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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,
Plaintiff,
v.
MAZYAR YAGHOUBIAN, et al.
Defendants.

No. 2:16-cv-02299-TLN-CKD (PS)

ORDER

On December 14, 2018, the court ordered plaintiff’s counsel to show cause in writing why he should not be sanctioned \$250.00 for failing to comply with the Local Rules of this court, when he failed to file a timely opposition to defendants’ motion to vacate. (ECF No. 95.) Plaintiff’s counsel responded to the order to show cause on December 28, 2018. (ECF No. 96.) After review of the briefing, the relevant portions of the record, and the relevant legal standards, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

Default judgment was entered against all defendants on January 8, 2018. (ECF No. 54.) After a motion to enforce the judgment, defendant Camp was ordered to appear for a judgment debtor exam, which was continued twice to October 3, 2018, and Camp failed to appear. (ECF Nos. 72, 73, 77, 78, 80.)

Defendants Camp and Ahmed subsequently filed a motion to vacate the judgment on October 25, 2018. (ECF No. 81.) Plaintiff filed an exceptionally late opposition on December

1 11, 2018, on the eve of the hearing. (ECF No. 89.) Plaintiff's attorney, Dennis Price, explained
2 in an attached declaration that the opposition was late due to a malware attack suffered by his law
3 firm that was not resolved until November of 2018. (ECF No. 89-1 at 1-2.) Despite the malware
4 attack, on November 2, 2018, plaintiff was able to submit a proposed certification of facts of
5 contempt based upon Camp's failure to appear at the judgment debtor exam. (ECF No. 82.)

6 In response to the court's order to show cause, Mr. Price maintains that the error was due
7 to the malware attack that briefly shutdown his entire firm's hardware. According to Mr. Price,

8 [w]hile full functionality was restored in November 2018, many
9 matters simply were unable to be properly calendared. In this case,
10 discovering the missed deadline was a result of review of the file as
11 a result of the hearing having been calendared, but the opposition
12 deadline not similarly being properly calendared. As the hearing had
13 only been listed as a judgment enforcement hearing, it would not
14 naturally have an opposition attached to it. As a result, the opposition
15 was not filed until preparing for the hearing. Despite the fact
16 Creditor was able to file his proposed certification of facts on
November 2, 2018, this did not correct the missed calendaring date.
The certification of facts was triggered by a different incident than
the motion filing: the certification of facts was a result of
nonappearance at the examination. The motion was separately filed
without an appearance by our office, thus it getting missed due to the
calendaring difficulties during the outage and as a result they were
not naturally linked.

17 (ECF No. 96 at 2.)

18 The Local Rules direct that an "[o]pposition, if any, to the granting of the motion shall be
19 in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or
20 continued) hearing date. . . . No party will be entitled to be heard in opposition to a motion at oral
21 arguments if opposition to the motion has not been timely filed by that party." E.D. Cal. L.R.
22 230(c).

23 The malware attack that was resolved in November does not excuse plaintiff's failure to
24 file a timely opposition to defendant's motion to vacate. The court appreciates Mr. Price's
25 explanation of events, but finds his excuse to be lacking. While the court understands that it is
26 the firm's practice to calendar each individual matter in a case separately, such calendaring
27 practices do not excuse the firm's failure to file a timely opposition here.

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