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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEKSANDR L. YUFA,

Plaintiff,

No. C 09-1388 PJH

v.

ORDER RE MOTION TO DISMISS

PARTICLE MEASURING SYSTEMS,
INC.,

Defendant.

_____ /

Before the court is defendant Particle System Inc.'s motion to dismiss plaintiff's claim for emotional distress. In his second amended complaint ("SAC"), plaintiff alleges only that defendant has caused him emotional distress by its "misrepresentation of the plaintiff's achievements as defendants' achievements."

Defendant first argues that "there is no federal claim for emotional distress arising under patent law," but plaintiff does not purport to be proceeding under federal law, and the court instead construes plaintiff's asserted claim as arising under state law. In order to state a claim for intentional infliction of emotional distress, plaintiff must allege (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by defendant's outrageous conduct. Christensen v. Superior Court, 54 Cal.3d 868, 903 (1991). Plaintiff's allegations, as pled in the SAC, are not sufficient to state a claim for intentional infliction of emotional distress, and thus, defendant's motion is GRANTED. Although it is unlikely that plaintiff will be able to cure the deficiencies of his claim through amendment, the court will allow plaintiff one opportunity to amend this claim. Plaintiff shall have until **September 3, 2013** to file an amended complaint in accordance with this order,

United States District Court
For the Northern District of California

1 and defendant shall have 21 days from that filing to answer or otherwise respond to the
2 complaint. No new claims or parties may be added - only the emotional distress claim may
3 be re-pled. Plaintiff's amended complaint must also make clear whether he intends to
4 assert one or two infringement claims.

5 Finally, the court will conduct a case management conference in this matter on
6 **September 19, 2013 at 2:00pm**. The court notes this case management conference will
7 be held before defendant's response to plaintiff's amended complaint is due. However, the
8 parties must still comply with this court's filing requirements for case management
9 conferences.

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IT IS SO ORDERED.

Dated: August 1, 2013



PHYLLIS J. HAMILTON
United States District Judge