

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

EASTERN DISTRICT OF CALIFORNIA

LEPRINO FOODS COMPANY,

Plaintiff,

v.

JND THOMAS COMPANY, INC., et al.,

Defendants.

Case No. 1:16-cv-01181-LJO-SAB

**ORDER DISMISSING COMPLAINT AS
TO DEFENDANT DENNIS THOMAS**

**ORDER THAT JUDGMENT BE ISSUED
AGAINST DEFENDANT JND THOMAS
COMPANY, INC.**

**ORDER DIRECTING THAT THE CASE
BE CLOSED**

Plaintiff Leprino Foods Company ("Leprino") filed this lawsuit against JND Thomas Company, Inc. ("JND") and Dennis Thomas ("Thomas") for damages arising out of a contract for waste disposal. Leprino also pled a negligence claim against Thomas in his individual capacity. The defendants failed to respond to the complaint, and Leprino filed a motion for default judgment as to both defendants. Default judgment was granted as to the claims against JND, but Leprino's default judgment motion as to Thomas was held in abeyance to allow Leprino to amend its allegations against Thomas. Leprino filed a second amended complaint in April, but upon review of the amended complaint, the Court determined the negligence claim against Thomas remained insufficiently pled and denied Leprino's motion for default judgment. (Doc. 45.)

1 In denying the motion as to Thomas, the Court permitted Leprino 14 days leave to once
2 again amend the negligence claim against Thomas, but Leprino failed to file an amended
3 complaint. For all the reasons stated in the Court's May 2, 2017, order (Doc. 45), the negligence
4 claim as to defendant Thomas is not cognizable and is dismissed with prejudice.

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. Leprino's complaint against Defendant Thomas is dismissed with prejudice for
7 failure to state a claim (Doc. 45);
- 8 2. Judgment shall be entered against JND as set forth in the Court's January 31,
9 2017, order (Doc. 35); and
- 10 3. The Clerk of this Court is DIRECTED to close this case.

11 IT IS SO ORDERED.

12 Dated: May 24, 2017

13 /s/ Lawrence J. O'Neill
14 UNITED STATES CHIEF DISTRICT JUDGE