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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AZITA ZENDEL,)	NO. CV 10-2889-VBF(Ex)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
ABC VIDEO PRODUCTIONS, et al.,)	UNITED STATES MAGISTRATE JUDGE
)	
Defendants.)	
)	
_____)	

This Report and Recommendation is submitted to the Honorable Valerie Baker Fairbank, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

For many months, and continuing to the present date, Plaintiff¹ has failed and refused to give Defendants basic discovery to which the Defendants are entitled. More than once, the Court ordered Plaintiff

¹ "Plaintiff," as used herein, refers to Plaintiff Azita Zenel, the only remaining plaintiff in this case.

1 to provide this discovery. The Court imposed monetary sanctions on
2 Plaintiff for failing to comply with the Court's order and for
3 unreasonably causing Defendant ABC Video Productions ("ABC") to incur
4 expenses in bringing a discovery motion. Plaintiff is in continuing
5 violation of the Court's various discovery orders, including the order
6 for sanctions. On more than one occasion, the Court has warned
7 Plaintiff that failure timely to provide the ordered discovery might
8 result in the imposition of terminating sanctions against Plaintiff.
9 Still, Plaintiff has failed timely to provide the discovery to which
10 Defendants are entitled. As discussed below, terminating sanctions
11 are now appropriate.

12
13 **FACTUAL FINDINGS**
14

15 Plaintiff filed this action on April 19, 2010. Plaintiff
16 contends that, through an episodic television program entitled "Ugly
17 Betty," Defendants infringed Plaintiff's asserted copyrights in a
18 screenplay entitled "Silent Partners" and a motion picture entitled
19 "Controlled Chaos."

20
21 On December 22, 2010, Defendants ABC, Touchstone Television,
22 Reveille Productions, and Ventanarosa Productions served on Plaintiff
23 Defendants' first set of requests for production of documents. These
24 requests sought basic discovery relevant to Plaintiff's claims and
25 Defendants' defenses. On December 22, 2010, ABC served on Plaintiff
26 its first set of interrogatories. These interrogatories sought basic
27 discovery relevant to Plaintiff's claims and the Defendants' defenses,
28 including the discovery of Plaintiff's contentions regarding alleged

1 similarities between "Ugly Betty" and Plaintiff's alleged works.
2

3 In early 2011, Plaintiff failed to produce a single document in
4 response to the request for production, and provided patently
5 inadequate responses to the interrogatories. Plaintiff failed to
6 cooperate in Local Rule 37 procedures leading up to a motion to
7 compel.
8

9 On March 8, 2011, Defendant ABC Video Productions filed
10 "Defendant ABC Video Productions' Motion to Compel Discovery Responses
11 and Document Production By Plaintiff Azita Zendel, etc." ("the March
12 Motion"), noticing a hearing to occur on April 8, 2011.
13

14 On March 24, 2011, Plaintiff filed an ex parte application
15 seeking a continuance of the April 8, 2011 hearing. By Minute Order
16 dated March 29, 2011, the Court permitted additional briefing
17 concerning the March Motion, but refused to continue the April 8, 2011
18 hearing.
19

20 Plaintiff failed to appear for the April 8, 2011 hearing,
21 although Plaintiff filed another ex parte application and a motion for
22 protective order on April 8, 2011.
23

24 By Minute Order dated April 11, 2011, the Court ruled on the
25 March Motion and on Plaintiff's April 8 ex parte application and
26 motion. The Court granted the March Motion in substantial part, and
27 denied Plaintiff's April 8 application and motion in substantial part.
28 The Court ordered that Plaintiff serve supplemental answers without

1 objection to Interrogatories Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13,
2 14, 15, 16 and 18 on or before May 9, 2011. The Court also ordered
3 that Plaintiff produce on or before May 9, 2011, all documents within
4 Plaintiff's possession, custody or control that are responsive to
5 certain requests for production, as specified in the April 11, 2011
6 Order. Although Plaintiff had not sufficiently supported any request
7 for a protective order, out of an abundance of caution, the Court
8 ordered that "use of the interrogatory answers served and the
9 documents produced in response to this Order shall be limited to use
10 for purposes of this litigation only." Contrary to Plaintiff's
11 subsequent arguments, this protective order was binding on all
12 Defendants, not just on ABC. The Court's April 11, 2011 Order denied
13 the March Motion's request for sanctions, but cautioned Plaintiff
14 "that failure timely to comply fully with this Order may result in the
15 imposition of severe sanctions, including, without limitation,
16 monetary sanctions, preclusion sanctions, and/or dismissal with
17 prejudice of all of Plaintiff's claims."

