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E-FILED: April 23, 2013

NOT FOR CITATION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

JUAN TORRES CABRERA,
Plaintiff,

v.

CHRISTOPHER HANBUM OH,
Defendant.

No. C12-04294 HRL

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

**REPORT AND RECOMMENDATION
THAT DEFENDANT'S ANSWER BE
STRICKEN**

Plaintiff sues under federal and state law for wages that allegedly were earned, but remain unpaid. The complaint was filed on August 15, 2012. Defendant Oh subsequently appeared through attorney Milton Katz, who filed an answer on Oh's behalf. (See Dkt. No. 10).

Shortly after, Katz moved to withdraw as counsel of record, asserting that Oh failed to pay his fees and refused to provide records Katz deemed necessary for the defense of this action. Katz stated that he sent Oh a copy of that motion. The court received no opposition to it. And, Katz's motion to withdraw was granted, subject to the condition that papers could continue to be served on him for forwarding purposes, unless and until Oh appeared through other counsel or pro se. (See Dkt. No. 15, December 4, 2012 Order). In that same order, this court re-set the initial case management conference for December 18, 2012. Oh was ordered to appear at the conference in person, unless he retained other counsel by that time.

United States District Court
For the Northern District of California

1 The court's December 4, 2012 order was electronically served on Katz for forwarding
2 purposes through the court's ECF system. Additionally, the court mailed a copy of the order to
3 Oh at the address listed for defendant in Katz's motion papers.

4 Plaintiff appeared at the December 18, 2012 initial case management conference. Oh
5 did not. Nor did any attorney appear on his behalf.

6 The court then issued an order directing Oh to appear on January 15, 2013 and show
7 cause why his answer should not be stricken. That order was electronically served on Katz for
8 forwarding purposes, and the court also mailed a copy of the order to Oh.

9 On December 26 and 28, 2012, the orders previously mailed to defendant were returned
10 to the court as undeliverable and with no forwarding address. According to plaintiff, mail sent
11 to Oh has also been returned to plaintiff's counsel's office as undeliverable, and the phone
12 number plaintiff had for Oh is no longer in service. This court is told that plaintiff asked Katz
13 for other contact information for Oh and that Katz said he has no such information.

14 An attorney or party proceeding pro se has an obligation to provide the court with
15 current contact information. Civ. L.R. 3-11(a). The court may, without prejudice, strike an
16 answer when mail directed to an attorney or pro se party is returned to the court as
17 undeliverable and the court fails to receive within 60 days of the return a written
18 communication from the attorney or pro se party indicating a current address. Civ. L.R. 3-
19 11(b).

20 On January 15, 2013, the court issued a second order, directing defendant to appear on
21 March 19, 2013 and show cause why his answer should not be stricken. Defendant did not
22 appear; and, plaintiff advised that, despite efforts, he had not been able to obtain Oh's current
23 contact information.

24 Although Katz (now withdrawn) previously said, in the parties' Joint Case Management
25 Statement, that Oh consented to magistrate judge jurisdiction for all purposes, the court has not
26 received a signed consent form from either Katz or Oh. Accordingly, this court ORDERS the
27 Clerk of the Court to reassign this case to a District Judge. The undersigned further
28 RECOMMENDS that Oh's answer be stricken, without prejudice, pursuant to Civil Local Rule

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3-11(b). Any party may serve and file objections to this Report and Recommendation within fourteen days after being served. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SO ORDERED.

Dated: April 23, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court
For the Northern District of California

1 5:12-cv-04294-HRL Notice has been electronically mailed to:

2 Huy Ngoc Tran huy@lacasalegal.com

3 Milton Katz , Esq miltonkatz@yahoo.com

4 Tomas Eduardo Margain Tomas@LaCasaLegal.com, brisa@lacasalegal.com,
5 huy@lacasalegal.com, margainlaw@hotmail.com, oriana@lacasalegal.com

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