

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AARON BLANK,

Plaintiff,

v.

HYDRO-THERMAL
CORPORATION,

Defendant.

CASE NO. 12-CV-2611 W (BGS)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS [DOC. 12]**

Pending before the Court is Defendant Hydro-Thermal Corporation's motion to dismiss for failure to prosecute. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d.1).

Plaintiff Aaron Blank commenced this lawsuit in the San Diego Superior Court on September 21, 2012. (*See Not. of Removal* [Doc. 1], Ex. 1 [Doc. 1-1].) On October 26, 2012, Defendant removed the action to this court based on diversity jurisdiction. (*Not. of Removal*, ¶¶ 8–10.)

On July 22, 2013, Defendant filed the pending motion to dismiss. Defendant argues that "Plaintiff and his counsel have abandoned this case," and "have done nothing to prosecute this case since filing it ten months ago and recently failed to appear at the mandatory early neutral evaluation conference." (*MTD P&A* [Doc. 12-1], 1:2–4.) The hearing on the motion was set for September 9, 2013.

1 Based on the hearing date, Plaintiff's opposition to Defendant's motion was due
2 on or before September 3, 2013. Plaintiff did not file an opposition. However, on
3 September 4, 2013, Plaintiff filed a request for court approval of a substitution of
4 attorney. (See *Notice of Substitution* [Doc. 15].) Plaintiff requested that the Court
5 approve the substitution of Alan L. Williams, as counsel of record, in place of Mark
6 Teuton. (*Id.*, 1:20–22.) According to the notice, “Mr. Teuton has abandoned Plaintiff
7 and this case” and, as a result, “Plaintiff has been unaware of proceedings, hearings and
8 motions pending in this Court since that time.” (*Id.*, 1:23–27.)

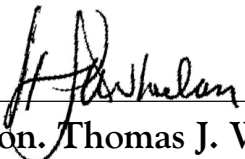
9 On September 12, 2013, this Court approved the substitution of attorney. (See
10 *Order* [Doc. 16].) Despite the substitution, to date, Plaintiff has not filed an opposition
11 to Defendant's motion to dismiss, nor has Plaintiff filed a request for an extension of
12 time to file an opposition. Instead, Plaintiff has left the motion unopposed.

13 Civil Local Rule 7.1(f.3.c) expressly provides that “[i]f an opposing party fails to
14 file papers in the manner required by Local Rule 7.1(e)(2), that failure may constitute
15 a consent to the granting of that motion or other ruling by the court.” The Ninth
16 Circuit has held that a district court may properly grant a motion to dismiss for failure
17 to respond. See generally *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per
18 curiam) (affirming dismissal for failure to file timely opposition papers where plaintiff
19 had notice of the motion and ample time to respond).

20 Relying on Civil Local Rule 7.1(f.3.c), the Court deems Plaintiff's failure to
21 oppose Defendant's motion as consent to its merits, and on that basis **GRANTS**
22 Defendant's motion [Doc. 12] and **DISMISSES THIS CASE WITHOUT**
23 **PREJUDICE** for failure to prosecute.

24 **IT IS SO ORDERED.**

25
26 **DATED: October 8, 2013**



Hon. Thomas J. Whelan
United States District Judge