
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:16-cv-1950-JLS-KESx

Date: January 18, 2017

Title: Tuan Nguyen v. Marc Kelly, et al.

Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER (1) STRIKING PLAINTIFF’S EX PARTE APPLICATION (Doc. 37); AND (2) STRIKING DEFENDANTS’ MOTIONS TO DISMISS (Doc. 21, 23)

Before the Court is an Ex Parte Application to Strike Pleading and Grant Defaults filed by Plaintiff Tuan Nguyen. (Ex Parte App., Doc. 37.) Plaintiff specifically seeks to strike the motions to dismiss filed by Defendants Bich An Thi Nguyen, Ngoc Bich Thi Nguyen, Van Anh Thi Nguyen, Hoang Huy Tu, and Walter Emil Teague III, (Docs. 21, 23), for failure to properly serve them on Plaintiff. (*See* Ex Parte App.) For the following reasons, the Court STRIKES Plaintiff’s Ex Parte Application and, on its own motion, STRIKES Defendants’ motions to dismiss.

With respect to Defendants’ motions to dismiss, upon reviewing the docket, the Court finds no proof of service was ever filed reflecting that these motions were properly served on Plaintiff. Moreover, in response to Plaintiff’s Ex Parte Application, Defendants make no statement or showing that they in fact served Plaintiff with the motions. (*See* Teague Decl., Doc. 39.) Instead, they state only that they were not given proper notice of Plaintiff’s Application. (*Id.* ¶¶ 3, 5.) The Court therefore concludes that Plaintiff was never properly served with Defendants’ motions to dismiss.

With respect to Plaintiff’s Ex Parte Application, the Court notes that Plaintiff has attached a proof of service to his Application purportedly showing that service was made by mail, email, and phone on January 4, 2017. (*See* Ex Parte App.) Defendants assert that this proof of service is false, and that Defendants’ counsel was in fact notified of the application on January 11, 2017 when he received notice of the Application through Pacer. (Teague Decl. ¶ 5.) Whether or not the proof of service states the true facts,

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Plaintiff has otherwise failed to comply with the requirements of Local Rules 7-19, 7-19.1, and Paragraph 3 of the Court's Initial Standing Order relating to notice and service of ex parte applications.

The Court is faced with a circumstance in which neither party followed the rules; Plaintiff is seeking to strike two motions to dismiss filed by Defendants because Defendants failed to properly serve those motions on Plaintiff, and Defendants oppose Plaintiff's Ex Parte Application because Plaintiff failed to properly serve and provide notice to Defendants of his Application.

The Court determines that the appropriate course is to STRIKE Plaintiff's Ex Parte Application for failure to comply with Local Rules 7-19, 7-19.1, and the Court's Initial Standing Order, and on its own motion, STRIKE Defendants' motions to dismiss for failure to effect proper service.

IT IS SO ORDERED.

Initials of Preparer: tg