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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

James Lee Stewart, et al.,

NO. C 07-04061 JW

Plaintiffs,

**ORDER OF DISMISSAL**

v.

Leland Stanford Junior University,

Defendant.

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On September 14, 2010, the Court issued an Order Adopting in part Magistrate Judge Trumbull's Report and Recommendation. (hereafter, "Order," Docket Item No. 133.) In its Order, the Court specifically required Plaintiffs to "obtain, serve and file a declaration of a current union representative with the authority to approve that Mr. Zavodnick may serve as counsel of record for the Union in this case," and file such declaration on or before September 24, 2010. (Order at 3.) The Court warned Plaintiffs that "failure to comply with this Order may warrant further monetary sanctions or termination sanctions for lack of prosecution pursuant to Fed. R. Civ. P. 41(b)." (Id.)

On October 7, 2010, the Court issued an Order to Show Cause re: Dismissal because nearly two weeks after the September 24 deadline, Mr. Zavodnick, counsel for Plaintiff Stewart and purported counsel for the Union failed to comply with the Court's Order or otherwise communicate with the Court. (Docket Item No. 139.) The Court found that Mr. Zavodnick's failure was consistent with Plaintiffs and counsel's previous discovery violations found to be sanctionable, including monetary and terminating sanctions, by Judge Trumbull. (Id.)

On October 14, 2010, Plaintiffs filed an Opposition to the Court's Order to Show Cause. (hereafter, "Opposition," Docket Item No. 140.) The Opposition however, does not respond directly to the Court's Order. Instead, the Opposition attaches an informal letter from Mr. Ron Edwards,

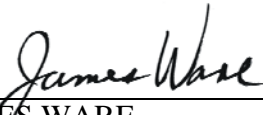
1 who is purported to be the Steward of record for United Stanford Workers Local 715. (Opposition,  
2 Ex. 1.) In his letter, Mr. Edwards accuses Defendant's counsel of improprieties with respect to how  
3 the declaration of Rusty Smith, President of Local 715, was obtained regarding the Union's  
4 declination to prosecute the case. (Id.) The Court ordered the appearance of Mr. Smith for the  
5 October 18, 2010 hearing. At the hearing, Mr. Smith and his attorney appeared and represented to  
6 the Court that as trustee of the Union, Mr. Smith is the only person authorized to make decisions  
7 with respect to this litigation and that Mr. Smith has not authorized Mr. Zavodnick to represent the  
8 Union.

9           Based on Mr. Smith and his counsel's representation, and for the reasons stated on the record  
10 at the October 18 hearing, the Court DISMISSES this action pursuant to Fed. R. Civ. P. 41(b). The  
11 Court STAYS this Order for thirty (30) days pending Plaintiffs' ability to cure the defects identified.  
12 Nothing in this Order is intended to lift any obligations of Plaintiffs to pay previously ordered  
13 sanctions for discovery abuses.

14           Unless otherwise ordered, the Clerk shall close this file on November 19, 2010.

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Dated: October 19, 2010

  
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JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Carol Capri Copsey ccopsey@gordonrees.com  
3 Michael Terence Lucey mlucey@gordonrees.com  
4 Steven Daniel Zavodnick szavodnick@verizon.net

5 **Dated: October 19, 2010**

**Richard W. Wieking, Clerk**

6 **By:           /s/ JW Chambers**  
7 **Elizabeth Garcia**  
8 **Courtroom Deputy**

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