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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YANA ZELKIND,
Plaintiff,
v.
FLYWHEEL NETWORKS, INC.,
Defendant.

Case No. [15-cv-03375-WHO](#)

**ORDER DISMISSING CASE WITH
PREJUDICE AND REFERRING
ATTORNEY ALEXANDER JOHNSON
TO THE STANDING COMMITTEE ON
PROFESSIONAL CONDUCT**

On October 16, 2015, I granted defendant’s motion to compel arbitration and required the parties to file a Joint Status Report every six months apprising the Court of the status of the arbitration. Dkt. No. 38.

On April 15, 2016, defendant filed a status report explaining that arbitration had not commenced and that Alexander Johnson, plaintiff’s counsel of record, has indicated that he no longer represents plaintiff¹ and would not oppose a dismissal without prejudice. Dkt. No. 39. However, defendant was unable to secure a joint stipulation regarding a dismissal without prejudice and now seeks a dismissal with prejudice from the Court.

On April 22, 2016 I ordered plaintiff to show cause why this action should not be dismissed for failure to prosecute. Dkt. No. 40. Because the relationship between Johnson and plaintiff was and is unclear, I ordered Johnson to notify plaintiff of my April 22, 2016 Order by telephone and serve plaintiff with a copy of the Order by fax or email and U.S. mail within five days of the date of the Order. I ordered Johnson to file proof of service with the Court by May 2, 2016 and ordered plaintiff to respond by May 12, 2016, explaining why this case should not be

¹ No motion to withdraw as counsel or substitution of counsel has been filed with the Court and Johnson remains counsel of record.

1 dismissed with prejudice. I instructed that if Johnson intended to withdraw from plaintiff's
2 representation, he must file and serve a motion to withdraw within five days of the date of the
3 Order to show cause. I explained that it must appear from a declaration accompanying the motion
4 that plaintiff had actual notice of the motion and plaintiff must respond to the motion to withdraw
5 by May 12, 2016.

6 A hearing was set for May 17, 2016 at 2:00 pm in Courtroom 2, 17th Floor, at which time
7 the order to show cause and any motion to withdraw were to be argued and decided. Neither
8 plaintiff nor Johnson appeared at the hearing. Johnson did not file a proof of service or motion to
9 withdraw and did not comply with the April 22, 2016 Order.

10 On May 17, 2016 I issued a minute entry explaining that Johnson had failed to appear at
11 the May 17, 2016 hearing or comply with court Orders. Dkt. No. 41. I noted that the Court would
12 attempt to take steps to compel Johnson to comply with his professional obligations, but that, at
13 the latest, this case would be dismissed on or around the time of the parties' next status conference
14 on October 15, 2016.

15 Since the May 17, 2016 hearing Johnson has not filed any documents and has not had any
16 communication with the Court or with defense counsel. Dkt. No. 42. In its case status report,
17 filed on October 14, 2016, defendant Flywheel Networks Inc. again requests that this case be
18 dismissed with prejudice for failure to prosecute.

19 As plaintiff and her counsel Johnson have failed to prosecute this case for over a year, and
20 have not complied with the Court's Order to show cause, this case is now **DISMISSED WITH**
21 **PREJUDICE.**

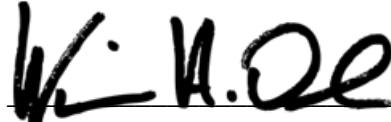
22 Counsel Alexander Johnson has demonstrated an on-going pattern of failure to prosecute
23 this case, to comply with court orders, and to meet his professional obligations to his client, Ms.
24 Zelkind. I am troubled by Johnson's conduct and accordingly now refer this matter to the Court's
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Standing Committee on Professional Conduct per Civil Local Rule 11-6.

IT IS SO ORDERED.

Dated: October 24, 2016



WILLIAM H. ORRICK
United States District Judge