
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SOPHIA STEWART,

Plaintiff,

v.

MICHAEL T. STROLLER, JONATHAN
LUBELL, DEAN WEBB, GARY BROWN
and JOHN DOES I through X,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:07-CV-0552

Judge Clark Waddoups

Before the court is the magistrate judge's report and recommendation to strike the Answer of Jonathan Lubell for failure to appear at the initial pretrial conference on December 7, 2011, and for again failing to appear pursuant to the magistrate judge's order to show cause hearing on January 11, 2012. In reviewing the report and recommendation under a 28 U.S.C. § 636(b)(1)(B) referral, the court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Although Mr. Lubell's objection was to be received on January 25, 2012 (Dkt. No. 183), it was not received until January 31, 2012. (Dkt. No. 184.) The court notes that at no time did Mr. Lubell move the court to file an extension. The objection is therefore disregarded and the magistrate judge's report and recommendation is adopted in its entirety. Mr. Lubell's Answer is hereby stricken.

Although Mr. Lubell's Answer is stricken, the court will entertain a motion by Mr. Lubell for leave to file an Amended Answer. The memorandum in support of the motion must address

whether Mr. Lubbell has a good faith defense to the claims against him. Because of Mr. Lubell's health and the difficulty he has had in representing himself and his failure and inability to otherwise comply with the court's prior orders, the motion for leave to file an amended answer will be entertained by the court only if (1) Mr. Lubell appears through an attorney admitted to practice in Utah and before this court who has the ability to appear in person in court, or (2) Mr. Lubell demonstrates by competent evidence that he has the mental and physical ability to represent himself and personally appear in court. If Mr. Lubell chooses to so file, his motion for leave to file an Amended Answer must be received by the court on or before May 20, 2012 and have attached as an exhibit the proposed Amended Answer. Failure to retain counsel and timely submit the Amended Answer will bar Mr. Lubell from further defending the claims against him as stated in the complaint against him in this case.

DATED this 20th day of April, 2012.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Clark Waddoups", is written over a horizontal line.

Clark Waddoups
United States District Judge