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

TERRYLYN MCCAIN,

Plaintiff,

No. 2:11-cv-01265 KJM KJN PS

v.

CALIFORNIA HIGHWAY PATROL,
et al.,

Defendants.

ORDER

_____ /
A status (pretrial scheduling) conference was set to take place on October 6, 2011.¹ Defendants Mike’s Towing Service, Inc. and Michael Olivarez (“Towing Defendants”) filed a separate status report (Dkt. No. 62). Neither plaintiff nor defendant California Highway Patrol (“CHP”) filed a status report. Defaulted defendants Brent Mangham and Michael Walling did not file status reports, but filed a motion to set aside the Clerk’s entry of default that is set to be heard by the undersigned on October 27, 2011 (Dkt. No. 58). Because two sets of proposed findings and recommendations are pending before the district judge assigned to this case (Dkt. Nos. 38, 52), and the motion to set aside an entry of default is pending before the undersigned, there is uncertainty regarding the actual claims and defendants that will remain in this action.

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

1 Accordingly, the undersigned vacated the October 6, 2011 status conference. (See Minute Order,
2 Oct. 3, 2011, Dkt. No. 64.) By this order, the undersigned sets a follow-up status conference and
3 stays discovery in this case until after the follow-up status conference.

4 For the sake of clarity, the undersigned details the matters that are presently
5 pending before the court, and also resolves a pending request for entry of default recently filed by
6 plaintiff. First, on August 4, 2011, the undersigned recommended that the CHP's motion to
7 dismiss be granted and that the CHP be dismissed from this case with prejudice. (See Order and
8 Findings and Recommendations, Aug. 4, 2011, Dkt. No. 38.) Plaintiff filed objections to the
9 proposed findings and recommendations (Dkt. No. 47). These proposed findings and
10 recommendations have not yet been resolved.

11 Second, on June 9, 2011, plaintiff requested that default be entered against
12 defendants Mangham and Walling, and the Clerk of Court entered those defendants' default
13 (Dkt. Nos. 12-14). Plaintiff did not file a motion for a default judgment against Mangham and
14 Walling. On September 16, 2011, Mangham and Walling filed a motion to set aside the entry of
15 default on the grounds that Mangham and Walling were not properly served with process (Dkt.
16 No. 58). That motion is set to be heard on October 27, 2011.

17 Third, on August 26, 2011, the undersigned entered findings and
18 recommendations granting the Towing Defendants' motion to dismiss in part and denying it in
19 part. (See Order and Findings and Recommendations, Aug. 26, 2011, Dkt. No. 52.) Plaintiff
20 filed objections to the proposed findings and recommendations, and the Towing Defendants filed
21 a response to those objections (Dkt. Nos. 53, 59). These proposed findings and
22 recommendations have not yet been resolved.

23 Meanwhile, on September 12, 2011, plaintiff requested that the Clerk of Court
24 enter default against the Towing Defendants, apparently because the Towing Defendants did not
25 file an answer regarding the claims for which dismissal was not recommended (Dkt. Nos. 54-

26 ///

1 55).² The Towing Defendants have opposed the entry of default, arguing, in part, that the
2 findings and recommendations should be resolved before they are required to file an answer
3 (Dkt. No. 61). The undersigned agrees with the Towing Defendants and denies plaintiff's
4 requests for the entry of default.

5 Accordingly, IT IS HEREBY ORDERED that:

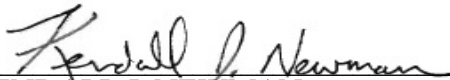
6 1. A status (pretrial scheduling) conference shall be conducted by the
7 undersigned on December 1, 2011. The parties shall file status reports, or a joint status report if
8 possible, *no later than 14 days prior* to the status (pretrial scheduling) conference. (See also
9 Order Setting Status Conference at 2-3 (stating the requirements of a status report), Dkt. No. 3.)

10 2. Discovery in this case is stayed until after the December 1, 2011 status
11 conference.

12 3. Plaintiff's requests for the entry of default against defendants Mike's
13 Towing Service, Inc. and Michael Olivarez (Dkt. Nos. 54, 55) are denied.

14 IT IS SO ORDERED.

15 DATED: October 3, 2011

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE
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26 ² The Towing Defendants filed an answer on September 24, 2011, despite the pending findings and recommendations (Dkt. No. 60).