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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
SAEED ZARAKANI, et al.,
Defendants.

No. 2:14-cv-0696-MCE-KJN

ORDER

On January 14, 2015, the court issued an order directing defendants’ counsel of record, William Bernheim, to pay \$500.00 in monetary sanctions for his failure to comply with the court’s prior orders, including a December 29, 2014 order to show cause (ECF No. 20), and to provide the court with a written statement informing the court whether he intends to further represent defendants in this matter by no later than January 28, 2015. (ECF No. 22.) Mr. Bernheim failed to comply with this order by the specified deadline. Accordingly, the court issued an order to show cause on February 20, 2015 directing Mr. Bernheim to “show cause in writing why he failed to timely pay the \$500.00 in monetary sanctions ordered against him on January 14, 2015.” (ECF No. 24.) On that same day, Mr. Bernheim filed a response to the court’s order to show cause. (ECF No. 25.) The court’s docket indicates that Mr. Bernheim subsequently paid the monetary sanctions imposed on January 14, 2015.

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1 Mr. Bernheim apologizes in his response for his failure to timely respond to the court's
2 prior orders, which he states was due to his lack of awareness that the court had issued the orders
3 until he received an email regarding the court's issuance of the February 20, 2015 order. (ECF
4 No. 25 at 1.) Mr. Bernheim asserts that his lack of awareness stemmed from problems regarding
5 his firm's email account that were the result of a dispute with the firm's email vendor. (Id. at 2.)
6 He claims that from a period beginning sometime around November of 2014 through early
7 February of 2015, many emails sent to him did not reach the firm's email account and were
8 returned to the sender as undeliverable. (Id.) Mr. Bernheim also relates that the relationship
9 between his firm and defendants was terminated in November of 2014 due to defendants' lack of
10 cooperation.¹ (Id.) Mr. Bernheim received an email from attorney Bruce Nielson on December
11 17, 2014, indicating that Mr. Nielson would be assuming representation of defendants in this
12 case. (Id. at 2, 5.) With regard to his failure to appear at the December 18, 2014 hearing on
13 plaintiff's motion to compel, Mr. Bernheim claims that he was not contacted by Mr. Neilson, Mr.
14 Zarakani, or opposing counsel regarding his need to attend. (Id. at 2.)

15 In light of this showing, the court finds it appropriate to discharge the February 20, 2015
16 order to show cause. Although the court finds it regrettable that it had to resort to monetary
17 sanctions, Mr. Bernheim's failure to ensure that he was substituted out as defendants' counsel of
18 record in accordance with the court's local rules and repeated failure to make himself aware of
19 and comply with court orders while the docket reflected that he was defendants' counsel of record
20 left the court with little choice. The court cautions Mr. Bernheim that so long as the docket
21 reflects that he is defendants' counsel of record in this case, he shall remain responsible for
22 making himself aware of the proceedings in this matter and responding as required by the court's
23 local rules and orders.

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27 ¹ In support of this claim, Mr. Bernheim attaches a letter dated November 21, 2014 he sent to
28 plaintiff's counsel informing them that Mr. Zarakani had terminated his legal relationship with
Mr. Bernheim's firm. (ECF No. 25 at 3.)

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The court also notes that Mr. Bernheim has attached a substitution of attorney form to his response that is dated December 17, 2014, and signed by both himself and Bruce Nielson. (ECF No. 25 at 6.) However, this document does not contain the signatures of Saeed Zarakani and an authorized representative of Mardan, Inc. indicating that defendants consent to this substitution. Accordingly, the requested substitution will not be approved by the court unless and until it is signed by defendants. E.D. Cal. Local Rule 182(g).

Based on the foregoing, IT IS HEREBY ORDERED that the February 20, 2015 order to show cause directed to William Bernheim (EFC No. 24) is DISCHARGED.

Dated: March 9, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE