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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

VALERIE MARTEL, et al.,	)	Case No. 2:14-cv-00636-RCJ-NJK
	)	
Plaintiff(s),	)	ORDER ADMONISHING C. CONRAD CLAUS
	)	
vs.	)	
	)	ORDER SANCTIONING CARL JOERGER
DALE L. CAIN, SR.,	)	
	)	
Defendant(s).	)	

On July 18, 2014, the Court ordered Plaintiffs, Defendant and their counsel to show cause in writing, no later than July 25, 2014, why they should not be sanctioned pursuant to Federal Rule of Civil Procedure 16(f). *See* Docket No. 12.<sup>1</sup> Plaintiffs and their attorney (C. Conrad Claus) filed a response. Docket No. 13. Defendant and his attorney (Carl Joerger) failed to respond to the order to show cause. For the reasons discussed more fully below, the Court hereby **ADMONISHES** C. Conrad Claus and hereby **SANCTIONS** Carl Joerger in a Court fine of \$250.

**I. STANDARDS**

Parties and attorneys are required to follow Court orders. Rule 16(f) requires parties and attorneys to comply with pretrial orders and provides that a judge may order appropriate sanctions, including those outlined in Rule 37(b)(2)(A)(ii)-(vii), for non-compliance. Whether the party and/or its counsel disobeyed the court order intentionally is impertinent; sanctions may be imposed when the

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<sup>1</sup> References to “Rules” hereafter refer to the Federal Rules of Civil Procedure.

1 parties and their counsel disobey a court order. *See Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone,*  
2 *Inc.*, 275 F.3d 762, 769 (9th Cir. 2001) (sanctions may be imposed when disobedience of order is  
3 unintentional). Rule 16(f) “was designed not only to insure the expeditious and sound management of  
4 cases for trial, but to deter conduct that unnecessarily consumes ‘the Court’s time and resources that  
5 could have been more productively utilized by litigants willing to follow the Court’s procedures.”  
6 *Martin Family Trust v. Heco/Nostalgia Enterps. Co.*, 186 F.R.D. 601, 603 (E.D. Cal. 1999) (quoting  
7 *Mulkey v. Meridan Oil, Inc.*, 143 F.R.D. 257, 262 (W.D. Okla. 1992)).

8 The Court has broad discretion in fashioning the appropriate sanctions. *See, e.g., Official Airline*  
9 *Guides, Inc. v. Goss*, 6 F.3d 1385, 1397 (9th Cir. 1993). The Court may impose any “just” sanctions  
10 under Rule 16(f). In determining the appropriate sanction, the Court notes that a primary objective of  
11 Rule 16(f) is the deterrence of similar misconduct. *Martin Family Trust*, 186 F.R.D. at 604.<sup>2</sup>

## 12 **II. BACKGROUND**

13 On July 14, 2014, the parties submitted a proposed discovery plan. Docket No. 10. On July 15,  
14 2014, the Court denied the proposed discovery plan and ordered that a new discovery plan be submitted  
15 no later than July 17, 2014. *See* Docket No. 11. The parties failed to comply with that order. On July  
16 18, 2014, the Court issued the pending order to show cause why the parties and their counsel should not  
17 be sanctioned for failing to comply with the July 15, 2014 order. Docket No. 12. Responses to the order  
18 to show cause were due no later than July 25, 2014. *See id.* Although Plaintiffs and their counsel timely  
19 responded to the order to show cause, Defendant and his counsel did not.

## 20 **III. ANALYSIS**

### 21 A. Defendant and Carl Joerger

22 Defendant and his attorney (Carl Joerger) have violated two clear Court orders. They violated  
23 the Court’s July 15, 2014 order to timely file an amended discovery plan and they further violated the  
24 order to show cause by failing to timely respond to it. In light of the failure to respond to the order to  
25 show cause, it appears that there is no justification for these shortcomings and that sanctions are

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27 <sup>2</sup> Similarly, the Local Rules make clear that the Court may “impose any and all appropriate  
28 sanctions” on attorneys who, without just cause, either fail to appear when required for argument on a  
motion or otherwise fail to comply with any order of the Court. Local Rule IA 4-1.

1 warranted. In the Court's view, it appears that Mr. Joerger as Defendant's attorney bears the brunt of  
2 the blame for not responding to the Court's orders given that he receives the notice of the Court orders  
3 rather than his client. In light of the circumstances, the Court **SANCTIONS** Mr. Joerger in a Court fine  
4 of \$250. The sanction is personal to Mr. Joerger. Payment of the \$250 shall be made *within ten days*  
5 to the "Clerk, U.S. District Court." Mr. Joerger shall submit proof of payment to the undersigned  
6 Judge's chambers within five days of payment.

