

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CORY LARSON, on behalf of himself and  
all others similarly situated,  
  
Plaintiff,  
  
v.  
  
HARMAN-MANAGEMENT  
CORPORATION and 3SEVENTY, INC.,  
  
Defendants.

No. 1: 16-cv-00219-DAD-SKO  
  
ORDER DENYING DEFENDANT  
HARMAN-MANAGEMENT  
CORPORATION'S MOTION TO STRIKE  
  
(Doc. No. 148)

Plaintiff Cory Larson (“plaintiff”) filed a complaint against Harman-Management Corporation and 3Seventy, Inc. (“defendants”) on February 17, 2016, alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”). (Doc. No. 1.) On May 15, 2018, the parties appeared for a hearing on plaintiff’s motion for class certification (Doc. No. 98), defendant 3Seventy, Inc.’s motion for summary judgment (Doc. No. 101), and defendant Harman-Management Corporation’s (“HMC”) motion for summary judgment (Doc. No. 128). Following that hearing, defendant HMC filed a notice of supplemental authority on May 17, 2018. (Doc. No. 146.) Plaintiff filed a response to the supplemental authority on May 22, 2018. (Doc. No. 147.)

On May 24, 2018, defendant HMC filed a motion to strike plaintiff’s response to HMC’s supplemental authority. (Doc. No. 148.) Defendant HMC argues that plaintiff’s response to

1 HMC’s supplemental authority constitutes an impermissible surreply in violation of Local Rule  
2 230 and should thus be stricken. (*Id.* at 2–3.) In the alternative, defendant HMC requested leave  
3 to file a reply. (*Id.* at 3.) Plaintiff filed an opposition to the motion to strike on June 7, 2018,  
4 stating that there is no authority that would permit defendant HMC to “file a Notice of  
5 Supplemental Authority, but prohibits an opposing party from responding to the same.” (Doc.  
6 No. 149 at 3.) However, plaintiff does not oppose defendant HMC’s request to file a reply. (*Id.*  
7 at 4.)

8 Local Rule 230 provides that an “[o]pposition, if any, to the granting of the motion shall  
9 be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed  
10 (or continued) hearing date” and that a reply may be filed “[n]ot less than seven (7) days  
11 preceding the date of hearing . . . .” L.R. 230(c)-(d). The local rules do not state that parties are  
12 entitled to provide notice of supplemental authority regarding motions that have been taken under  
13 submission, without first obtaining leave from the court. The court finds no reason to strike  
14 plaintiff’s response to defendant’s HMC’s supplemental authority, especially since HMC did not  
15 seek leave of court to file a notice of supplemental authority in the first place. Because plaintiff  
16 does not oppose it, the court will grant HMC’s request to file a reply in support of its motion to  
17 strike. However, the parties are both cautioned that further filings, addressing motions already  
18 submitted for decision, in contravention of the local rules may be stricken or subject the filing  
19 party to imposition of sanctions.

20 Accordingly,

- 21 1. Defendant Harman-Management Corporation’s motion to strike plaintiff’s response to  
22 HMC’s supplemental authority (Doc. No. 148) is denied;
- 23 2. Defendant Harman-Management Corporation is granted leave to file a reply in support  
24 of its motion to strike within seven days of this order.

25 IT IS SO ORDERED.

26 Dated: June 28, 2018

27   
28 UNITED STATES DISTRICT JUDGE