

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|-------------------|---|------------------------------|
| |) | Case No. 12-4221 SC |
| |) | |
| AF HOLDINGS, LLC, |) | ORDER DISMISSING PLAINTIFF'S |
| |) | ACTION FOR FAILURE TO POST |
| Plaintiff, |) | <u>UNDERTAKING</u> |
| |) | |
| v. |) | |
| |) | |
| ANDREW MAGSUMBOL, |) | |
| |) | |
| Defendant. |) | |
| |) | |

This is a copyright infringement action. Plaintiff AF Holdings, LLC ("Plaintiff") is a foreign corporation, organized under the laws of Saint Kitts and Nevis. ECF No. 12 ("FAC") ¶ 2. Defendant Andrew Magsumbol ("Defendant") is a California resident. Id. ¶ 4. Plaintiff sued Defendant alleging that he infringed the copyright of one of Plaintiff's works. See id. ¶ 1.

On January 1, 2013, Defendant moved to require Plaintiff to post an undertaking. ECF No. 20 ("Mot."). The Court has inherent power to do so, subject to California law. See Simulnet E. Assocs. v. Ramada Hotel Operating Co., 37 F.3d 573, 574 (9th Cir. 1994). California law permits courts to require foreign corporations to post an undertaking when suing California citizens, provided that the citizen defendant shows a reasonable possibility of obtaining a

1 judgment in the case. See Cal. Civ. Proc. Code § 1030. The
2 purpose of this statute is to "enable a California resident sued by
3 an out-of-state resident to secure costs in light of the difficulty
4 of enforcing a judgment for costs against a person who is not
5 within the court's jurisdiction . . . [and] prevent out-of-state
6 residents from filing frivolous lawsuits against California
7 residents." Alshafie v. Lallande, 171 Cal. App. 4th 421, 428 (Cal
8 Ct. App. 2009) (internal quotation marks and citations omitted).

9 On March 18, 2013, the Court found that Defendant made the
10 requisite showing and accordingly required Plaintiff to post a
11 \$50,000 undertaking. ECF No. 45 ("Order") at 4-5. The Court
12 stated that Plaintiff would have thirty days to post the
13 undertaking, or else its case could be dismissed with prejudice.
14 Id. at 5.

15 More than thirty days have passed since the Court required
16 Plaintiff to post an undertaking, and Plaintiff has not complied.
17 Nor does it express any intention or desire to do so. Indeed,
18 Plaintiff's attorneys "anticipate this case will be dismissed in
19 the near future for failure to post this amount." ECF No. 51
20 ("Pl.'s Case Mgmt. Stmt.").

21 They are right. Plaintiff's refusal to post the undertaking
22 is grounds for dismissal. See Lyons v. Wickhorst, 42 Cal. 3d 911,
23 915 n.4 (Cal. 1986) (en banc) (noting that a ground for dismissal
24 with prejudice under a court's inherent powers includes
25 "plaintiff's failure to give security for costs"); see also, e.g.,
26 Atlanta Shipping Corp., Inc. v. Chem. Bank, 818 F.2d 240, 245, 252
27 (2d Cir. 1987) (affirming lower court's dismissal for failure to
28 post security).

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This case is DISMISSED WITH PREJUDICE. Plaintiff's motions to substitute and withdraw counsel, ECF No. 43, and to continue the case management conference, ECF No. 49, are DENIED AS MOOT.

IT IS SO ORDERED.

Dated: May 30, 2013



UNITED STATES DISTRICT JUDGE