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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert McDonald,
Plaintiff,
vs.
E-Service, Inc.,
Defendants.

No. CV-10-01232-PHX-LOA

ORDER

On June 10, 2010, Plaintiff Robert McDonald filed a Complaint, alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (Doc. 1) Specifically, Plaintiff alleges, among others, that “Defendant constantly and continuously placed collection calls to Plaintiff seeking and demanding payment for an alleged debt . . . Defendant placed approximately four (4) collection calls to Plaintiff every other day . . . Defendant failed to identify itself as a debt collector in the initial communication . . . Defendant stated to Plaintiff, ‘f***ing dead beat, why don’t you pay your damned bills.’” (*Id.* at 2) After service and before filing its answer, Defendant filed a Motion to Dismiss on July 21, 2010. (Doc. 8) Plaintiff and Defendant have consented in writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. §636(c). (Doc. 6, 14)

On July 26, 2010, the Court issued an order striking Defendant’s Motion to

1 Dismiss for failure to properly file its Motion in text-searchable .pdf format required by this
2 District Court's Local rules and its ECF Manual. (Doc. 12) Rather than denying the Motion
3 and after explaining why the Motion was stricken, the Court afforded Defendant another
4 opportunity to re-file its Motion provided it was re-filed on or before Monday, August 2,
5 2010, was substantively identical to its July 21, 2010 filing, and that it complied in all
6 respects with the July 26, 2010 Order, the Local Rules and the ECF Manual or Defendant's
7 Motion to Dismiss may not be considered. (*Id.*)

8 The Court advised Defendant that compliance with the District Court's LRCiv
9 5.5(b) and the ECF Manual regarding filings in text-searchable .pdf format is not a petty
10 requirement and that "[c]ompliance was not optional." (*Id.* at 1) The Court further ordered
11 that defense counsel shall "use proper capitalization," i.e., use proper upper and lower case
12 type to denote the correct spelling of party names, in all future captions as mandated by
13 LRCiv 7.1(a)(3). (*Id.* at 2)

14 Incredibly, on July 28, 2010, Defendant re-filed its Motion to Dismiss, doc.
15 13, with the identical deficiencies identified in the Court's July 26, 2010 order striking
16 Defendant's original Motion to Dismiss. (Doc. 13) Defendant's re-filed Motion to Dismiss,
17 doc. 13, was not properly filed in text-searchable .pdf format and the caption did not "use
18 proper capitalization," i.e., it contained all capital letters.

19 The Ninth Circuit has recently "explain[ed], yet again, the importance of
20 following a district court's local rules. 'District courts have broad discretion in interpreting
21 and applying their local rules.'" *Simmons v. Navajo County*, ___ F.3d ___, 2010 WL
22 2509181, * 3 (9th Cir. 2010) (quoting *Miranda v. S. Pac. Transp. Co.*, 710 F.2d 516, 521 (9th
23 Cir. 1983)). Although the Court's preference is to resolve Defendant's Motion on the merits,
24 Defendant's failure to comply with LRCiv 5.5(b), LRCiv 7.1(a)(3), and the ECF Manual,
25 after Defendant was given a reasonable opportunity to re-file a conforming Motion, warrants
26 a denial of Defendant's Motion. *Lopez v. Mortgage Electronic*, 2010 WL 2816697 (E.D.Cal.
27 2010) (adopting findings and recommendation dismissing case without prejudice for failing
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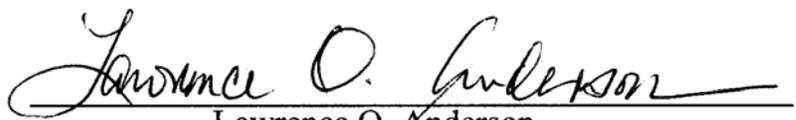
1 to comply with local rules); *Tran v. Tyco Elec. Corp.*, 2008 WL 2037279, at * 2 (D.Or. 2008)
2 (denying motion to compel where plaintiff failed to comply with Local Rule 37.1's
3 requirements); *Burgess v. Piler*, 2006 WL 278588, at * 3 (E.D. Cal. 2006) (defective motion
4 to compel denied where party failed to follow local rule requiring that party set forth the
5 requests propounded and allegedly deficient responses received); *Ghazali v. Moran*, 46 F.3d
6 52, 53 (9th Cir. 1995) (The Ninth Circuit has held that "failure to follow a district court's
7 local rules is a proper ground for dismissal.").

8 The District Court's LRCiv 83.1(f)(1) authorizes a district or magistrate judge
9 to "impose appropriate sanctions upon the party, attorney, super vising attorney or law firm
10 who without just cause: (A) violates, or fails to conform to . . . the Local Rules of Practice
11 for the District . . ." Rather than imposing a monetary sanction and giving defense counsel
12 a third order to comply with specific Local Rules, the Court will deny the Motion with
13 prejudice.

14 Having violated a prior court order and LRCiv 5.5(b), LRCiv 7.1(a)(3), and
15 the ECF Manuel without just cause,

16 **IT IS ORDERED** that Defendant's Motion to Dismiss, doc. 13, is **DENIED**.
17 Defendant shall timely answer the Complaint as required by law.

18 Dated this 3rd day of August, 2010.

19
20 
21 Lawrence O. Anderson
22 United States Magistrate Judge