18
19 On May 3, 2011, Plaintiff filed an ex parte application seeking
20 reconsideration of the April 11, 2011 Order. The Court denied this
21 application by Minute Order dated May 4, 2011.

22
23 When the May 9, 2011 deadline in the April 11, 2011 Minute Order
24 expired without counsel for Defendants having received any
25 supplemental responses from Plaintiff, counsel for Defendants sent
26 Plaintiff an email indicating that responses had not been received
27 (See Declaration of Vincent Cox, filed June 3, 2011, and exhibits
28 thereto). On May 12, 2011, counsel for Defendants sent Plaintiff a

1 letter, by mail and email, reiterating that no supplemental responses
2 had been received and demanding Plaintiff's cooperation in Local
3 Rule 37 procedures. Plaintiff then spoke with counsel for Defendants,
4 promising to meet with him on May 21. Id. In this conversation,
5 Plaintiff did not claim that she already had served supplemental
6 responses. Id. On May 21, 2011, approximately an hour and a half
7 before the scheduled meeting, Plaintiff sent an email to counsel for
8 Defendants advising him that Plaintiff would not appear for the meet
9 and confer. Id. In this email, Plaintiff did not claim that she
10 previously had served any supplemental responses. Id.

11
12 Meanwhile, Defendants attempted without success to take
13 Plaintiff's deposition. Counsel for Defendants acceded to Plaintiff's
14 selection of the date of May 27 for her deposition (See Declaration of
15 Vincent Cox, filed June 21, 2011, and exhibits thereto). However, on
16 May 26, 2011, Plaintiff sent an email to counsel for Defendants
17 requesting a rescheduling of the deposition. Id. Neither in that
18 email or at any other time prior to May 27, 2011, did Plaintiff
19 communicate to counsel for Defendant any reason for the eleventh hour
20 request for the rescheduling. Id. By return email on May 26, 2011,
21 counsel for Defendants complained that "you apparently won't give me
22 an explanation for your refusal to attend your own deposition that I
23 set on the date you expressly requested . . ." Id. Counsel for
24 Defendants declined to reschedule the deposition, and Plaintiff failed

1 to appear for the deposition on May 27, 2011. Id.²

2
3 On June 3, 2011, ABC filed a "Motion to Compel Plaintiff Azita
4 Zendel to Comply with This Court's 4/11/11 Order and for Monetary and
5 Evidentiary Sanctions, Including Dismissal" ("the Motion Re 4/11/11
6 Order"). The Motion Re 4/11/11 Order noticed a hearing for July 1,
7 2011.

8
9 On June 10, 2011, Plaintiff filed a Declaration in which she
10 requested that the Motion Re 4/11/11 Order be taken off calendar. In
11 this Declaration, Plaintiff also, and for the first time, contended
12 that she in fact had served supplemental responses to the
13 interrogatories and the request for production by mail on May 6,
14 2011.³

15
16 By Minute Order dated June 14, 2011, the Court denied Plaintiff's
17 request that the Motion Re 4/11/11 Order be taken off calendar, and
18 ordered that, on or before June 21, "Plaintiff shall file with the
19 Court exact copies of the supplemental interrogatory responses and
20 supplemental document production Plaintiff claimed to have served by
21 mail on May 6, 2011."

22 ///

23 _____
24 ² Plaintiff's failure to appear violated her discovery
25 obligations under the federal rules. See Pioche Mines
26 Consolidated, Inc. v. Dolman, 333 F.2d 257, 269 (9th Cir. 1964),
27 cert. denied, 380 U.S. 956 (1965).

