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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 SCOTT JOHNSON,

12 Plaintiff,

13 v.

14 NORTH TAHOE STATION, INC.,

15 Defendant.
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No. 2:13-cv-02540-TLN-AC

ORDER TO SHOW CAUSE RE CONTEMPT

17 This case is before the undersigned pursuant to Local Rule 302(c)(1). For the reasons
18 which follow, civil contempt proceedings are warranted. Accordingly, the undersigned hereby
19 certifies facts regarding contempt to U.S. District Judge Troy L. Nunley, and orders defendant to
20 show cause before Judge Nunley why it should not be held in contempt.

21 CERTIFICATION PROCEDURE AND CONTEMPT STANDARDS

22 Magistrate judges must refer contempt proceedings to district judges. See 28 U.S.C. §
23 636(e); Bingman v. Ward, 100 F.3d 653, 656–57 (9th Cir. 1996). A magistrate judge may
24 investigate whether further contempt proceedings are warranted and certify such facts to a district
25 judge. 28 U.S.C. § 636(e); see also Alcalde v. NAC Real Estate Invs. & Assignments, Inc., 580
26 F. Supp. 2d 969, 971 (C.D. Cal. Aug. 4, 2008). A magistrate judge may not, however, conduct a
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1 contempt hearing in a civil case absent consent jurisdiction.¹

2 The Federal Magistrates Act establishes a certification procedure whereby:

3 the magistrate judge shall forthwith certify the facts to a district
4 judge and may serve or cause to be served, upon any person whose
5 behavior is brought into question under this paragraph, an order
6 requiring such person to appear before a district judge upon a day
7 certain to show cause why that person should not be adjudged in
8 contempt by reason of the facts so certified. The district judge shall
thereupon hear the evidence as to the act or conduct complained of
and, if it is such as to warrant punishment, punish such person in
the same manner and to the same extent as for a contempt
committed before a district judge.

9 28 U.S.C. § 636(e)(6)(B)(iii); see also Bowens v. Atl. Maint. Corp., 546 F. Supp. 2d 55, 71–72
10 (E.D.N.Y. 2008).

11 Under this process, the magistrate judge functions to certify the facts and not to issue an
12 order of contempt. Bingman, 100 F.3d at 656–57. By certifying facts under Section 636(e), the
13 magistrate judge is simply attesting that further contempt proceedings are warranted. See 28
14 U.S.C. § 636(e); Gomez v. Scoma's Inc., No. C-94-4452-VRW JSB, 1996 WL 723082, at *3
15 (N.D. Cal. Dec. 2, 1996). The certification of facts is typically included in an order to show cause
16 why a contempt citation should not issue, which also provides notice of a date for the hearing. 28
17 U.S.C. § 636(e); Alcalde, 580 F. Supp. 2d at 971 (citing Schwarzer, Tashima & Wagstaffe,
18 Federal Civil Procedure Before Trial at ¶ 11:2316). The district court, upon certification of the
19 facts supporting a finding of contempt, is then required to conduct a de novo hearing at which
20 issues of fact and credibility determinations are to be made. See Taberer v. Armstrong World
21 Indus., Inc., 954 F.2d 888, 907–08 (3d Cir. 1992) (holding that it was error for the district court

23 ¹ Under the Federal Magistrates Act, 28 U.S.C. § 636(e), magistrate judges' contempt authority
24 is limited to specific matters within magistrate judges' regular statutory jurisdiction. Magistrate
25 judges may exercise summary criminal contempt authority, for misbehavior "in the magistrate
26 judge's presence so as to obstruct the administration of justice," 28 U.S.C. § 636(e)(2), as well as
27 criminal contempt and civil contempt authority in misdemeanor cases and cases where the
28 magistrate judge presides with the consent of the parties. 28 U.S.C. §§ 636(e)(3), (4); see also
Irwin v. Mascott, 370 F.3d 924, 932 (9th Cir. 2004) (affirming a magistrate judge's civil
contempt order in a civil consent case). In all other instances where a person has committed an
act constituting contempt in a proceeding before the magistrate judge, the magistrate judge must
follow the certification procedure discussed above.

1 not to conduct a de novo hearing after the magistrate judge issued a certification of contempt).

2 Where the relief sought in contempt proceedings involves compulsory and compensatory
3 sanctions, including conditional confinement employed to compel compliance, then the
4 proceeding is for civil contempt. See Shillitani v. United States, 384 U.S. 364, 369–70 (1966);
5 United States v. Asay, 614 F.2d 655, 659 (9th Cir. 1980). To find civil contempt, “the court need
6 only (1) have entered a clear and unambiguous order, (2) find it established by clear and
7 convincing evidence that the order was not complied with, and (3) find that the alleged contemnor
8 has not clearly established his inability to comply with the terms of the order.” Huber v. Marine
9 Midland Bank, 51 F.3d 5, 10 (2d Cir. 1995). A civil contempt finding does not require a willful
10 violation of the order in order for the court to find civil contempt. Asay, 614 F.2d 661; see also
11 United States v. Laurins, 857 F.2d 529, 534 (9th Cir. 1988).

12 CERTIFIED FACTS

13 The undersigned certifies the following facts pursuant to 28 U.S.C. § 636(e)(6)(B)(iii):

- 14 • On January 28, 2015, plaintiff filed a request for a debtor’s examination. ECF No. 25.
15 The court granted plaintiff’s request and ordered defendant to appear at its judgment
16 debtor exam on April 22, 2015. ECF No. 26.
- 17 • The order contained the following language: “NOTICE TO JUDGMENT DEBTOR: If
18 you fail to appear at the time and place specified in this order, you may be subject to arrest
19 and punishment for contempt of court and the court may make an order requiring you to
20 pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.” Id.
21 at 2.
- 22 • The court’s order that defendant appear at its judgment debtor’s exam was served on
23 defendant by plaintiff on April 14, 2015, at North Tahoe Station, Inc., Sarbjit Singh Kang,
24 Agent for Service of Process, 913 Emerald Bay Road, South Lake Tahoe, CA 96150.
25 ECF No. 27.
- 26 • On April 22, 2015, the date set for the judgment debtor exam, Amanda Lockhart appeared
27 on behalf of plaintiff and defendant failed to appear.

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1 FURTHER CONTEMPT PROCEEDINGS ARE WARRANTED

2 Based on the foregoing facts the court finds that further civil contempt proceedings are
3 warranted. The court's order that defendant appear at the April 22, 2015, judgment debtor's
4 exam was specific and definite. Despite that fact, defendant failed to appear or offer any
5 explanation for doing so. For these reasons, further civil contempt proceedings are warranted to
6 ensure defendant's compliance with the court's order.

7 Accordingly, IT IS HEREBY ORDERED that:


8 1. Defendant is hereby ordered to appear and SHOW CAUSE why it should not be found
9 in contempt based upon the facts this court has certified;

10 2. A contempt hearing is set before Judge Nunley on July 16, 2015, at 1:30 p.m. in
11 Courtroom No. 2;

12 3. The Clerk of the Court shall serve a copy of this order on defendant at the following
13 address:

14 North Tahoe Station, Inc., Sarbjit Singh Kang, Agent for Service of Process, 913
15 Emerald Bay Road, South Lake Tahoe, CA 96150.

16 DATED: May 29, 2015

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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