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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

REZA NAGAH, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CALIFORNIA EMPLOYMENT )  
 DEVELOPMENT DEPARTMENT, et al., )  
 )  
 Defendants. )

Case No.: C 07-6268 PVT  
**ORDER DENYING PLAINTIFF’S MOTION TO STRIKE COUNSEL’S DECLARATION AND EXHIBITS; TAKING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT UNDER SUBMISSION; AND CONTINUING TRIAL SETTING CONFERENCE TO 2:00 P.M. ON JUNE 15, 2010**

On March 9, 2010, Plaintiff filed motion to strike counsel’s declaration and exhibits. Defendants have not filed any opposition to the motion. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without oral argument. Based on the moving papers and the file herein, and the court’s unavailability on June 1, 2010,

IT IS HEREBY ORDERED that Plaintiff’s motion to strike is DENIED. Rule 901 of Federal Rules of Evidence provides, in relevant part:

**(a) General provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

**(b) Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

\* \* \* \*

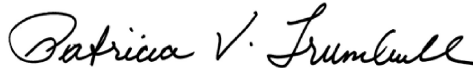
1                   **(7) Public records or reports.** Evidence that \* \* \* a purported public  
2 record, report, statement, or data compilation, in any form, is from the  
public office where items of this nature are kept.

3                   The two documents attached to the Declaration of Counsel in Support of Defendants' Motion  
4 for Summary Judgment are both documents that are maintained in a public office of the State of  
5 California. The declarant, who is employed by the State of California, attests to the fact that the  
6 documents are from the public offices where such items are kept – the cancelled check is from the  
7 State Controller's Office, and the payment records are from the Employment Development  
8 Department. Thus, pursuant to Rule 901(a) & (b)(7), the documents have been adequately  
9 authenticated.

10                   IT IS FURTHER ORDERED that Defendants' motion for summary judgment is TAKEN  
11 UNDER SUBMISSION without oral argument. Although Plaintiff failed to timely file any  
12 opposition to the motion, summary judgment cannot be granted based solely on Plaintiff's failure to  
13 oppose the motion. *See Martinez v. G.D. Stanford*, 323 F.3d 1178, 1182-1183 (2003). The lack of  
14 an opposition does not excuse Defendants' affirmative duty under Rule 56 to demonstrate their  
15 entitlement to judgment as a matter of law. *Id.* at 1182. Thus, the court must still determine whether  
16 "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no  
17 genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."  
18 *See* FED.R.CIV.PRO. 56(c)(2).

19                   IT IS FURTHER ORDERED that the trial setting conference is CONTINUED to 2:00 p.m.  
20 on June 15, 2010.

21 Dated: 5/28/10

22                     
23                   PATRICIA V. TRUMBULL  
24                   United States Magistrate Judge  
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