28 ³ Although Plaintiff has purported to serve by mail
numerous papers on counsel for Defendants during this case,
counsel for Defendants has received almost none of these papers
by mail. See Declaration of Robin Black, filed June 17, 2011.

1 Plaintiff failed to comply with the June 14, 2011 Minute Order,
2 but did file, on June 21, 2011, a "Motion to Take Leave for Permission
3 to File Under Seal, etc." The Court issued a Minute Order on June 22,
4 2011, ordering that Plaintiff file *under seal* the documents ordered to
5 be filed by the Court's June 14, 2011 Minute Order. The Court ordered
6 that this *under seal* filing take place no later than June 24, 2011.
7 The Court also ordered that Plaintiff serve or re-serve on counsel for
8 Defendants copies of all of those documents. Plaintiff failed timely
9 to comply with the June 22, 2011 Order.

10
11 On June 24, 2011, Plaintiff filed a "Motion for Stay of Judge
12 Eick's April 11, 2011, June 14, 2011 and June 22, 2011 Orders." The
13 Court denied this motion by Minute Order dated June 27, 2011, ordered
14 immediate compliance with the June 22, 2011 Minute Order and
15 reiterated that the July 1, 2011 hearing of the Motion Re 4/11/11
16 Order remained on calendar.

17
18 Nevertheless, Plaintiff failed to appear at the July 1, 2011
19 hearing. In a July 1, 2011 Minute Order, the Court *sua sponte*
20 afforded Plaintiff another opportunity to be heard (in writing)
21 regarding the Motion Re 4/11/11 Order, permitting additional papers to
22 be filed on or before July 8, 2011.

23
24 Plaintiff attempted to file certain documents on July 8, 2011,
25 which the Court did not receive in chambers until after issuing a
26 Minute Order dated July 11, 2011. After considering these documents,
27 which eventually were filed on July 11 and 12, 2011, the Court
28 withdrew the July 11, 2011 Minute Order and issued a superseding

1 Minute Order dated July 12, 2011.

2
3 This July 12, 2011 Minute Order found that the documents
4 Plaintiff claimed to have served previously as supplemental responses
5 to interrogatories and a supplemental document production were so
6 patently violative of the April 11, 2011 Minute Order as to fail to
7 reflect any good faith effort to comply with that Order. For example,
8 Plaintiff had been ordered to serve answers and to produce documents
9 without objection. Nevertheless, Plaintiff interposed numerous
10 objections in the purported supplemental responses. For further
11 example, the April 11, 2011 Order required Plaintiff to "set forth
12 each similarity" requested in Interrogatories Nos. 1, 2, 3, 4, 7, 8,
13 9, 10, 11, 12, 13 and 14. Yet, Plaintiff's purported supplemental
14 interrogatory responses failed to set forth any similarity in response
15 to any of those interrogatories. Rather, Plaintiff's purported
16 answers merely asserted in a conclusory fashion that there allegedly
17 exist unspecified similarities between Plaintiff's movie or screenplay
18 and (all) 84 listed episodes of "Ugly Betty." With regard to the
19 purported document production, the July 12, 2011 Minute Order observed
20 that Plaintiff had effected the production of only two documents ("a
21 VHS copy of 'Controlled Chaos'" and "an earlier version of the
22 screenplay of 'Silent Partners'"). The Court stated, "[i]t strains
23 credulity to suggest that Plaintiff lacks possession, custody or
24 control of any of the other documents the Court ordered Plaintiff to
25 produce." The Court further observed that Plaintiff previously had
26 represented to the Court that she needed to fly to London and New York
27 to obtain documents she had been ordered to produce. Yet, Plaintiff
28 produced only two additional documents.

1 The July 12, 2011 Minute Order also noted that Plaintiff had
2 purported to take an appeal to the Ninth Circuit from non-appealable
3 discovery orders, and that the Ninth Circuit had dismissed Plaintiff's
4 purported appeal for lack of jurisdiction.

