

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARK SHEPHERD and DELIA SHEPHERD,)
)
Plaintiffs,)
v.)
)
S3 PARTNERS, LLC; ALARIS)
DEVELOPMENT; THE SHIELDS)
FOUNDATION; NORTHWEST CONSULTING)
GROUP, LLC; CORINTHIAN WEALTH)
MANAGEMENT; GOLDEN CREST WEALTH)
MANAGEMENT; PIERCE ARROW)
INVESTORS, LLC; LIVINGSTONE CAPITAL;)
STAGECOACH RETAIL, LLC; MICHAEL)
SIMS; SAM STAFFORD; MELVIN RUSSEL)
SHIELDS; DAVID VAUGHN; DAVID)
SAMUELS; CHASTAN SHIELDS; DOUG)
BURKE,)
)
Defendants.)
)

Case No.: C 09-1405-RMW
**REPORT AND RECOMMENDATION
FOR SANCTIONS**
(RE: Docket No. 109)

On October 20, 2011, Judge Whyte referred this matter to the undersigned for magistrate judge settlement conference.¹ None of the defendant parties appeared at the settlement conference,

¹ See Docket No. 96.

1 scheduled for December 29, 2011.² The same parties also failed to appear on January 6, 2012, as
2 ordered, to show cause why they should not be sanctioned for their December 29 failure to appear.³
3 At the January 6 show cause hearing, Plaintiffs requested the court consider entering a dispositive
4 sanction by striking Defendants' pleadings and entering default.

5 In light of Defendants' repeated failures to appear or otherwise respond to court orders, the
6 undersigned agrees that the requested sanctions are warranted. Under the civil local rules, the court
7 may refer the case to a judicially hosted settlement conference.⁴ The undersigned construes Judge
8 Whyte's October 20, 2011 settlement conference referral order to be part of the pretrial scheduling
9 and management orders in this case.⁵ Failure to adhere to the court-ordered ADR procedure, as set
10 forth in the court's pretrial scheduling order, may subject the disobedient party to sanctions.⁶ Such
11 sanctions may include striking pleadings in whole or in part and rendering a default judgment
12 against the subject party.⁷

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15 _____
16 ² See Docket No. 108.

17 ³ See Docket No. 116. Defendants Livingstone Capital, Michael Sims, and Sam Stafford were
18 erroneously included in the court's December 29 order to show cause. Livingstone Capital
19 prevailed on summary judgment on all counts. See Docket No. 95. Based on Plaintiff's
20 representations to the court at the January 6, 2012 show cause hearing, Michael Sims and Sam
21 Stafford have filed for bankruptcy.

22 ⁴ See Civ. L.R. 16-8(a).

23 ⁵ See, e.g., Fed. R. Civ. P. 16(a)(5) ("In any action, the court may order the attorneys and any
24 unrepresented parties to appear for one or more pretrial conferences for such purposes as ...
25 facilitating settlement."); Civ. L.R. 16-10(b)(1) (providing that the court may use a subsequent case
26 management order to establish deadlines for commencement and completion of any ADR
27 proceedings).


28 ⁶ See Fed. R. Civ. P. 16(f)(C) ("[T]he court may issue any just orders, including those authorized
by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney ... fails to obey a scheduling or other pretrial
order."). See also *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 594-595 (8th Cir. 2001) (affirming
district court's authority to issue sanctions for failure to comply with pretrial order referring parties
to mediation).

⁷ See Fed. R. Civ. P. 37(b)(2)(A)(iii), (vi).

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Issuance of such dispositive sanctions is the proper domain of the presiding judge.⁸ IT IS
HEREBY RECOMMENDED that the presiding judge issue an order granting Plaintiffs' request
that the answer of the non-appearing defendants be stricken, default entered, and a default
judgment issued against them.

Dated: January 9, 2012



PAUL S. GREWAL
United States Magistrate Judge

⁸ Absent consent of all parties, a magistrate judge does not have authority to make case-dispositive rulings. *See, e.g., Tripathi v. Rison*, 847 F.2d 548, 548-49 (9th Cir. 1988).