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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

VIANA B. BAILEY,

Plaintiff,

vs.

WILLIAM OSCAR HARRIS, et al.,

Defendants.

Case No. 2:15-cv-02279-JAD-GWF

**REPORT AND
RECOMMENDATION**

This matter is before the Court on the parties failure to show cause why this matter should not be dismissed for lack of an actual dispute and lack of prosecution.

BACKGROUND

On December 2, 2015, Plaintiff Viana B. Bailey filed her Complaint (ECF No. 1) setting forth her demand for arbitration pursuant to arbitration agreements between Plaintiff and Defendants William Oscar Harris, Robert David Neal, and Ralph Taylor. On September 7, 2016, Plaintiff filed Notices of Acceptance of Offer of Judgment (ECF No. 7, 8, 9) and her Motion for Final Judgment based on the offers of judgment (ECF No. 10). On October 5, 2016, a Motion for Modification of Deemed Final Judgment (ECF No. 11) was filed purportedly on behalf of Defendant Ralph Taylor.

With the exception of Defendant Ralph Taylor, none of the Defendants have appeared in this matter. Mr. Kenneth Taylor is not a party to this action, but signed the Motion for Modification purportedly on behalf of Defendant Ralph Taylor. Mr. Kenneth Taylor signed the offer of judgment purportedly on behalf of Defendants William Oscar Harris, Robert David Neal, and Ralph Taylor. See ECF No. 10-2. Mr. Kenneth Taylor appeared for a status conference in this

1 action on November 22, 2016 and represented that he was the power of attorney for the
2 Defendants. *See* ECF No. 16.

3 On January 13, 2017, the Court ordered the parties to show cause in writing by February
4 10, 2017 why this matter should not be dismissed for lack of an actual dispute and lack of
5 prosecution. The Court also instructed the parties to retain counsel who shall file an appearance
6 according to the Local Rules of Practice or to file a notice with the Court that he or she will be
7 appearing in this matter pro se. On January 31, 2017, Mr. Kenneth Taylor filed a notice (ECF No.
8 18) purportedly on behalf of the Defendants informing the Court that he will file a response to the
9 Court's order to show cause on June 12, 2017. Mr. Kenneth Taylor represents that he is appearing
10 on behalf of the Defendants as their power of attorney. *See* ECF No. 18. On February 9, 2017,
11 Plaintiff filed her response. ECF No. 20. She stated that there is no longer a controversy before
12 the Court because of her acceptance of offers of judgment and requests that final judgment be
13 entered.

14 DISCUSSION

15 **A. Failure to Retain Counsel**

16 Although an individual is entitled to represent himself or herself, non-attorneys are not
17 permitted to represent, or appear in court on behalf of, any other person. *Handley v. Bank of Am.,*
18 *N.A.*, 2010 WL 4607014, at *1 (D. Nev. Nov. 4, 2010) (citing *Salman v. Newell*, 110 Nev. 1333,
19 885 P.2d 607, 608 (Nev.1994)). *See also Jackson v. United Artists Theatre Circuit, Inc.*, 278
20 F.R.D. 586, 596 (D. Nev. 2011). An individual does not have the right to be represented by an
21 agent other than counsel in a court of law. *Handley*, 2010 WL 4607014, at *1. NRS § 7.285
22 prohibits the unauthorized practice of law. *Id.*

23 The Court instructed the parties to retain counsel or to file a notice with the Court that he
24 or she will be appearing in this matter pro se by February 10, 2017. To date, Defendants have
25 failed to do so. Mr. Kenneth Taylor is not an attorney and is not permitted to represent the
26 Defendants in this action. Pursuant to NRS § 7.285, the Defendants cannot delegate representation
27 to Mr. Kenneth Taylor. It does not appear that Defendants have filed anything in this matter on
28 their own behalf. Defendants, therefore, failed to comply with this Court's order.

1 **B. Lack of Case or Controversy**

2 Article III of the Constitution limits the jurisdiction of the federal courts to cases or
3 controversies. *See* U.S. Const. art. III, § 2, cl. 1. “The doctrine of mootness, which is embedded
4 in Article III’s case or controversy requirement, requires that an actual, ongoing controversy exist
5 at all stages of federal court proceedings.” *Banks v. Robinson*, 2011 WL 5877542, at *1 (D. Nev.
6 Nov. 22, 2011) (quoting *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011)). A
7 case becomes moot “when the issues presented are no longer ‘live’ or the parties lack a legally
8 cognizable interest in the outcome” of the litigation. *Pitts*, 653 F.3d at 1086. Federal courts lack
9 the constitutional authority to decide moot cases. *Id.* at 1087. If events subsequent to the filing of
10 the case resolve the parties’ dispute, the court must dismiss the case as moot. *Id.*

11 The Court instructed the parties to show cause in writing why this matter should not be
12 dismissed for lack of an actual dispute and lack of prosecution. The parties have failed to present
13 a discernible issue in dispute or that the parties have a legally cognizable interest in the outcome of
14 the litigation. Plaintiff’s claims are unclear and she even represents that there is no longer a
15 controversy before the Court. Further, the Court reiterates that the documents filed by both parties
16 appear to be created from the same source and are similarly formatted. The Defendants have not
17 filed any documents on their own behalf. As such, there does not appear to be an actual dispute
18 between real parties. Accordingly,

19 **IT IS HEREBY RECOMMENDED** that Plaintiff’s Complaint (ECF No. 1) be
20 **dismissed.**

21 **IT IS FURTHER RECOMMENDED** that the Clerk of the Court be instructed to close
22 this case and enter judgment accordingly.

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NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 31st day of May, 2017.



GEORGE FOLEY, JR.
United States Magistrate Judge