5
6 The July 12, 2011 Minute Order ruled on part of the Motion Re
7 4/11/11 Order by imposing monetary sanctions on Plaintiff "to be paid
8 on or before July 19, 2011" and ordering that Plaintiff comply fully
9 (albeit belatedly) with the April 11, 2011 Minute Order on or before
10 July 19, 2011. The July 12, 2011 Minute Order warned Plaintiff that
11 "[f]ailure to comply with the present order may result in the
12 imposition of more drastic sanctions, including, without limitation,
13 preclusion sanctions and/or the dismissal with prejudice of any or all
14 of Plaintiff's claims." The July 12, 2011 Order also scheduled
15 further oral argument on the remainder of the Motion Re 4/11/11 Order
16 for July 22, 2011.

17
18 By separate Minute Order, also dated July 12, 2011, the Court
19 denied "Plaintiff's Ex Parte Application for Extension of Time, etc.,"
20 filed July 12, 2011.

21
22 Also scheduled for hearing on July 22, 2011, was "Defendant ABC
23 Video Productions' Motion to Compel Plaintiff Azita Zendel to Appear
24 for her Deposition and for Monetary and Evidentiary Sanctions,
25 Including Dismissal" ("the Deposition Motion"), filed June 21, 2011.
26 ABC filed the Deposition Motion unilaterally, after Plaintiff again
27 failed to cooperate in Local Rule 37 procedures. Plaintiff belatedly
28 filed opposition to the Deposition Motion on July 12, 2011, and on

1 July 22, 2011.
2

3 Although the Court's July 12, 2011 Minute Order had ordered
4 Plaintiff to comply fully with the April 11, 2011 Order on or before
5 July 19, 2011, Plaintiff failed to do so. Although the July 12, 2011
6 Minute Order had ordered Plaintiff to pay monetary sanctions on or
7 before July 19, 2011, Plaintiff failed to pay any part of the ordered
8 sanctions.⁴
9

10 Plaintiff failed to appear at the July 22, 2011 hearings on the
11 Deposition Motion and on the remainder of the Motion Re 4/11/11 Order,
12 although Petitioner filed additional papers on July 22, 2011.

13 ///

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16 _____
17 ⁴ Plaintiff repeatedly has challenged the adequacy of
18 notice. There is no requirement under Rule 37(b) of the Federal
19 Rules of Civil Procedure mandating a noticed motion or an
20 opportunity to be heard before sanctions, including terminating
21 sanctions, may be imposed. See Dreith v. Nu Image, Inc., ___
22 F.3d ___, 2011 WL 2811226, at *6 (9th Cir. July 19, 2011).
23 Nevertheless, the Court has afforded Plaintiff multiple
24 opportunities to be heard, orally and in writing, in connection
25 with ABC's motions, as well as opportunities to comply belatedly
26 with the Court's April 11, 2011 Order. See also L.R. 6-1
27 (providing standard of 28-31 days notice for a unilaterally filed
28 motion, but also stating that "[t]he Court may order a shorter
time").

24 After repeatedly violating the Court's orders, on July 19,
25 2011, Plaintiff filed "Plaintiff Azita Zendel's Objections to and
26 Request/Petition for Review of Judge Charles F. Eick's Oral and
27 Written Orders of 3/29/11, 4/8/11, 4/11/11, 5/4/11, 6/14/11,
28 6/22/11, 6/27/11, 7/1/11, 7/5/11, 7/11/11 and 7/12/11." This
request for review, which is untimely as to, inter alia, the
April 11, 2011 Order, has no impact on the effectiveness of any
of the Court's orders. See L.R. 72-2.

1 Defendant ABC reasonably expended \$3,221.00 in attorneys' fees
2 and costs in connection with the Deposition Motion. Plaintiff's
3 opposition to the Deposition Motion lacked substantial justification
4 and there are no other circumstances that would make an award of
5 expenses unjust.

6
7 **ANALYSIS AND FURTHER FINDINGS**
8

9 The pertinent facts essentially speak for themselves. Plaintiff
10 has engaged in willful, repeated, bad faith discovery abuse. The
11 abuse has included repeated violations of multiple Court orders,
12 despite pointed warnings and monetary sanctions. The abuse has denied
13 Defendants the opportunity to obtain basic discovery and follow-up
14 discovery for purposes of planning a summary judgment motion or
15 preparing for trial.

