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

RICK W. CORDEIRO,

Plaintiff,

No. 2:10-cv-00588 KJN

v.

SYSCO FOOD SERVICES OF
SACRAMENTO, INC,

Defendant.

ORDER TO SHOW CAUSE

_____ /
In an order dated December 16, 2010 (the "Order"), this court granted defendant Sysco Food Services of Sacramento, Inc.'s motion to compel (Dkt. No. 18) in its entirety. (Order, Dkt. No. 20.) To date, plaintiff Rick W. Cordiero and his counsel, attorney Michael D. Welch of "Michael Welch & Associates," have failed to comply with the Order in several respects; accordingly, the court hereby issues this order to show cause.

The Order required plaintiff Rick W. Cordiero to serve his Rule 26(a)(1) initial disclosures upon defendant within 14 days of December 16, 2010, if such service had not already occurred. (Order at 8-9.) The Order also required plaintiff to file a notice with the court confirming that such service occurred, and to do so within ten days of serving his initial disclosures. (Id.) To date, no such notice has been filed.

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1 The Order also required plaintiff to serve responses to defendant's Interrogatories,
2 Set One, without objections and with the appropriate verification, within 14 days of
3 December 16, 2010. (Order at 8-9.) The Order also required plaintiff to file a notice with the
4 court confirming that such service occurred, and to do so within ten days of serving responses to
5 the interrogatories. (Id.) To date, no such notice has been filed.

6 The Order required plaintiff to serve complete written responses, without
7 objections, to defendant's Request for Production of Documents, Set One, within 14 days of
8 December 16, 2010.¹ (Order at 8-9.) The Order also required plaintiff to file a notice with the
9 court confirming that such service occurred, and to do so within ten days of serving such
10 responses to defendant's document requests. (Id.) To date, no such notice has been filed.

11 The Order also required plaintiff's attorney, Michael D. Welch, to pay defendant a
12 total of \$812.50, an amount reflecting defendant's reasonable expenses pursuant to Federal Rule
13 of Civil Procedure 37(a)(5) and alternatively as a sanction pursuant to Federal Rule of Civil
14 Procedure 37(d). (Order at 8-9.) Mr. Welch was to pay defendant that sum within 30 days of
15 December 16, 2010. (Id.) The Order also required that, within ten days after such payment,
16 Mr. Welch file with the Clerk of Court an affidavit stating that he has paid the sum out of his
17 personal funds, and will not bill his client or make it the responsibility of his client as attorney's
18 fees or costs. To date, no such affidavit has been filed.

19 The Order cautioned plaintiff and his counsel that a failure to obey the court's
20 Order in any respect would be grounds for the imposition of additional sanctions against plaintiff
21 and Mr. Welch, including monetary sanctions, evidentiary sanctions, and/or dismissal of
22 plaintiff's case pursuant to Federal Rule of Civil Procedure 41(b). (Order at 9-10 (citing cases).)

23 To date, neither plaintiff nor his counsel have complied with the Order in any
24 respect. Based on a review of the court's docket, plaintiff has not filed any of the requisite

25
26 ¹ The Order also required plaintiff to produce all documents responsive to defendant's
document requests within 30 days of December 16, 2010. (Order at 8-9.)

1 notices confirming service of discovery. Plaintiff's counsel, Mr. Welch, has not filed any
2 affidavit confirming payment of the \$812.50 sanction. These failures are particularly troubling in
3 light of the fact that protracted inaction by plaintiff and his counsel in the meet-and-confer
4 process and in the discovery process are what prompted the Order in the first place. If plaintiff
5 and his counsel do not intend to participate in discovery and do not intend to abide by this court's
6 orders, plaintiff should dismiss his case.

7 Accordingly, IT IS HEREBY ORDERED that:

8 In light of the foregoing, plaintiff and his counsel are ordered show cause *in*
9 *writing, on or before February 22, 2011*, why the court should not impose monetary sanctions or
10 other sanctions upon them for failure to comply with the court's Order dated December 16, 2010.
11 (Order at 8-9.) Plaintiff and Mr. Welch are reminded that the "[f]ailure of counsel or of a party
12 to comply with these Rules or with any order of the Court may be grounds for imposition by the
13 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the
14 Court." E. Dist. Local Rule 110; see also *Hells Canyon Preservation Council v. U.S. Forest*
15 *Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action pursuant to
16 Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff's failure to prosecute or comply
17 with the rules of civil procedure or the court's orders); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.
18 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground for
19 dismissal."); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) ("Pursuant to Federal Rule
20 of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any
21 order of the court."); *Thompson v. Housing Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir.
22 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
23 may impose sanctions including dismissal). *Plaintiff and his counsel are hereby admonished*
24 *that failure to file the required writing shall constitute an additional ground for the imposition of*
25 *appropriate sanctions, including dismissal of the case.*

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