

United States District Court
Northern District of California

JONATHAN TRUJILLO,

Plaintiff,

v.

OPTIO SOLUTIONS, LLC, et al.,

Defendants.

Case No.: 4:14-cv-01704-KAW

ORDER DISCHARGING ORDER TO
SHOW CAUSE; STRIKING PROPOSED
FIRST AMENDED COMPLAINT

Plaintiff Jonathan Trujillo, who is represented by counsel, commenced this case on April 14, 2014. (Compl., Dkt. No. 1.) On May 9, 2014, Defendant Optio Solutions, LLC filed a motion to dismiss. (Optio's Mot. to Dismiss, Dkt. No. 10.) On May 20, 2014, Defendant Crosscheck, Inc. also filed a motion to dismiss. (Crosscheck's Mot. to Dismiss, Dkt. No. 16.) Pursuant to Civil Local Rule 7-3(a), the opposition to the first motion was due on May 23, 2014, and the opposition to the second motion was due on June 3, 2014. As of June 23, 2014, Plaintiff had not filed an opposition to either motion. Therefore, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute, and file either an opposition to the motions to dismiss or a statement of non-opposition to the motions to dismiss. (June 23, 2014 Order to Show Cause, Dkt. No. 22.)

Plaintiff timely filed a response. (Pl.'s Response, Dkt. No. 24.) In his response, Plaintiff indicated that he intended to file an amended complaint as of right pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) on May 23, 2014 but that "due to an unfortunate clerical error Plaintiff did not file the amended complaint," which he believed had been filed on May 23, 2014 (Id. at 1.) Plaintiff appended a copy of the first amended complaint to his response.

Because Plaintiff has filed a response to the Court's order to show cause, that order is hereby discharged. Because the time for filing an amended complaint as of right has expired, the Court strikes the proposed first amended complaint Plaintiff has appended to his response to the

1 Court's order to show cause. To the extent that Plaintiff would like the pleading to become the
2 operative complaint, he shall obtain a stipulation from all parties permitting its filing or move for
3 leave to file an amended complaint. Any such stipulation or motion shall be filed within 14 days
4 of this order, with a copy of the proposed first amended complaint attached, as required by Civil
5 Local Rule 10-1. The proposed first amended complaint shall be on pleading paper and conform
6 the formatting requirements set out in Civil Local Rule 3-4. The hearing on the motions to
7 dismiss, currently set for August 7, 2014, shall remain on calendar in the interim. If Plaintiff fails
8 to comply with the 14-day deadline set forth above, the Court may grant the motions as
9 unopposed.

10 IT IS SO ORDERED.

11 Dated: July 3, 2014


KANDIS A. WESTMORE
United States Magistrate Judge