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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HILMIJA DZEBIC,

Plaintiff,

v.

ROANOKE COMPANIES GROUP, INC.,  
et al.,

Defendants.

No. C 10-2363 PJH

**ORDER GRANTING MOTION  
TO DISMISS**

**United States District Court**  
For the Northern District of California

Before the court is the renewed motion of defendants Roanoke Companies Group, Inc., n/k/a BRTT, Inc. ("Roanoke"); Home Depot USA, Inc. ("Home Depot"); and Aerofil Technology, Inc. ("Aerofil"), to dismiss the above-entitled action pursuant to Federal Rule of Civil Procedure 37(b)(2). Plaintiff Hilmija Dzebic filed no opposition to the motion within the time allowed under Civil Local Rule 7-3.

Defendants previously filed a motion to dismiss for failure to prosecute and as a Rule 37 sanction. On August 10, 2011, the court denied the motion, conditional upon plaintiff making his expert, M. Eric Gershwin, M.D. available for deposition by August 24, 2011. The court advised that should plaintiff fail to make Dr. Gershwin available for deposition by that date, defendants could renew their motion for terminating sanctions, and that the motion would be granted.

On August 29, 2011, defendants filed their renewed motion, accompanied by a declaration by counsel stating that plaintiff had failed to make Dr. Gershwin available for deposition, and further, that at no time since the issuance of the August 10, 2011 order had plaintiff made any attempt to contact defense counsel regarding the scheduling of the Gershwin deposition.

1 In accordance with the court's prior order of August 10, 2011, defendants' motion to  
2 dismiss the claims asserted against them in the above-entitled action is GRANTED.  
3 However, final judgment cannot be entered because this court's docket indicates that not  
4 all claims and parties have been dismissed. Cross-claims filed by Roanoke and by Ortec,  
5 Inc. ("Ortec"), remain in the case, as do claims filed by plaintiff against defendant  
6 Innovative Chemical Technologies, Inc. ("Innovative").

7 Accordingly, no later than September 23, 2011, Roanoke and Ortec shall file  
8 dismissals of the cross-claims, and Innovative shall file a motion to dismiss the claims  
9 asserted against it, or the court will set the case for a mandatory case management  
10 conference.

11  
12 **IT IS SO ORDERED.**

13 Dated: September 16, 2011



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PHYLLIS J. HAMILTON  
United States District Judge