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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CHARLES HOLMES,

11 Plaintiff,

12 v.

13 ESTOCK, et al.,

14 Defendants.
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Case No. 16-cv-2458-MMA (BLM)

**ORDER FOLLOWING MAY 16, 2022
STATUS CONFERENCE**

16 On May 16, 2022, the Court held a status conference for the primary purpose of
17 determining whether Plaintiff Charles Holmes' attorney, Mr. Brian Vogel, intended to
18 proceed as counsel. Prior to the hearing, the Court ordered Mr. Vogel to show cause why
19 sanctions should not issue for failure to prosecute. *See* Doc. No. 157 (the "OSC"). The
20 OSC details Mr. Vogel's history of noncompliance, which the Court incorporates by
21 reference here. In sum, over the last two years Mr. Vogel missed eight deadlines, sought
22 five extensions to oppose summary judgment, and was ordered to show cause twice for
23 his failure to prosecute this case. Mr. Vogel's conduct and pattern of inaction
24 significantly delayed the adjudication of this case. Resolution of Defendants' summary
25 judgment motion was delayed by nearly one year, and due to Mr. Vogel's failure to meet
26 key pretrial deadlines, the trial set to begin on February 22, 2022 has yet to be reset.

27 Based upon Mr. Vogel's representations, *see* Doc. No. 158, the Court discharged
28 the OSC and ordered Mr. Vogel to file either a motion to withdraw from the case or

1 notice of substitution by March 11, 2022, *see* Doc. No. 161. The Court warned
2 Mr. Vogel that if he failed to meet this deadline, the Court would impose a sanction of
3 \$100 per day. *Id.*

4 “[C]ourts have inherent power to enforce compliance with their lawful orders
5 through civil contempt.” *Shillitani v. United States*, 384 U.S. 364, 370 (1966) (internal
6 citations omitted). Civil contempt occurs when a party disobeys “a specific and definite
7 court order by failure to take all reasonable steps within the party’s power to comply.” *In*
8 *re Dual—Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.
9 1993); *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006).
10 “The contempt need not be willful, and there is no good faith exception to the
11 requirement of obedience to a court order. . . . But a person should not be held in
12 contempt if his action appears to be based on a good faith and reasonable interpretation of
13 the court’s order.” *In re Dual-Deck*, 10 F.3d at 695 (internal citations, quotations, and
14 alterations omitted).

15 “Civil contempt is characterized by the court’s desire to compel obedience to a
16 court order or to compensate the contemnor’s adversary for the injuries which result from
17 the noncompliance.” *United States v. Bright*, 596 F.3d 683, 695–96 (9th Cir. 2010)
18 (internal citation omitted). Accordingly, there are two forms of civil contempt sanctions:
19 compensatory and coercive. *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d
20 770, 778 (9th Cir. 1983). Coercive civil sanctions are “intended to coerce the contemnor
21 to comply with the court’s orders in the future” and are therefore conditioned upon the
22 contemnor’s continued noncompliance. *Richmark Corp. v. Timber Falling Consultants*,
23 959 F.2d 1468, 1481 (9th Cir. 1992). Thus, when imposing a coercive civil contempt
24 sanction, the court must provide a “subsequent opportunity to reduce or avoid the fine
25 through compliance.” *See Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S.
26 821, 829 (1994). Upon the contemnor’s compliance, the coercive sanction ceases. *Id.*

27 To determine whether a coercive sanction is appropriate, courts must “consider the
28 character and magnitude of the harm threatened by continued contumacy” as well as the

1 probable effectiveness the sanction. *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510,
2 517 (9th Cir. 1992). A “per diem fine imposed for each day a contemnor fails to comply
3 with an affirmative court order” is a “paradigmatic civil contempt sanction.” *See United*
4 *States v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999); *NLRB v. Ironworkers Local 433*, 169
5 F.3d 1217, 1222 (9th Cir. 1999) (describing per diem fines as a method of “coercing
6 future compliance” with court orders); *see also In re Rubin*, 172 F.3d 876 (9th Cir. 1999)
7 (affirming \$100 per day contempt fine); *In re E. W. Const. Co., Inc.*, 21 F.3d 1112 (9th
8 Cir. 1994) (same); *Rich v. Kirkland*, No. CV 11-4272-JLS (SPx), 2016 U.S. Dist. LEXIS
9 5657, at *12 (C.D. Cal. Jan. 15, 2016) (ordering \$200 per day contempt sanction);
10 *Facebook, Inc. v. Power Ventures, Inc.*, No. 08-CV-05780-LHK, 2017 U.S. Dist. LEXIS
11 125541, at *48 (N.D. Cal. Aug. 8, 2017) (ordering \$100 per day contempt sanction).

12 Mr. Vogel did not meet the March 11, 2022 deadline. By April 11, 2022, he had
13 amassed a sanction of \$3,000, and so the Court set a status conference for May 16, 2022
14 at 2:30 p.m. Doc. No. 163. At 1:39 p.m. on May 16, Mr. Vogel filed a motion to
15 withdraw, which lacked both an accompanying declaration and proper notice of service
16 on his client. Doc. No. 165. Accordingly, it did not comply with the local rules, *see*
17 CivLR 83.3.f.3, and Mr. Vogel’s contempt amounted to a sanction of \$6,500.

18 Based upon Mr. Vogel’s representations at the hearing, the Court found that his
19 noncompliance ceased on May 16, 2022, and reduced the sanction to \$3,250.¹ Doc.
20 No. 166. The Court will also refer Mr. Vogel to the Standing Committee on Discipline
21 for consideration of his conduct in this case so that the Committee may evaluate the
22 propriety of Mr. Vogel’s continued admission to practice in the Southern District of
23 California and/or consider any other authorized actions the Committee deems appropriate
24 after completing its investigation.

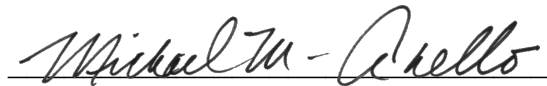
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28 ¹ Mr. Vogel has already satisfied his obligations. *See* Doc. No. 167.

1 Plaintiff participated in the status conference by telephone and consented to
2 Mr. Vogel's withdrawal.² Accordingly, the Court granted Mr. Vogel's motion and now
3 sua sponte reconsiders Plaintiff's prior motion for appointment of counsel pursuant to 28
4 U.S.C. § 1915(e)(1) as the case has survived summary judgment and refers the case to its
5 Pro Bono Panel for potential pro bono representation pursuant to G.O. 596, "Plan for the
6 Representation of Pro Se Litigants in Civil Cases," which provides that the Court may
7 appoint trial counsel as a matter of course in a prisoner civil rights case where summary
8 judgment has been denied. Subsequent to the appointment of trial counsel, the Court will
9 issue a scheduling order setting forth all relevant pretrial deadlines and hearings.

10 Moreover, as Plaintiff is currently housed at Kern Valley State Prison, the Court
11 **DIRECTS** the Clerk of Court to update Plaintiff's address accordingly and mail him a
12 copy of this Order. Plaintiff is advised that until he obtains representation, he has an
13 obligation to keep the Court and opposing parties apprised of his current address pursuant
14 to Civil Local Rule 83.11.b.

15 **IT IS SO ORDERED.**

16 Dated: May 18, 2022

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18 HON. MICHAEL M. ANELLO
19 United States District Judge
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28 ² Mr. Vogel also provided the Court with a supporting declaration at the hearing.