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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN WHITAKER,  
Plaintiff,

v.

S & R DRYWALL, INCORPORATED, et  
al.,  
Defendants.

Case No. [21-cv-03099-SK](#)

**FURTHER ORDER TO SHOW CAUSE**

As the Court previously noted in the first Order to Show Cause (“OSC”) issued in this case on November 29, 2021, the last day for Plaintiff to file a Notice of Need for Mediation as to Defendant E Plus Studio Incorporated under the scheduling order was August 30, 2021, almost *three months* before the first OSC was issued. (Dkt. Nos. 5, 13.) In response, Plaintiff’s counsel filed a declaration stating that Defendant E Plus Studio Inc. was served on May 20, 2021, and Defendant S & R Drywall Inc. was served on May 27, 2021. (Dkt. No. 16, ¶¶ 4, 6.) E Plus Studio filed an answer on May 27, 2021, and S & R Drywall has not yet made an appearance. (Dkt. No. 9.) Plaintiff’s counsel stated that the case had been left off their list of cases needing a Joint Site Inspection due to a calendaring error and that counsel was currently attempting to schedule a Joint Site Inspection. (Dkt. No. 16, ¶ 9.) Counsel stated they would file a stipulation to extend the deadline once they heard back from Defense counsel. (*Id.*)

The Court discharged the OSC but reminded Plaintiff of his obligation to diligently prosecute this case and set a deadline of January 3, 2022, for Plaintiff to file a request to extend the deadline to conduct a joint site inspection with Defendant E Plus Studio and to move to enter default against S & R Drywall. (Dkt. No. 18.)

On December 14, 2021, Plaintiff moved to enter default against S & R Drywall, which was

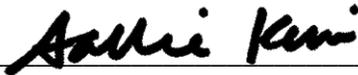
1 entered on December 21, 2021. (Dkt. Nos. 20, 21.) To date, Plaintiff has not filed a motion for  
2 default judgment, despite the fact that default was entered over *four months* ago. Nor has Plaintiff  
3 filed a request to extend the deadline to conduct a joint site inspection with Defendant E Plus  
4 Studio. Additionally, the Court notes that Plaintiff's service of S & R Drywall may be deficient  
5 because it is not clear whether previous service attempts were made before the purported substitute  
6 service. The proof of service did not include a declaration of due diligence. (Dkt. No. 14.)

7 The Court notes that it has repeatedly issued Orders to Show Cause ("OSC") to Plaintiff's  
8 Counsel's law firm based on Plaintiff's Counsel's failure to diligently prosecute, repeatedly  
9 sanctioned attorneys at the Plaintiff's Counsel's law firm, and referred two individual attorneys  
10 with Plaintiff's Counsel's law firm to the Northern District of California's Standing Committee on  
11 Professional Conduct. Despite repeated apologies and promises to calendar deadlines, the Court  
12 notes that attorneys with the Plaintiff's Counsel's law firm continue to fail to diligently prosecute  
13 their cases. Plaintiff's Counsel's is responsible for prosecution of this case in a diligent manner.

14 Accordingly, Plaintiff is HEREBY ORDERED to Show Cause in writing by no later than  
15 May 16, 2022, why this case should not be dismissed for failure to prosecute pursuant to Federal  
16 Rule of Civil Procedure 41(b) and why Counsel should not be personally sanctioned in the amount  
17 of \$1,000. Additionally, Plaintiff is admonished that, if he fails to file a response to this OSC by  
18 May 16, 2022, the Court will reassign this matter and issue a report and recommendation that this  
19 matter be dismissed for failure to prosecute and will sanction Plaintiff's Counsel without any  
20 further notice.

21 **IT IS SO ORDERED.**

22 Dated: May 6, 2022

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25 SALLIE KIM  
26 United States Magistrate Judge  
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