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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Facebook, Inc.,

NO. C 08-05780 JW

Plaintiff,

v.

**ORDER STRIKING DEFENDANT
POWER VENTURES' ANSWER;
GRANTING DEFENDANT VACHANI
ADDITIONAL TIME TO SECURE
COUNSEL**

Power Ventures, Inc., et al.,

Defendants.

On August 6, 2012, the parties appeared at an Order to Show Cause hearing regarding Defendants' failure to timely identify substitute counsel after the Court granted former counsel's motions to withdraw.

A. Background

On December 30, 2008, Plaintiff filed its initial Complaint alleging violations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. §§ 7701 *et seq.*, the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, and California Penal Code § 502. (See Docket Item No. 1.) Following extensive discovery and multiple motions to dismiss, the parties filed cross-motions for summary judgment.¹ On February 16, 2012, the Court granted Plaintiff's Motions for Summary Judgment on all counts and denied Defendants'

¹ (See Docket Item Nos. 98, 214, 215.)

1 Motion.² In its February 16 Order, the Court ordered the parties to submit supplemental briefing on
2 the issues of damages and the individual liability of Defendant Vachani. (Id. at 19.)

3 On June 4, 2012, after fully briefing the issues requested by the Court, Bursor & Fisher, P.A.
4 moved to withdraw as defense counsel on the ground that Defendants were significantly behind in
5 paying legal fees and had indicated that they would not be able to pay fees moving forward.³ On
6 June 11, 2012, Bramson, Plutzik, Mahler & Birkhaeuser, LLP also sought leave to withdraw as
7 defense counsel.⁴ On July 2, 2012, the Court granted the Motions to Withdraw.⁵ In that Order, the
8 Court also directed Defendants to file Notices of Identification of Substitute Counsel or Self-
9 Representation on or before July 17, 2012. (Id. at 2.)

10 On July 19, 2012, not having received notices from either Defendant, the Court set an Order
11 to Show Cause hearing as to why the Answer should not be stricken in light of Defendants' failure
12 to obey the Court's Order.⁶ On July 26, 2012, the Court received Defendant Vachani's Response to
13 the Court's Order to Show Cause.⁷ In his Response, Defendant Vachani requested that the Court
14 grant him an additional thirty to sixty days to retain new counsel. (Id. at 2.) Defendant Vachani also
15 requested permission to e-file so that he could communicate directly with the Court. (Id. at 1.)⁸
16 However, nowhere in his Response did Defendant Vachani give notice to the Court regarding his
17

18 ² (Order Granting Plaintiff's Motions for Summary Judgment; Denying Defendants' Motion
19 for Summary Judgment, hereafter, "February 16 Order," Docket Item No. 275.)

20 ³ (See Docket Item No. 302.)

21 ⁴ (See Docket Item No. 303.)

22 ⁵ (See Order Granting Withdrawal of Bursor & Fisher, P.A., and Bramson, Plutzik, Mahler
& Birkhaeuser, LLP as Defense Counsel, hereafter, "July 2 Order," Docket Item No. 306.)

23 ⁶ (See Docket Item No. 308.)

24 ⁷ (Response to Order to Show Cause, hereafter, "Response," Docket Item No. 309.)

25 ⁸ In his Response, Defendant Vachani contended that because he had not received the
26 Court's Orders regarding substitution of counsel directly from the Court, he was not properly served
27 with them. (Id.) However, the Court finds that this contention is disingenuous, as Defendant
Vachani was properly served with the Court's Orders through his former counsel. (See Docket Item
28 No. 307.)

1 desire to proceed in *pro per*. On July 31, 2012, the Court granted Defendant Vachani's request for
2 permission to e-file, but denied his request for additional time to obtain counsel. (See Docket Item
3 No. 311.) The Court also reminded Defendants that while Defendant Vachani has the option of
4 proceeding *pro se*, Defendant Power Ventures cannot proceed *pro se* in light of its corporate status
5 and must be represented by a member of the bar. (Id.)

6 **B. Discussion**

7 At issue is whether the Court should strike the Answer and enter default judgment in light of
8 Defendants' failure to obey the Court's Order to find substitute counsel.

9 Pursuant to the Local Rules of this district, a corporation may only be represented by a
10 member of the bar, and thus may not represent itself or appear through a corporate representative.
11 See Civ. L.R. 3-9(b). A natural person, however, may represent himself and thus may appear *pro se*
12 without the aid of an attorney. See Civ. L.R. 3-9(a).

13 Here, in spite of repeated warnings by the Court, Defendant Power Ventures has not
14 identified replacement counsel. In addition, although Defendant Vachani appeared on behalf of
15 himself at the August 6 hearing, he has yet to file a notice of appearance. With respect to Defendant
16 Power Ventures, in light of the record before the Court, the Court finds good cause to strike its
17 Answer and enter default against Defendant Power Ventures.

18 However, with respect to Defendant Vachani, because he personally appeared and showed
19 good cause as to why he should be given additional time to find substitute counsel, the Court grants
20 him a short extension to secure proper representation. This grant is conditioned on Defendant
21 Vachani immediately filing a Notice of Self-Representation, so as to avoid prejudice to Plaintiff.
22 Accordingly, the Court ORDERS as follows:

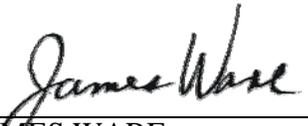
- 23 (1) On or before **August 9, 2012**, Defendant Vachani shall file a Notice of Self-
24 Representation.
- 25 (2) Because the Court has previously granted summary judgment in favor of Plaintiff and
26 the only pending issue is the question of the amount of damages, and because this
27 issue was fully briefed while both Defendants were represented by counsel, the Court
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will proceed to address this issue to bring this case to a close. Should Defendant Vachani wish to file an additional brief regarding this matter, he shall do so on or before **August 15, 2012**.

- (3) The Court STRIKES the Answer currently on file as to Defendant Power Ventures⁹ and directs the Clerk of Court to enter default against Defendant Power Ventures.

Dated: August 8, 2012



JAMES WARE
United States District Chief Judge

⁹ (See Docket Item No. 54.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

- 2 Alan R Plutzik aplutzik@bramsonplutzik.com
- 3 Cindy Ann Cohn cindy@eff.org
- 4 David P. Chiappetta david.chiappetta@corrs.com.au
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Dated: August 8, 2012

Richard W. Wieking, Clerk

By: /s/ JW Chambers
William Noble
Courtroom Deputy