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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THOMSEN AS TRUSTEES OF THE
REDWOOD EMPIRE ELECTRICAL
WORKERS HEALTH AND WELFARE
TRUST FUND, REDWOOD EMPIRE
ELECTRICAL WORKERS PENSION
TRUST, JOINT ELECTRICAL INDUSTRY
TRAINING PROGRAM, NATIONAL
EMPLOYEES BENEFIT FUND,
AND REDWOOD EMPIRE ELECTRICAL
WORKERS WORK RECOVERY FUND,

Plaintiffs,

vs.

PETALUMA ELECTRIC, INC.,
a California Corporation,

Defendant.

Case No: C 09-1594 SBA

ORDER TO SHOW CAUSE

I. INTRODUCTION

Plaintiffs Jack Buckhorn and Anisa Thomsen, as trustees of the Redwood Empire Health and Welfare and Pension Trust Funds (collectively, "Plaintiffs") bring the instant action under the Employee Retirement Income Security Act, 12 U.S.C. § 1132, to recover unpaid trust fund contributions allegedly owed by Defendant Petaluma Electric, Inc. ("Defendant").

On January 4, 2010, the Court entered its Order for Pretrial Preparation, in accordance with Federal Rule of Civil Procedure 16. (Docket 14.) The Court set this matter for a one-day court trial to commence on August 2, 2010, with the pretrial conference to take place on April 6, 2010. (Id. at 2.) Numerous deadlines were set based on the date of the pretrial conference: (1) meet and confer regarding compliance with pretrial requirements – thirty days prior to the pretrial conference; (2) pretrial documents (i.e., Joint Pretrial Statement, Proposed Findings of Fact and

1 Conclusions of Law, etc., – due twenty eight days prior to the pretrial conference; and (3) motions
2 in limine – due twenty-one days prior to the pretrial conference. (Id. at 2-3.) Upon stipulated
3 request of the parties, the Court subsequently moved the pretrial conference to July 21, 2010, and
4 advanced the trial date to July 28, 2010. (Docket 19, 23.) The Court did not alter the deadlines for
5 filing pretrial documents.

6 Based on the pretrial scheduling order, pretrial documents were due on June 23, 2010, and
7 motions in limine were due on June 30, 2010. Plaintiffs filed their motions in limine on July 1,
8 2010, and their pretrial documents on July 14, 2010. Although Plaintiffs’ documents are late,
9 Defendants have filed none of the documents required under the Court’s scheduling order. In their
10 separately-filed Pretrial Conference Statement, Plaintiffs state that since June 16, 2010, they have
11 made numerous, unsuccessful attempts to meet and confer with Defendant regarding the
12 submission of a Joint Pretrial Conference Statement. Because Defendant apparently failed to
13 respond to these inquiries, Plaintiffs were forced to file their statement separately.

14 **II. DISCUSSION**

15 **A. DEFENDANT’S VIOLATION OF PRETRIAL SCHEDULING ORDER**

16 “A scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly
17 disregarded by counsel without peril.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610
18 (9th Cir. 1992) (internal quotations omitted). “In these days of heavy caseloads, trial courts . . . set
19 schedules and establish deadlines to foster the efficient treatment and resolution of cases.” Wong
20 v. Regents of the Univ. of Cal., 410 F.3d 1052, 1060 (9th Cir. 2005). As such, a party’s failure to
21 comply with the Court’s scheduling order undermines the administration of justice. In this regard,
22 the Ninth Circuit has stated that the “[d]isregard of the order would undermine the court’s ability to
23 control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the
24 cavalier.” Johnson, 975 F.2d at 610.

25 Under Federal Rule of Civil Procedure 16, the district court has the discretion, upon motion
26 or sua sponte, to impose sanctions upon any party which “fails to obey a scheduling or other
27 pretrial order.” Fed.R.Civ.P. 16(f)(1)(C). “Instead of or in addition to any other sanction,” the
28 court may order the offending party and/or its counsel to pay attorney’s fees and other reasonable

1 expenses incurred by its non-compliance, absent a showing that such non-compliance was
2 “substantially justified” or other circumstances that would “make an award of expenses unjust.”
3 Id. 16(f)(2). In addition, Rule 16(f)(1) expressly incorporates the sanctions specified in Rule
4 37(b)(2)(A)(ii)-(vii), which includes “rendering a default against a disobedient party.”

5 “Parties must understand that they will pay a price for failure to comply strictly with
6 scheduling and other orders[.]” Wong, 975 F.3d at 1060. Based on Defendant’s non-compliance
7 with the Court’s pretrial scheduling order, the Court will direct Defendant to show cause why
8 sanctions should not be imposed, up to and including the entry of default.

9 **B. PLAINTIFFS’ UNOPPOSED MOTIONS IN LIMINE**

10 Plaintiffs have filed two motions in limine. In the first motion, Plaintiffs seek to exclude
11 any reference to the settlement agreement between Plaintiffs and Defendant in a prior lawsuit on
12 the ground that it is not relevant to any issue at trial. See Fed.R.Evid. 401. In their second motion,
13 Plaintiffs seek to preclude any oral or written testimony of Edgar Ponce and Justin Daly, two
14 current or former employees of Defendant, pursuant to Federal Rule of Evidence 403. The Court’s
15 Order for Pretrial Preparation warns the parties that the failure to oppose any motion “shall
16 constitute a consent to the granting of the motion.” (Docket 14 at 2.) Having received no
17 opposition from Defendant, the Court grants both of Plaintiffs’ motions in limine.

18 **III. CONCLUSION**

19 In view of the foregoing,

20 IT IS HEREBY ORDERED THAT:

21 1. By no later than **12:00 p.m. on Monday, July 19, 2010**, Defendant shall file a
22 Certificate of Counsel and show cause why its default should not be taken and/or why
23 monetary sanctions should not be imposed against Defendant and/or its counsel under Rule
24 16(f) for failure to comply with the Court’s pretrial scheduling order. **FAILURE TO FULLY**
25 **COMPLY WITH THIS ORDER WILL BE DEEMED SUFFICIENT GROUNDS TO ENTER**
26 **DEFENDANT’S DEFAULT AND/OR IMPOSE MONETARY SANCTIONS, WITHOUT**
27 **FURTHER NOTICE.**

28 2. Plaintiffs’ Motions in Limine are **GRANTED.**

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3. This Order terminates Docket 24.

IT IS SO ORDERED.

Dated: July 15, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge