

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 BOARD OF TRUSTEES OF THE LABORERS
5 HEALTH AND WELFARE TRUST FUND FOR
6 NORTHERN CALIFORNIA; BOARD OF
7 TRUSTEES OF THE LABORERS
8 VACATION-HOLIDAY TRUST FUND FOR
9 NORTHERN CALIFORNIA; BOARD OF
10 TRUSTEES OF THE LABORERS PENSION
11 TRUST FUND FOR NORTHERN
12 CALIFORNIA; and BOARD OF TRUSTEES
13 OF THE LABORERS TRAINING AND
14 RETRAINING TRUST FUND FOR
15 NORTHERN CALIFORNIA,

16 Plaintiffs,

17 v.

18 KUDSK CONSTRUCTION, INC.; and
19 LARRY JAMES KUDSK,

20 Defendants.

No. C 12-165 CW

ORDER GRANTING
PLAINTIFFS' MOTION
TO STRIKE ANSWER
(Docket No. 18)

21 _____/
22 Plaintiffs Board of Trustees of the Laborers Health and
23 Welfare Trust Fund for Northern California, Board of Trustees of
24 the Laborers Vacation-Holiday Trust Fund for Northern California,
25 Board of Trustees of the Laborers Pension Trust Fund for Northern
26 California, and Board of Trustees of the Laborers Training and
27 Retraining Trust Fund for Northern California move to strike the
28 answers to Plaintiffs' complaint filed by Defendants Kudsk
Construction, Inc. and Larry James Kudsk. Defendants have not
filed a response to Plaintiffs' motion. The Court takes
Plaintiffs' motion under submission on the papers. Having
considered the papers filed by Plaintiffs, the Court GRANTS the
motion and STRIKES Defendants' answers.

1 BACKGROUND

2 On January 10, 2012, Plaintiffs filed their complaint seeking
3 to recover employee fringe benefit contributions owed by
4 Defendants. Docket No. 1.

5 On February 15, 2012, Defendants, through shared counsel,
6 filed answers to Plaintiffs' complaint. Docket Nos. 6 and 7.

7 On February 29, 2012, at the request of Defendants, the
8 parties agreed to and filed a joint stipulation to stay the case
9 for ninety days to allow the parties attempt to resolve the
10 dispute informally. Docket No. 14; Richman Decl. ¶ 3.

11 On March 2, 2012, the Court granted the parties' stipulation
12 and ordered the parties to appear at a case management conference
13 on June 6, 2012 at 2:00 p.m. Docket No. 15. The Court directed
14 the parties to submit a joint case management statement seven days
15 prior to the case management conference advising the Court as to
16 the status of the parties' informal attempts to resolve the case.

17 Id.

18 Once the stay was issued, Defendants refused to respond to
19 Plaintiffs' attempts to discuss the case. Richman Decl. ¶ 3.
20 Prior to the case management conference, Plaintiffs drafted a
21 joint case management statement and sent it to Defendants for
22 their input. Id. at ¶ 4. Defendants did not respond. Id.

23 Defendants failed to appear at the June 6, 2012 case
24 management conference. Docket No. 17. At that time, the Court
25 directed Plaintiffs to file a motion for default judgment.

26 On July 6, 2012, Plaintiffs filed the instant motion to
27 strike Defendants' answers. Docket No. 18. Pursuant to Civil
28 Local Rule 7-3(a), Defendants were required to file their response

1 to the motion to strike by July 20, 2012. Defendants have not
2 filed a response.

