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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
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7 JOSH TOWBIN,

8 Plaintiff,

9 vs.

10 EMPIRE SUZUKI, et al.,

11 Defendants.

Case No. 2:08-cv-01719-RLH-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

(Mtn for Sanctions - Dkt. #34)

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13 This matter is before the court on Defendants' Tom Georgalis' and Empire Suzuki's failure to
14 comply with this court's Order to Show Cause (Dkt. #36). The court makes the following findings:

15 1. The complaint in this matter was originally filed in state court and was removed to this
16 court on December 5, 2008.

17 2. The court entered a Discovery Plan and Scheduling Order (Dkt. #11) on February 10,
18 2009 and approved a stipulation extending the discovery cutoff on May 27, 2009. See Dkt. #18.
19 Plaintiff propounded written discovery on Defendants in May, 2009. Defendants timely responded to
20 the requests for admission, but no other responses were provided. See Motion at 3:13-14.

21 3. Plaintiff filed a Motion to Extend Discovery (Dkt. #22). The court heard the motion and
22 compelled Defendants to respond within two weeks and warned Defendants that failure to comply
23 could result in sanctions. See Dkt. #27.

24 4. The court held a status conference on September 8, 2009. See Dkt. #31. Defense
25 counsel represented to Plaintiff's counsel that it was unable to provide discovery responses and advised
26 that it would move to withdraw as counsel. See Exhibit A to Motion; Dkt. #29.

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1 5. At the status hearing, the court found the Defendants had not complied with the court's
2 Order (Dkt. #27) compelling discovery. See Dkt. #31. The court conditionally granted defense
3 counsel's Motion to Withdraw (Dkt. #29), gave the individual defendant Tom Georgalis thirty days to
4 either retain new counsel or file a statement he would appear *pro se*, and required the corporate
5 defendant to retain new counsel within thirty days. See Dkt. #31. The Order (Dkt. #31) advised
6 Defendant Empire Suzuki that because it is a corporation, it could not defend this case except through
7 counsel.

8 6. The docket reflects that the order was returned as undeliverable. Neither Defendant has
9 complied with the order. Moreover, a review of the court's docket in this matter also reflects that the
10 Defendants failed to update the Clerk of Court with their current address. See Dkt. #33.

11 7. A letter from Ms. Yablon (Dkt. #35) indicates she has never been counsel of record in
12 this matter and ceased representing Empire Suzuki more than six months ago. Her letter provides a last
13 known address for Defendants.

14 8. On November 12, 2009, Plaintiff filed a Motion for Sanctions (Dkt. #34), requesting that
15 the court strike Defendants' pleadings, enter default judgment against Defendants, and award attorneys
16 fees and costs to Plaintiff. Plaintiff sought the most severe sanction possible because "of the
17 documented blatant and repeated failure of the Defendants to comply with this court's orders or to
18 participate meaningfully and in good faith in this lawsuit." Motion at 5:8-11.

19 9. It appeared, however, that Plaintiff served the Motion on Defendants at the same address
20 from which mail sent by the court was returned as undeliverable. Because Ms. Yablon provided
21 another address at which the Defendants may be served, the court required Plaintiff to re-serve the
22 motion and allowed Defendants an opportunity to respond.

23 10. Defendants did not respond to the Motion for Sanctions (Dkt. #34).

24 11. The court entered an Order to Show Cause (Dkt. #36) on December 22, 2009 requiring
25 the Defendants to show cause on or before January 5, 2010 why they had not complied with the court's
26 Order (Dkt. #32) requiring the Mr. Georgalis to retain new counsel or file a notice he would proceed
27 *pro se* and requiring Empire Suzuki to show cause why it had not retained new counsel. The Order to
28 Show Cause again advised Empire Suzuki that it could not defend this action except through counsel.

1 The Clerk of the Court served Defendants with the Order to Show Cause (Dkt. #36) at Defendants' last
2 known address as ordered.

3 12. The Order to Show Cause (Dkt. #36) advised Defendants that “[f]ailure to timely
4 respond to this Order to Show Cause will result in the recommendation of case-dispositive sanctions to
5 the district judge.” Id. at 3:4-5.

6 13. Defendants have not responded to the Order to Show Cause (Dkt. #36) or requested an
7 extension of time in which to respond.

8 14. Defendants' willful failure to comply with the court's orders and the Local Rules of
9 Practice has interfered with the court's ability to hear this case, delayed litigation, disrupted the court's
10 timely management of its docket, wasted judicial resources, and threatened the integrity of the court's
11 orders and the orderly administration of justice. A corporation cannot appear except through counsel.
12 See, e.g., Rowland v. California Men's Colony, 506 U.S. 194, 201-02 (1993); U.S. v. High Country
13 Broadcasting Co., Inc., 3 F.3d 1244, 1245 (9th Cir. 1993). Sanctions less drastic than dismissal are
14 unavailable because Defendants have wilfully refused to comply with multiple court orders and because
15 Defendant Empire Suzuki cannot defend this action except through counsel.

16 Under these circumstances,

17 **IT IS RECOMMENDED** that Plaintiff's Motion for Sanctions (Dkt. #34) be GRANTED and
18 that default judgment be entered against Defendants Empire Suzuki and Tom Georgalis.

19 Dated this 19th day of February, 2010.

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21 
22 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

23 **NOTICE**

24 These findings and recommendations are submitted to the United States District Judge assigned
25 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after being served
26 with these findings and recommendations, any party may file written objections with the court.
27 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
28 recommendations of a magistrate judge shall file and serve *specific written objections* together with

1 points and authorities in support of those objections, within ten (10) days of the date of service of the
2 findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s
3 Findings and Recommendations.” The parties are advised that failure to file objections within the
4 specified time may waive the right to appeal the District Court’s Order. Martinez v. Ylst, 951 F.2d
5 1153 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are
6 subject to the page limitations found in LR 7-4.

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