which set forth numerous deadlines with which the parties must comply  
8 (Dkt. No. 62). Among these deadlines is the deadline for the parties to exchange their initial  
9 disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). The court ordered that such  
10 exchange take place "on or before March 9, 2012." (Scheduling Order at 4.) The following  
11 admonition appears on the first page of the Scheduling Order:

12 READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT  
13 DATES THAT THE COURT WILL STRICTLY ENFORCE AND WITH  
14 WHICH ALL COUNSEL AND PARTIES MUST COMPLY. FAILURE  
15 TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN  
16 THE IMPOSITION OF MONETARY AND ALL OTHER SANCTIONS  
17 WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL  
18 OR AN ORDER OF JUDGMENT.

16 (Id. at 1-2 (footnote omitted).)

17 On or about March 9, 2012, defendants served plaintiff with their Rule 26 initial  
18 disclosures. (Walter Decl. ¶ 3.) Defendants represent that as of the date they filed their motion  
19 for terminating sanctions, plaintiff had not provided initial disclosures to defendants. (Id. ¶ 4.)

20 On March 27, 2012, defendants filed their motion for terminating sanctions. As  
21 noted above, plaintiff failed to file a written opposition to defendants' motion, or a statement of  
22 non-opposition.

23 As plaintiff has been warned on numerous occasions by this court, Eastern District  
24 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules or  
25 with any order of the Court may be grounds for imposition by the Court of any and all sanctions  
26 authorized by statute or Rule or within the inherent power of the Court." Moreover, Eastern

1 District Local Rule 183(a) provides, in part:

2 Any individual representing himself or herself without an attorney is  
3 bound by the Federal Rules of Civil or Criminal Procedure, these Rules,  
4 and all other applicable law. All obligations placed on “counsel” by these  
5 Rules apply to individuals appearing in propria persona. Failure to comply  
6 therewith may be ground for dismissal . . . or any other sanction  
7 appropriate under these Rules.

8 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the  
9 same rules of procedure that govern other litigants.”). Case law is in accord that a district court  
10 may impose sanctions, *including involuntary dismissal of a plaintiff’s case* pursuant to Federal  
11 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to  
12 comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local rules.  
13 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act *sua*  
14 *sponte* to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.  
15 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action  
16 pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff’s failure to prosecute  
17 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,  
18 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground  
19 for dismissal.”), cert. denied, 516 U.S. 838 (1995); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th  
20 Cir. 1992) (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an  
21 action for failure to comply with any order of the court.”), cert. denied, 506 U.S. 915 (1992);  
22 Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)  
23 (stating that district courts have inherent power to control their dockets and may impose  
24 sanctions including dismissal), cert. denied, 479 U.S. 829 (1986).

25 Plaintiff cannot claim to be unfamiliar with the concept of sanctions, including  
26 monetary and non-monetary sanctions, imposed for failing to comply with a court’s orders or  
local rules. For example, the court recently imposed a \$100 monetary sanction on plaintiff for  
plaintiff’s failure to file a court-ordered status report in advance of the scheduling conference in

1 this case. (Order, Feb. 3, 2012, Dkt. No. 61.) In imposing that sanction, the court recounted  
2 plaintiff's numerous failures to comply with the court's orders and various procedural rules, both  
3 in this case and in the now-dismissed parallel action entitled Kent v. United States et al.,  
4 No. 2:07-cv-02361 MCE KJN PS (E.D. Cal.) ("Kent I"). (See Order, Feb. 3, 2012, at 2.) Faced  
5 with the choice of imposing a monetary sanction or recommending dismissal of plaintiff's case,  
6 the court imposed a monetary sanction "[i]n view of the policy in favor of resolving cases on the  
7 merits." (Id.) Additionally, plaintiff has been repeatedly warned in this case that his failure to  
8 prosecute or comply with the court's orders and applicable procedural rules would result in a  
9 recommendation that his case be dismissed with prejudice. (See, e.g., Order, Nov. 16, 2011, at 4,  
10 Dkt. No. 52; Order & Order To Show Cause, Oct. 21, 2011, at 2-4, Dkt. No. 50; Order, Sept. 29,  
11 2011, at 2-4, Dkt. No. 48; Order To Show Cause & Findings & Recommendations, June 28,  
12 2011, at 22, Dkt. No. 42; Order, Jan. 4, 2011, at 2-3, Dkt. No. 29.)

13 Indeed, plaintiff has already suffered the dismissal of one of his cases as a  
14 sanction. This court dismissed Kent I with prejudice as a result of plaintiff's failure to prosecute  
15 that case and comply with the court's orders and Local Rules. (Kent I, Findings &  
16 Recommendations, Dec. 1, 2011, Dkt. No. 73, adopted by Order, Jan. 9, 2012, Dkt. No. 74; Kent  
17 I, Judgment, Dkt. No. 75.)<sup>4</sup>

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

- 19 1. The May 3, 2012 hearing on defendants' motion for terminating sanctions  
20 is VACATED.
- 21 2. On or before May 11, 2012, plaintiff shall show cause in writing why:
- 22 a. Plaintiff failed to file an opposition or statement of non-opposition  
23 in regards to defendants' motion for terminating sanctions;

24 \_\_\_\_\_  
25 <sup>4</sup> The court may take judicial notice of court records and other matters of public record.  
26 See, e.g., Bias v. Moynihan, 508 F.3d 1212, 1225 (9th Cir. 2007); Reyn's Pasta Bella, LLC v.  
Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); Shaw v. Hahn, 56 F.3d 1128, 1129 n.1  
(9th Cir. 1995).

