

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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| ENTERED <u>7/24/08</u> |
| FILED |
| JUL 23 2008 |
| CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA |
| BY <u>128</u> DEPUTY |

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 07-02875-B7
12 DAVID VARGAS,) Adversary No. 07-90557-B7
13 Debtor.) ORDER ON COURT'S OSC
14 _____)
15 GOLDEN EAGLE ENTERPRISES, INC.)
16 Plaintiff,)
17 v.)
18 DAVID VARGAS,)
19 Defendant.)
20 _____)

21 This adversary was filed on September 4, 2007. The debtor's
22 default was taken on November 26, 2007, but no default judgment
23 was sought. Thereafter, counsel for the corporate creditor
24 withdrew from representation on February 5, 2008.

25 When nothing happened thereafter, on May 14 the Court issued
26 its OSC re: dismissal on two grounds: 1) failure of the corporate

1 creditor to appear and be represented by counsel; and 2) failure
2 to submit a default judgment. The OSC was set for hearing on
3 June 23.

4 No pleadings were filed in opposition to the OSC. Instead,
5 attorney Mark Siegel submitted a letter by fax on the last
6 business day before the hearing to the Court, in which he advised
7 he had been retained, but was not a member of the bar in this
8 district. He requested the OSC be taken off calendar and that he
9 be given 45 days to file a motion for default judgment.

10 The Court declined to remove the OSC from the calendar
11 because there still was no substitution of attorneys on file.
12 Instead, the Court continued the hearing to July 21. On the
13 Friday before the Monday hearing, attorney Siegel sent another
14 letter by fax. Finally, a substitution of attorneys was filed,
15 so that prong of the OSC has been resolved. Mr. Siegel asked in
16 the letter for another 45 days to file "the appropriate motion."

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1 Given the amount of delay that has already taken place, and
2 its impact on the debtor's "fresh start", the Court directs that
3 any application for default judgment in this matter must be filed
4 and served on or before September 2, 2008. If it is not, this
5 adversary proceeding will be dismissed by the Court on the OSC,
6 and without further notice or opportunity for hearing on part of
7 the plaintiff creditor, Golden Eagle Enterprises, Inc.

8 IT IS SO ORDERED.

9 DATED: JUL 23 2008

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12 PETER W. BOWIE, Chief Judge
13 United States Bankruptcy Court
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