

1 any “summary of the facts and opinions to which the witnesses is expected to testify.” Fed. R.
2 Civ. P. 26(a)(2)(B) & (C).

3 On October 15, 2014, Mr. Winding submitted a motion requesting a 120-day
4 continuance of all matters pending before the court. ECF No. 184. To his motion, Mr. Winding
5 attached his declaration, in which he averred he “is seeking new counsel” to help him prepare for
6 trial. *Id.* ¶¶ 2-3. He declared he “has several other case[s] in federal court” which overlap with
7 this case, but did not name or describe those cases. *Id.* ¶ 4. He reported he was “suffering health
8 issues and has been under a physician’s immediate care for over 6 months” *Id.* ¶ 6. Mr.
9 Winding has previously submitted several similar motions on similar grounds. *See* Pl.’s Mot.
10 Stay, ECF No. 153; Pl.’s Mot. Continue, ECF No. 148; Pl.’s Mot. Continue, ECF No. 136; Pl.’s
11 Mot. Extension, ECF No. 130.

12 The court did not grant Mr. Winding’s motion, but after receiving it did contact
13 Ms. Sujean Park, the district’s Pro Bono Panel Coordinator, to determine if a member of the
14 district’s panel of experienced volunteer attorneys would be willing to accept a limited
15 appointment to represent Mr. Winding at trial without charge. Mr. James Houpt of Orrick,
16 Herrington & Sutcliffe LLP, a member of the panel, agreed to represent Mr. Winding without
17 charge. Mr. Houpt made a special appearance at the pretrial conference. He informed the court
18 he contacted Mr. Winding by phone to offer his services, and the two spoke briefly. Mr. Houpt
19 sent Mr. Winding an engagement letter, but Mr. Winding has not returned the letter. Mr.
20 Winding has not responded to further phone and email contact from Mr. Houpt. Mr. Houpt was
21 prepared to meet with Mr. Winding at the time of the pretrial conference and confirmed he would
22 represent Mr. Winding without charge subject to the terms of his engagement letter.

23 II. ORDER TO SHOW CAUSE

24 The Eastern District of California has adopted local rules as authorized by Federal
25 Rule of Civil Procedure 83(a). Local Rule 183(a) requires a party appearing without an attorney
26 to appear either in person or by courtesy appearance of an attorney admitted to practice before
27 this court. A person appearing without an attorney may not delegate the duty to appear to any
28 other person. Local Rule 183(a). Because Mr. Winding is not represented in this matter, the

1 Local Rule requires him to attend hearings, including pretrial conferences, and the trial, either in
2 person or by courtesy appearance of an attorney. Failure to comply with this rule may result in
3 “judgment by default, or any other sanction appropriate under these rules.” *Id.*

4 On August 14, 2014, the court issued an order requiring the parties submit a joint
5 pretrial conference statement by October 23, 2014. Order 1-2, ECF No. 177. The order warned
6 the parties, “Failure to comply with Local Rule 281, as modified by this order, may be grounds
7 for sanctions.” Order 3, ECF No. 177. Local Rule 281(b)(10) and (b)(11) require disclosure of
8 exhibits and witnesses to be offered at trial.

9 “District courts have inherent power to control their dockets. In the exercise of
10 that power they may impose sanctions including, where appropriate, default or dismissal.”
11 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986) (citing *Link v.*
12 *Wabash Railroad Co.*, 370 U.S. 626 (1961)). *Sua sponte* dismissal for failure to prosecute is a
13 decision within this court’s discretion. *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992). But
14 “[b]ecause dismissal is a harsh penalty, it should be imposed as a sanction only in extreme
15 circumstances.” *Id.* Whether dismissal is appropriate depends on application of several factors:
16 “(1) the public's interest in expeditious resolution of litigation; (2) the court’s need to manage its
17 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
18 cases on their merits and (5) the availability of less drastic sanctions.” *Thompson*, 782 F.2d at
19 831.

20 Federal Rule of Civil Procedure 55 governs entry of default and default judgment.
21 It provides that the clerk must enter a party’s default if that party “has failed to plead or otherwise
22 defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55. Whether default
23 is an appropriate sanction depends on the same five factors listed above. *See Thompson*, 782 F.2d
24 at 831; *Hingano v. Channing & Associates, LLC*, No. 09-1881, 2010 WL 55891, at *2 (E.D. Cal.
25 Jan. 4, 2010).

26 In light of the above, the court hereby ORDERS:

27 (1) The trial set for December 8, 2014, is VACATED; and

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(2) Mr. Winding shall show cause why the facts and authorities set forth above do not warrant dismissal of his claims for lack of prosecution and entry of default as to Allstate's counterclaim. Mr. Winding shall respond within fourteen days.

IT IS SO ORDERED.

DATED: November 14, 2014.


UNITED STATES DISTRICT JUDGE