

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

RAYMOND J. SMITH,	)	Case No.: 12-CV-04150-LHK
	)	
Plaintiff,	)	ORDER DISMISSING CASE
	)	
vs.	)	
	)	
HUNT & HENRIQUES, MICHAEL S. HUNT,	)	
and JANALIE HENRIQUES,	)	
	)	
Defendants.	)	

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Plaintiff Raymond J. Smith (“Plaintiff”) filed his complaint on August 7, 2012 in the instant matter. On August 30, 2012, Defendants filed their answer. ECF No. 4. A case management conference was scheduled for February 6, 2013 at 2:00 p.m. ECF No. 10. The parties were required to file a joint case management statement by January 30, 2013. *Id.* Defendants filed a separate case management statement on February 1, 2013. ECF No. 11. Defendants stated that they were not able to communicate with Plaintiff and therefore were unable to file a joint case management statement. Plaintiff did not file a case management statement. Plaintiff also did not appear at the February 6, 2013 case management conference.

In light of Plaintiff’s failure to file a case management statement and failure to appear at the February 6, 2013 case management conference, the Court ordered Plaintiff to show cause, by February 20, 2013, why this case should not be dismissed with prejudice for failure to prosecute. A hearing on the Order to Show Cause (“OSC”) was set for February 27, 2013 at 2:00 P.M.

1 Plaintiff was advised that, should Plaintiff fail to respond to this Order and to appear at the  
2 February 27, 2013 hearing, Plaintiffs' case would be dismissed with prejudice for failure to  
3 prosecute.

4 On February 19, 2013 (11 days after the deadline), Plaintiff filed a response to the OSC.  
5 See ECF No. 15. Plaintiff stated that Plaintiff was unable to prepare a case management statement  
6 or participate in the case management conference because Plaintiff is suffering from physical  
7 disabilities which were exacerbated by a case of the flu. *Id.* at 1-2. Plaintiff also contested  
8 Defendants' representation that that Defendants' were not able to communicate with Plaintiff. *Id.*  
9 at 3-4. Plaintiff did not appear at the February 27, 2013 OSC hearing.

10 In light of Plaintiff's failure to: (1) file a case management statement in advance of the  
11 February 6, 2013 case management conference; (2) appear at the February 6, 2013 case  
12 management conference; (3) file a timely response to the OSC; and (4) appear at the February 27,  
13 2013 OSC hearing, the Court DISMISSES Plaintiff's case. However, given that Plaintiff filed a  
14 response to the OSC (albeit a late one), the Court's dismissal is *without* prejudice. The Clerk shall  
15 close the file.

16 **IT IS SO ORDERED.**

17 Dated: March 1, 2013

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20 LUCY H. KOH  
21 United States District Judge  
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