

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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**CIVIL MINUTES - GENERAL**

<b>Case No.</b>	CV 12-8990 CAS (VBKx)	<b>Date</b>	August 8, 2013
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<b>Title</b>	ROBERT E. LYON V. EDWIN D. SCHINDLER, ET AL.
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<b>Present: The Honorable</b>	CHRISTINA A. SNYDER
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Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants

Not Present

Not Present

**Proceedings:** (IN CHAMBERS): MOTION FOR CLARIFICATION (Docket #68, filed July 15, 2013)

MOTION TO DISMISS COUNTERCLAIM (Docket #70, filed July 15, 2013)

REQUEST TO APPEAR VIA TELEPHONE (Docket #74, filed August 6, 2013)

## I. INTRODUCTION AND DISCUSSION

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of August 12, 2013 is vacated, and the matter is hereby taken under submission.

Plaintiff Robert Lyon ("Lyon") filed the instant action in Los Angeles County Superior Court on September 17, 2012 against Edwin Schindler ("Schindler"). Subsequently, Schindler removed the action to this Court on October 18, 2012. Lyon's complaint asserts five claims for relief: (1) breach of contract, (2) open book account, (3) account stated, (4) reasonable value of services, and (5) fraud. Also, Schindler has filed a single counterclaim against plaintiff for conversion.

On July 15, 2013, Schindler filed a motion seeking clarification of purportedly inconsistent rulings of the Court. After reviewing the motion, the Court finds no inconsistencies in the Court's prior rulings. Although Schindler claims that the Court was inconsistent regarding whether Lyon's claims relied on the existence of a payment obligation between Amkie and Lyon, the Court finds no such inconsistency in its orders.

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In both orders, the Court found that the accrual date of Lyon's claim depended on whether, in fact, Amkie would provide payment to Lyon, regardless of the existence of any obligation. Dkt # 57 at 8; Dkt # 65 at 5. The Court therefore denies the motion. Furthermore, the Court hereby admonishes Schindler to cease filing frivolous motions in the future.

Additionally, on July 15, 2013, Schindler filed a motion to dismiss his counterclaim pursuant to Federal Rule of Civil Procedure 41(a)(2). This request is unopposed, and otherwise appears proper, and therefore the Court grants the request.

**II. CONCLUSION**

In accordance with the foregoing, the Court hereby DENIES Schindler's motion for clarification and GRANTS Schindler's motion to dismiss his counterclaim. Additionally, the Court DENIES Schindler's request to appear by telephone as moot.

IT IS SO ORDERED.

Initials of Preparer

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CMJ