7 B. Plaintiffs and C. Conrad Claus

8 Plaintiffs and their attorney (C. Conrad Claus) did respond to the order to show cause. Although  
9 not entirely clear, Mr. Claus argues primarily that he failed to comply with the July 15, 2014 order  
10 because he and his staff did not receive notice of its issuance. *See* Docket No. 13.<sup>3</sup> The Court takes very  
11 seriously representations from attorneys that they did not receive notice of a Court order. The Court  
12 tracks the *sending* of the notices through its Notice of Electronic Filing ("NEF"). In this case, the NEF  
13 shows that the notice of the July 15, 2014 order was sent from the Court to Mr. Claus to two email  
14 address: [paralegal@lawiswar.com](mailto:paralegal@lawiswar.com), [conrad@lawiswar.com](mailto:conrad@lawiswar.com). In addition, however, the Court also tracks  
15 *delivery* of the NEFs to counsel through the Administrative Office's Case E-Mail Notification Tracking  
16 System ("CENTS"). In this case, the CENTS records show that the Court's notice was successfully  
17 delivered to the server for the above two email addresses.<sup>4</sup>

18 Together, the NEF and the CENTS records create significant evidence of proper delivery of the  
19 Court's notice. In particular, the NEF alone establishes that notice was properly sent and creates a  
20 presumption of delivery and receipt. *See American Boat Co. v. Unknown Sunken Barge*, 567 F.3d 348,  
21 352-53 (8th Cir. 2009). This presumption is not overcome based on a simple statement in a declaration  
22 that notice was not received. *See, e.g., Trustees of the Operating Eng's Pension Trust v. Maui One*  
23 *Excavating, Inc.*, 2013 WL 1908328, \*2 (D. Nev. May 7, 2013) (finding such an assertion "plainly  
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25 <sup>3</sup> While that appears to be Mr. Claus's argument, the Court finds it notable that his declaration  
26 actually asserts "[t]hat I *did* receive the July 15, 2014, Order Denying the Discovery Plan and directive to  
27 submit an Amended Plan by July 17, 2014." Docket No. 13 at 2 (emphasis added). The Court assumes  
28 this was a typographical error in light of the other assertions made.

<sup>4</sup> The NEF and CENTS records for Mr. Claus and his paralegal are attached to this order.

1 insufficient” to overcome presumption, and citing *Singh v. Arrow Truck Sales, Inc.*, 2006 WL 1867540,  
2 \*1 (E.D. Cal. July 5, 2006)). That is especially true when the CENTS records further confirm delivery.  
3 *Id.*

4 In this case, the Court finds that Mr. Claus has failed to rebut the presumption of delivery created  
5 by the NEF and further confirmed by the CENTS record. Mr. Claus has also failed to put forth any other  
6 justification for his violation of the July 15, 2014 order. Nonetheless, in the circumstances of this case,  
7 the Court finds that a strong **ADMONISHMENT** of Mr. Claus is sufficient sanction to deter future  
8 misconduct. The Court reminds Mr. Claus that he bears the responsibility of maintaining his CM/ECF  
9 account and reviewing and responding to Court orders. *See, e.g., Cabrera v. New Albertson’s, Inc.*, 2013  
10 U.S. Dist. Lexis 101497, \*4 (D. Nev. July 19, 2013). Mr. Claus should expect future violations of Court  
11 orders to result in monetary sanctions.

12 **IV. CONCLUSION**

13 For the reasons discussed more fully above, the Court hereby **ADMONISHES** C. Conrad  
14 Claus and hereby **SANCTIONS** Carl Joerger in a Court fine of \$250.

15 IT IS SO ORDERED.

16 DATED: July 28, 2014

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20 NANCY J. KOPPE  
21 United States Magistrate Judge  
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**District of Nevada**

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**Case Number:** [2:14-cv-00636-RCJ-NJK](#)  
**Filer:**  
**Document Number:** [11](#)

**Docket Text:**

**ORDER that [10] Proposed Discovery Plan/Scheduling Order is DENIED. Signed by Magistrate Judge Nancy J. Koppe on 7/15/14. (Copies have been distributed pursuant to the NEF - MMM)**

**2:14-cv-00636-RCJ-NJK Notice has been electronically mailed to:**

Carl M Joerger Carlmjoerger@outlook.com

Christian Conrad Claus paralegal@lawiswar.com, conrad@lawiswar.com

**2:14-cv-00636-RCJ-NJK Notice has been delivered by other means to:**

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**Electronic document Stamp:**

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