3 LEGAL STANDARD

4 "District courts have inherent power to control their
5 dockets. In the exercise of that power they may impose sanctions
6 including, where appropriate, default or dismissal." Thompson v.
7 Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir.
8 1986). Federal Rule of Civil Procedure 16(f) provides, among
9 other things, that, if a party or its attorneys "fails to appear
10 at a scheduling or other pretrial conference" or "fails to obey a
11 scheduling or other pretrial order," the court "may issue any just
12 orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii).
13 See Federal Rule of Civil Procedure 16(f)(1)(A)-(C). Rule
14 37(b)(2)(A)(iii), in turn, authorizes the court to strike
15 pleadings in whole or in part. "Where the sanction results in
16 default, the sanctioned party's violations must be due to the
17 willfulness, bad faith, or fault of the party." Hester v. Vision
18 Airlines, Inc., 2012 U.S. App. LEXIS 14683, at *13 (9th Cir.)
19 (internal quotations omitted). "Disobedient conduct not shown to
20 be outside the control of the litigant is sufficient to
21 demonstrate willfulness, bad faith, or fault." Jorgenson v.
22 Cassiday, 320 F.3d 906, 912 (9th Cir. 2003).

23 "A court must consider the following five factors before
24 striking a pleading or declaring default: (1) the public's
25 interest in expeditious resolution of litigation; (2) the court's
26 need to manage its docket; (3) the risk of prejudice to the other
27 party; (4) the public policy favoring the disposition of cases on
28 their merits; and (5) the availability of less drastic sanctions."

1 Hester, 2012 U.S. App. LEXIS 14683, at *14 (internal quotations
2 omitted). Three subfactors that assist in evaluating the fifth
3 factor include (1) the availability of lesser sanctions; (2) the
4 use of lesser sanctions before termination; and (3) the adequate
5 warning of the possibility of termination. Id. at *16. "The fact
6 that a court does not implement a lesser sanction before striking
7 an answer is not dispositive." Id. at *17. Further, while a
8 court may be required to provide warning when a court sua sponte
9 dismisses a case, an express warning of the possibility of
10 termination is not required in the context of a noticed motion.
11 See In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d
12 1217, 1229 (9th Cir. 2006).

13 DISCUSSION

14 Defendants here have failed to comply with the Court's
15 scheduling order by refusing to participate in the preparation of
16 a joint case management statement and failing to appear at the
17 case management conference. Defendants also failed to engage in
18 informal settlement discussions after requesting that Plaintiffs
19 agree to stay prosecution of this action for this purpose and the
20 Court ordered such a stay. Defendants have not argued or shown
21 that their disobedience was outside their control. Thus, the
22 Court concludes that their conduct demonstrates willfulness, bad
23 faith, or fault.

24 The first two factors favor striking Defendants' answer.
25 Their conduct has impeded resolution of this case and has
26 prevented the Court from setting a schedule by which this case
27 could proceed. The third factor also favors granting the motion.
28 Defendants' refusal to participate in this action has prejudiced

1 Plaintiffs' ability to proceed to a trial to resolve the merits of
2 their claims. See In re PPA Prods. Liab. Litig., 460 F.3d at
3 1227. While courts generally hold that the fourth factor counsels
4 against dismissal, "a case that is stalled or unreasonably delayed
5 by a party's failure to comply with deadlines and discovery
6 obligations cannot move forward toward resolution on the merits."
7 Id. at 1228.

8 Finally, the Court concludes that the fifth factor also
9 favors striking Defendants' answers. Defendants' conduct thus far
10 demonstrates that a warning or additional chance to respond will
11 not be effective. The Court made clear at the case management
12 conference that it would entertain a motion for default judgment
13 in this case. Defendants were also on notice that Plaintiffs
14 sought to strike their answers. Yet, they failed to respond to
15 the motion in any way. Further, as previously noted, they have
16 not offered any explanation or reason to conclude that these were
17 failures were not willful or in bad faith.


18 CONCLUSION

19 For the reasons set forth above, the Court GRANTS Plaintiffs'
20 unopposed motion to strike Defendants' answers (Docket No. 18).
21 Defendants' answers are hereby STRICKEN. The Court directs the
22 Clerk to enter default against Defendants.

23 Plaintiffs shall file a motion for default judgment within
24 thirty days of the date of this Order.

25 IT IS SO ORDERED.

26
27 Dated: 7/23/2012

28


CLAUDIA WILKEN
United States District Judge