16
17 Rule 37(b)(2) of the Federal Rules of Civil Procedure authorizes
18 the sanction of dismissal against parties who disobey a court's
19 discovery orders. See National Hockey League v. Metropolitan Hockey
20 Club, Inc., 427 U.S. 639 (1976); Sigliano v. Mendoza, 642 F.2d 309,
21 310 (9th Cir. 1981). To justify the imposition of case-dispositive
22 sanctions, the Court must find that the discovery violations were due
23 to "willfulness, bad faith, or fault of the party." Commodity Futures
24 Trading Commission v. Noble Metals International, Inc., 67 F.3d 766,
25 770-71 (9th Cir. 1995), cert. denied, 519 U.S. 815 (1996) (citations
26 and internal quotations omitted); see also Societe Internationale v.
27 Rogers, 357 U.S. 197, 212 (1958). Disobedient conduct not outside the
28 control of the litigant is all that is required to demonstrate

1 willfulness, bad faith or fault. Henry v. Gill Industries, Inc., 983
2 F.2d 943, 948-49 (9th Cir. 1993) (citation and internal quotations
3 omitted). In evaluating the propriety of sanctions, the Court
4 considers "all incidents of a party's misconduct." Adriana
5 International Corp. v. Thoeren, 913 F.2d 1406, 1411 (9th Cir. 1990),
6 cert. denied, 498 U.S. 1109 (1991) (citation omitted).

7
8 The Ninth Circuit has identified five factors that a court must
9 consider when asked to impose the sanction of dismissal: (1) the
10 public's interest in the expeditious resolution of litigation;
11 (2) the Court's need to manage its docket; (3) the risk of prejudice
12 to the party seeking dismissal; (4) the public policy favoring
13 disposition of cases on their merits; and (5) the availability of less
14 drastic sanctions. Toth v. Trans World Airlines, Inc., 862 F.2d 1381,
15 1385 (9th Cir. 1988). "These factors are not a series of conditions
16 precedent before the judge can do anything, but a way for a district
17 judge to think about what to do." In re Phenylpropanolamine (PPA)
18 Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006)
19 (citation and internal quotations omitted). Consideration of these
20 factors yields the conclusion that the Court should impose the
21 ultimate sanction of dismissing Plaintiff's claims against all
22 Defendants.

23
24 Factors 1 and 2 obviously militate in favor of granting
25 dismissal. As to Factor 3, Plaintiff's discovery abuse significantly
26 has prejudiced the Defendants in their efforts to advance the defense
27 of this case. The discovery willfully withheld by Plaintiff is
28 central, rather than peripheral, to the issues in this case.

1 Plaintiff's discovery abuse has made the Defendants' defense
2 preparations practically impossible. See In re Exxon Valdez, 102 F.3d
3 429, 433 (9th Cir. 1996) (plaintiffs' "total failure to respond to
4 discovery and the time consumed by attempting to secure compliance"
5 show prejudice); see also Payne v. Exxon Corp., 121 F.3d 503, 508 (9th
6 Cir. 1997) (finding prejudice where "plaintiffs' repeated failure to
7 provide documents and information in a timely fashion prejudiced the
8 ability of [defendants] to prepare their case for trial") (citation
9 omitted). In re Phenylpropanolamine (PPA) Products Liability
10 Litigation, 460 F.3d at 1236 (party's refusal to produce evidence in
11 discovery supporting that party's claim presumptively shows the claim
12 is meritless). Beyond demonstrations of specific prejudice, the Court
13 may presume from the length of the delay in the present case that the
14 Defendants' ability to present its defense has suffered. See, e.g.,
15 Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir. 1991).

16
17 Although ABC was the only Defendant who filed discovery motions,
18 other Defendants joined in propounding the first set of requests for
19 production and all Defendants (each of whom is represented by the same
20 counsel) have been relying on ABC in the pursuit of discovery against
21 Plaintiff. Therefore, all Defendants are similarly situated with
22 regard to these issues. See Payne v. Exxon Corp., 121 F.3d 503, 509-
23 10 (9th Cir. 1997).

