

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  
NORTHERN DISTRICT OF CALIFORNIA

NAZIR KHALJI,  
Plaintiff,  
v.  
DELOITTE & TOUCHE LLP, et al.,  
Defendants.

Case No. [14-cv-00568-WHO](#)

**ORDER TO SHOW CAUSE WHY  
ACTION SHOULD NOT BE DISMISSED  
FOR LACK OF SUBJECT MATTER  
JURISDICTION**

Re: Dkt. No. 37, 38

On July 2, 2014, defendant Deloitte & Touche LLP filed a motion to dismiss the Fifth and Sixth Causes of Action in this action. Dkt. No. 19. On the same day, the defendant filed a motion to transfer venue from this Court to the United States District Court for the Southern District of New York. Dkt. No. 23. The defendant states that I need not decide the motion to dismiss if I grant the motion to transfer. Dkt. No. 20 at 1 n.1. Both motions are scheduled to be heard on August 27, 2014.

On July 30, 2014, plaintiff Nazir Khalji filed an untimely opposition to the motion to transfer. Dkt. No. 33. The next day, the plaintiff filed an untimely opposition to the motion to dismiss. Dkt. No. 34.

On August 5, 2014, the parties filed a stipulation to retroactively extend the deadline of the opposition briefs for both motions to July 31, 2014, and to extend the deadline of the reply briefs to August 8, 2014. Dkt. No. 37. The same day, the defendant filed a letter with the Court asserting that the Court lacks subject matter jurisdiction over the action and seeking guidance as to how to proceed. Dkt. No. 38.

The defendant did not raise the issue of subject matter jurisdiction in its motion to dismiss, where it should have been raised. Nonetheless, the Court has an independent obligation to assess

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

whether it has subject matter jurisdiction over any action before it. FED. R. CIV. P. 12(h)(3).

Accordingly, I ORDER as follows:

- As stipulated, the plaintiff's opposition briefs are deemed timely filed and the defendant's reply briefs shall be filed no later than August 8, 2014.
- No later than August 8, 2014, the defendant may file a three-page brief explaining why the Court lacks subject matter jurisdiction. Any exhibits or declarations supporting the brief may not exceed five pages.
- No later than August 13, 2014, the plaintiff may file a three-page brief showing cause why the action should not be dismissed for lack of subject matter jurisdiction. Any exhibits or declarations supporting the brief may not exceed five pages.
- The issue of subject matter jurisdiction will be heard at the same time as the originally scheduled hearing for the defendant's motions to transfer venue and to dismiss.

**IT IS SO ORDERED.**

Dated: August 6, 2014

  
\_\_\_\_\_  
WILLIAM H. ORRICK  
United States District Judge