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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JACK ONG,

Plaintiff,

No. 09-04982 EDL

v.

**DISMISSAL FOR FAILURE TO
PROSECUTE**

WORLD FINANCIAL SERVICES, INC. et al.,

Defendants.

The Complaint in this matter was filed on October 20, 2010 and an initial case management conference was set for January 26, 2010. On January 25, 2010, Plaintiff's counsel filed a request to continue the case management on the basis that not all parties had been served and located. The request was granted and the case management conference was continued to May 4, 2010. Without explanation, Plaintiff's counsel failed to appear at the May 4, 2010 case management conference, while counsel for several of the defendants did appear. Plaintiff's case management conference statement of April 27, 2010 stated that Plaintiff was "still trying to locate" two of the named defendants, World Financial Services and Yama Marifat, and would make a decision as to whether to serve by publication or dismiss these defendants within 30 days. Due to Plaintiff's counsel's failure to appear, the case management conference was again continued to June 8, 2010.

Plaintiff's counsel again failed to appear at the June 8, 2010 case management conference. Instead, she arrived at Court approximately one hour late and stated that she left a voice mail message after the conference was set to begin notifying the Court that she was delayed. The Court searched for any record of this untimely message on both its chambers line and courtroom deputy line, but did not receive any such message. Counsel for several of the defendants did timely appear at the June 8, 2010 case management conference and stated that they have had no recent contact with


1 Plaintiff's counsel, though Plaintiff's counsel filed an "Updated Joint Case Management Statement"
2 purportedly signed by all counsel on June 4, 2010. Additionally, this case management statement
3 again claims that Plaintiff is "still trying to locate" two of the named defendants, and will make a
4 decision as to whether to serve by publication or dismiss these defendants within 30 days. Therefore
5 it appears that no action has been taken with respect to service of these defendants following the
6 April 27, 2010 statement promising to serve or dismiss them within 30 days. With respect to other
7 defendants who have been served, including GMAC, no answer or dismissal has been filed and no
8 default has been taken, though there is some indication that Plaintiff has settled with this party.

9 Because almost eight months elapsed since the Complaint was filed and Ms. Pimentel failed to
10 appear at two Court-ordered case management conferences or to serve, dismiss, or take the default of
11 all named defendants, the Court issued an Order to Show cause as to why this case should not be
12 dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). The Order to
13 Show Cause specifically warned Ms. Pimentel that failure to file a declaration or to show that the
14 failure to appear and to timely serve, dismiss, or take the default of all named defendants were
15 excusable may result in dismissal of this case. Ms. Pimentel responded to this Order to Show Cause
16 by explaining that she missed the June 8, 2010 case management conference due to traffic, and
17 submitted documentation indicating that she called the Clerk's Office one minute before the
18 conference was set to begin and was transferred to what she thought was this Court's voice mail and
19 left a message. However, Ms. Pimentel's response does not address her failure to appear at the first
20 case management conference or her failure to serve, dismiss, or take the default of all named
21 defendants after more than eight months, despite repeated promises to do so. The Court therefore
22 finds this response to be inadequate.

23 For the foregoing reasons, this action is hereby DISMISSED WITHOUT PREJUDICE for
24 failure to prosecute.

25 **IT IS SO ORDERED.**

26
27 Dated: June 17, 2010

28 
ELIZABETH D. LAPORTE
United States Magistrate Judge