24
25 Factor 4, the public policy favoring disposition of cases on the
26 merits, usually weighs against dismissal. However, "a case that is
27 stalled or unreasonably delayed by a party's failure to comply with
28 deadlines and discovery obligations cannot move forward toward

1 resolution on the merits." In re Phenylpropanolamine (PPA) Products
2 Liability Litigation, 460 F.3d at 1228. Thus, the fourth factor is
3 entitled to little weight where a plaintiff completely refuses to
4 cooperate in discovery. See id. (fourth factor "lends little support
5 to a party whose responsibility it is to move a case toward
6 disposition on the merits but whose conduct impedes progress in that
7 direction") (citation and internal quotations omitted); In re Exxon
8 Valdez, 102 F.3d at 433 (policy favoring disposition on merits of
9 little weight in light of parties' "total refusal to provide
10 discovery"). "Noncompliant plaintiffs bear responsibility for halting
11 movement towards a merits resolution." In re Phenylpropanolamine
12 (PPA) Products Liability Litigation, 460 F.3d at 1237.

13
14 With respect to Factor 5, the Court previously imposed less
15 drastic sanctions for Plaintiff's discovery abuses, without any
16 apparent effect. The Court ordered discovery compliance, imposed
17 monetary sanctions, and warned of a terminating sanction upon further
18 noncompliance. Nevertheless, noncompliance continued, suggesting the
19 futility of sanctions lesser than a terminating sanction.

20
21 The egregious circumstances of the present case parallel those
22 found in Toth v. Trans World Airlines, Inc.:

23
24 Dismissal of this action was based on appellants' continued
25 refusal to respond to requests to produce; they continued to
26 refuse even after the Court had ordered their responses.

27 The record contains substantial evidence of long and
28 unjustified delays in responding to discovery requests and

1 noncompliance with judicial orders. We find this evidence
2 relevant to the considerations of expeditious resolution of
3 litigation, docket management, and prejudice, and support
4 the district court's order. The district court considered,
5 and indeed instigated, less drastic sanctions, but to no
6 avail. While the public policy favoring disposition on the
7 merits [Factor 4] weighs against dismissal, it is not enough
8 to preclude a dismissal order when the other four factors
9 weigh as heavily in favor of dismissal as they do in this
10 case.

11
12 Toth v. Trans World Airlines, Inc., 862 F.2d 1381, 1385 (9th Cir.
13 1988) (emphasis added).

14
15 Sanctions less than terminating sanctions would be inadequate to
16 undo the prejudice to Defendants. However, the Court should require
17 Plaintiff to pay monetary sanctions in connection with the Deposition
18 Motion. ABC should not be required to bear the monetary burden of
19 Plaintiff's continuing discovery abuse. See Fed. R. Civ. P.
20 37(a)(5)(A).

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RECOMMENDATION

For all of the reasons discussed above, the Magistrate Judge recommends that the Court issue an Order:

- (1) dismissing with prejudice all of Plaintiff's claims against all Defendants; and
- (2) ordering that Plaintiff pay to Defendant ABC the total sum of \$3,221.00.

DATED: July 25, 2011.

_____/S/_____
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AZITA ZENDEL,)	NO. CV 10-2889-VBF(Ex)
)	
Plaintiff,)	
)	
v.)	ORDER ADOPTING FINDINGS,
)	
ABC VIDEO PRODUCTIONS, et al.,)	CONCLUSIONS AND RECOMMENDATIONS
)	
Defendants.)	OF UNITED STATES MAGISTRATE JUDGE
)	
_____)	

Pursuant to 28 U.S.C. section 636, the Court has reviewed all of the records herein and the attached Report and Recommendation of United States Magistrate Judge. The Court approves and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Plaintiff's claims against all Defendants are dismissed with prejudice.

IT IS FURTHER ORDERED that Plaintiff shall pay to ABC the total sum of \$3,221.00.

///

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order
2 and the Magistrate Judge's Report and Recommendation on Plaintiff and
3 on all counsel of record.

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5 DATED: _____, 2011.

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9 VALERIE BAKER FAIRBANK
10 UNITED STATES DISTRICT JUDGE
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