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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS,  
INC.,

Plaintiff,

v.

HUMBERTO LEON SANCHEZ, JR.,  
individually and d/b/a  
DISCOTECA SANCHEZ,

Defendant.

No. 2:11-cv-02440-GEB-AC

**ORDER STRIKING ANSWER AND  
ENTERING DEFAULT**

An Order to Show Cause ("OSC") filed November 20, 2013, directed Defendant Humberto Leon Shanchez, Jr. ("Defendant") to explain "why sanctions should not be imposed against him under Rule 16(f) of the Federal Rules of Civil Procedure for failure to file a timely final pretrial statement and/or for his failure to follow court orders." (OSC 2:8-13, ECF No. 39.) The November 20, 2013 OSC warned Defendant "that the failure to timely respond to [the OSC] . . . could result in sanctions, including the striking of Defendant's Answer filed April 4, 2012, and the entry of default by the Clerk of the Court." (Id. at 2:15-24.) Defendant did not respond to the OSC. Therefore, the Court considers whether Defendant's Answer should be stricken and default

1 entered.

2 "District courts have inherent power to control their  
3 dockets and may impose sanctions, including dismissal, in the  
4 exercise of that discretion." Oliva v. Sullivan, 958 F.2d 272,  
5 273 (9th Cir. 1991); see also Ferdik v. Bonzelet, 963 F.2d 1258,  
6 1260 (9th Cir. 1992) ("Pursuant to Federal Rule of Civil  
7 Procedure 41(b), the district court may dismiss an action for  
8 failure to comply with any order of the court."). The concept of  
9 dismissal as a sanction applies equally to the entry of default.  
10 Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011).

11 "[The Ninth Circuit has] identified five  
12 factors that a district court must consider  
13 before dismissing a case or declaring a  
14 default: (1) the public's interest in  
15 expeditious resolution of litigation; (2) the  
16 court's need to manage its docket; (3) the  
17 risk of prejudice to the other party; (4) the  
18 public policy favoring the disposition of  
19 cases on their merits; and (5) the  
20 availability of less drastic sanctions."

21 Id. (quoting Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1412  
22 (9th Cir. 1990)).

23 The first and second factors weigh in favor of entering  
24 default in this case because Defendant's non-compliance with the  
25 OSC and past orders has impaired the public's interest in  
26 expeditious resolution of litigation and undermines the Court's  
27 ability to manage its docket. See Yourish v. Cal. Amplifier, 191  
28 F.3d 983, 990 (9th Cir. 1999) (stating "the public's interest in  
expeditious resolution of litigation always favors dismissal");  
Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) ("It is  
incumbent upon the Court to manage its docket without being  
subject to routine noncompliance of litigants.").

1           The third factor concerning the risk of prejudice to  
2 Plaintiff considers the strength of a party's excuse for non-  
3 compliance. See Pagtalunan, 291 F.3d at 642-43 (stating that "the  
4 risk of prejudice [is related] to the [defendant's] reason for  
5 [non-compliance]"). Since Defendant has provided no reason for  
6 his non-compliance, the third factor also favors dismissal.

7           The fourth factor concerning the public policy favoring  
8 disposition of cases on their merits, weighs against entering  
9 default. Dreith, 648 F.3d at 788 ("The fourth factor, resolution  
10 of cases on their merits, always weighs against dismissal.").

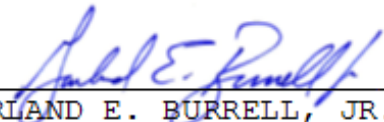
11           The fifth factor concerning whether the Court has  
12 considered less drastic sanctions, also weighs in favor of  
13 entering default in this case since Defendant failed to respond  
14 to the November 20, 2013 OSC despite the warning that his Answer  
15 could be stricken and default entered as a result. See Ferdick,  
16 963 F.2d at 1262 (stating "a district court's warning to a party  
17 that his failure to obey the court's order will result in  
18 dismissal can satisfy the 'consideration of alternatives'  
19 requirement").

20           Since the balance of the factors strongly favors  
21 entering default, Defendant's Answer is stricken and default  
22 shall be entered by the Clerk of the Court. Further, the final  
23 pretrial conference scheduled to commence at 11:00 a.m. on  
24 January 13, 2014, and trial scheduled to commence at 9:00 a.m. on  
25 February 25, 2014, are VACATED.

26           Further, a status conference is scheduled to commence  
27 at 9:00 a.m. on April 28, 2014. A status report shall be filed  
28 fourteen (14) days prior to the status conference in which

1 Plaintiff shall explain only what action has been taken, if any,  
2 that Plaintiff opines is sufficient to prevent this action from  
3 being dismissed for lack of prosecution.

4 Dated: December 4, 2013

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8 GARIAND E. BURRELL, JR.  
9 Senior United States District Judge  
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