

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRA L. CONNOLLY,
Plaintiff,
v.
I2A TECHNOLOGIES, INC., et al.,
Defendants.

Case No. [16-cv-02131-DMR](#)

**ORDER TO SHOW CAUSE TO PRO SE
DEFENDANT VICTOR BATINOVICH
AS TO WHY HIS ANSWER SHOULD
NOT BE STRICKEN**

Pro Se Defendant Victor Batinovich has repeatedly violated court orders, as well as failed to respond to court-ordered deadlines, and failed to attend court proceedings. The court now issues this Order to Show Cause as to why his Answer should not be stricken pursuant to Federal Rules of Civil Procedure 16(f) and 37(b)(2)(C). Batinovich must show cause in writing by **April 10, 2017**, otherwise the court will strike his Answer.

I. RELEVANT FACTUAL BACKGROUND

Steven P. Cohn represented Batinovich in this case. On January 13, 2017, Cohn filed a motion to withdraw, citing Batinovich’s failure to pay legal fees. [Docket No. 34].

On January 19, 2017, the court set the hearing on the motion to withdraw for February 23, 2017, and ordered Batinovich to personally appear at that hearing. [Docket No. 35]. The court instructed Cohn to serve the personal appearance order “on all last known mailing addresses and e-mail addresses for Mr. Batinovich, and to leave a voicemail message on Mr. Batinovich’s most current phone number.” [Docket No. 35].

Batinovich failed to appear at the hearing on February 23, 2017 as ordered. [Docket No. 40]. The court granted Cohn’s motion to withdraw effective immediately, but ordered that Cohn “shall continue to receive all papers served in this action and all orders issued by the court and shall serve them on Mr. Batinovich with a proof of service that is filed for a period of 90 days, or

1 until substitute counsel makes an appearance, whichever occurs sooner.” [Docket No. 40]. The
2 court stated on the record that it would issue an order to show cause to Batinovich as to why he
3 should not face sanctions for his failure to appear at the hearing. [Docket No. 40]. The court set a
4 further case management conference for March 29, 2017. [Docket No. 40].

5 On February 23, 2017, immediately following the hearing, the court issued two Orders to
6 Show Cause to Batinovich:

- 7 1. Order to Show Cause for Failure to Appear at Hearing [Docket No. 37]: This order
8 required Batinovich to respond by March 9, 2017 with a written statement
9 explaining why the court should not impose monetary sanctions for his failure to
10 appear at the February 23, 2017 hearing on the motion to withdraw; and
- 11 2. Order to Show Cause Re Service of Third-Party Complaint [Docket No. 39]: This
12 order required Batinovich, as the third-party plaintiff, to show cause in writing by
13 March 23, 2017 why his third-party complaint should not be dismissed under Federal
14 Rule of Civil Procedure 4(m) for failure to serve the summons and third-party
15 complaint on the third-party defendants.

16 Cohn served these orders on Batinovich, as well as the court’s February 23, 2017 minute order, on
17 March 7, 2017 via U.S Mail, e-mail, and Federal Express. See Proof of Service [Docket No. 49].
18 Batinovich failed to respond to either of the February 23, 2017 Orders to Show Cause.¹

19 On March 2, 2017, the court issued another order to Batinovich. [Docket No. 41]. As
20 Batinovich is now self-represented, this order required him to provide the court with current
21 contact information in the form of a current mailing address, telephone number, and e-mail
22 address by March 13, 2017. Cohn served this order on Batinovich via U.S. Mail, e-mail, and
23 Federal Express on March 2, 2017. See Proof of Service [Docket No. 47]. Batinovich failed to
24 respond to the March 2, 2017 order.

25 On March 29, 2017, Batinovich did not appear for the case management conference. As a
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27 ¹ As a result of Batinovich’s failure to show cause regarding service of the third-party complaint,
28 the court dismissed the third-party complaint without prejudice at the March 29, 2017 case
management conference.

1 self-represented defendant, Batinovich is required to attend all case management conferences.
2 Batinovich was notified about the March 29, 2017 case management conference. See Proof of
3 Service [Docket No. 49].

4 **II. ORDER TO SHOW CAUSE:**

5 In light of Batinovich's repeated violations of court orders, failures to respond to court-
6 ordered deadlines, and failures to attend court proceedings, the court issues this Order to Show
7 Cause as to why Batinovich's Answer should not be stricken under Federal Rules of Civil
8 Procedure 16(f) and 37(b)(2)(C) for failure to obey court orders. See, e.g., Softwareworks Grp.,
9 Inc. v. Ihosting, Inc., No. C06-04301 HRL, 2007 WL 1279495, at *1-2 (N.D. Cal. Apr. 30, 2007).

10 Batinovich must show cause in writing by **April 10, 2017**, or the court will strike his
11 Answer. Batinovich is forewarned that if his Answer is stricken, then Plaintiff can move for entry
12 of default and seek a default judgment against him.

13
14 **IT IS SO ORDERED.**

15 Dated: March 30, 2017

