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**\*\* E-filed September 6, 2011 \*\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BEAZLEY INSURANCE COMPANY,  
INC.,

No. C09-01327 HRL

Plaintiff,

**ORDER THAT CASE BE  
REASSIGNED TO A DISTRICT  
JUDGE**

v.

**REPORT AND RECOMMENDATION**

TRITON DISTRIBUTION SYSTEMS,  
INC., et al.,

Defendants.

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On July 24, 2009, upon Defendants' default being entered and Plaintiff's representation that it intended to file a motion for default judgment, this Court vacated the then-scheduled case management conference. Docket No. 17. Plaintiff never filed anything else, let alone a motion for default judgment. So, the Court ordered that Plaintiff appear on August 30, 2011 to show cause why the case should not be dismissed for failure to prosecute. Docket Nos. 18, 19. Plaintiff did not appear. Docket No. 20.

A court has authority to dismiss a plaintiff's action *sua sponte* due to failure to prosecute. Link v. Wabash R. Co., 370 U.S. 626, 629-30 (1962). When considering dismissal for lack of prosecution, a district court must weigh the court's need to manage its docket, the public interest in expeditious resolution of litigation, and the risk of prejudice to the defendants against the policy

United States District Court  
For the Northern District of California

1 favoring disposition of cases on their merits, and the availability of less drastic sanctions. Ash v.  
2 Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984).

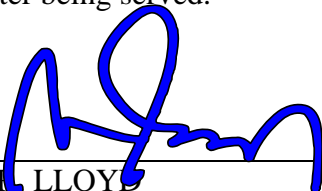
3 Here, Plaintiff failed to appear after being ordered to do so. It was warned that failing to  
4 appear or communicate with the Court would result in dismissal. It is unfair to Defendants to leave  
5 the case pending and unresolved indefinitely. Plaintiff's actions exhibit a disinterest in pursuing this  
6 case and judicial resources cannot continue to be wasted by permitting it to linger. Plaintiff has left  
7 the Court with no appropriate alternative but to recommend that the case be dismissed.

8 Because only Plaintiff has consented to the undersigned's jurisdiction, this Court ORDERS  
9 the Clerk of the Court to reassign this case to a district court judge. The undersigned further  
10 RECOMMENDS that the newly-assigned district court judge dismiss this action without prejudice  
11 for the reasons set forth above.

12 Pursuant to Federal Rule of Civil Procedure 72(b), any party may serve and file objections to  
13 this Report and Recommendation within fourteen days after being served.

14 **IT IS SO ORDERED.**

15 Dated: Sept. 6, 2011

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18 HOWARD R. LLOYDS  
19 UNITED STATES MAGISTRATE JUDGE  
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**C09-01327 HRL Notice will be electronically mailed to:**

Jeffrey Stewart Whittington                      jwhittington@kbrlaw.com

**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**