

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY KREMEN,)	Case No.: 5:11-CV-05411-LHK
)	
Plaintiff,)	ORDER DENYING DEFENDANT’S
)	MISCELLANEOUS MOTIONS
v.)	
)	(re: dkt. #59, 64)
MICHAEL JOSEPH COHEN, an individual; and)	
FNBPAY CORPORATION, an Arizona)	
corporation,)	
)	
Defendants.)	

Plaintiff Gary Kremen (“Plaintiff”) filed this action on November 8, 2011, under California’s Uniform Fraudulent Transfer Act (“UFTA”), Cal. Civ. Code §§ 3439.04, 3439.05, 3439.07, 3440, against Defendants Michael Joseph Cohen (“M. Cohen”) and FNBPay Corporation (“FNBPay”), a corporation incorporated under the laws of the State of Arizona (collectively “Defendants”). See ECF No. 1 (“Compl.”). On December 2, 2011, Plaintiff filed an *ex parte* motion seeking a temporary restraining order (“TRO”). The Court granted the motion on December 7, 2011, and set a briefing schedule and a January 5, 2012 hearing on Plaintiff’s motion for a preliminary injunction. See ECF Nos. 16, 30.

On December 20, 2011, Defendant M. Cohen filed an opposition to Plaintiff’s motion for a preliminary injunction. See ECF No. 38. On December 27, 2011, Defendant M. Cohen filed, without leave of the Court, a “Supplemental Brief on Michael J. Cohen’s (a) Opposition to Plaintiff’s Motion for a Preliminary Injunction and (b) Michael J. Cohen’s Motion Under Rule 12.”

1 ECF Nos. 59, 60, 61. M. Cohen’s unauthorized supplemental brief was filed in contravention of
2 the Civil Local Rules, and was therefore disregarded in the Court’s ruling on the relevant motions.
3 See Civ. L.R. 7-3(a), (d). In that same filing, M. Cohen also noticed for January 5, 2012, a: (1)
4 Motion to Quash Service on Both the Subpoena and the Request for Production of Documents and
5 His Request for Sanctions; (2) Motion for Referral to the Court’s Standing Committee of
6 Professional Conduct and His Request for Court Ordered Sanctions; and (3) Motion Requiring
7 Plaintiff Gary Kremen’s [sic] to Post a Five Million Dollar Bond Pursuant to California Civil Code
8 of Procedures § 1030.” ECF Nos. 59, 60, 61. This portion of the filing, too, was procedurally
9 defective. Under the Civil Local Rules, all motions must be filed, served and noticed in writing for
10 hearing not less than 35 days after service of the motion. Civ. L. R. 7-2(a). M. Cohen filed these
11 motions on December 27, 2012, and noticed them for hearing just nine days later. Plaintiff never
12 filed an opposition, and M. Cohen never filed a reply. Accordingly, M. Cohen’s motions are
13 DENIED without prejudice.

14 On January 3, 2012, M. Cohen filed another “Ex Party [sic] Motion for Notification of
15 Fraud Upon the Court and His Second Supplemental Reply Brief by Michael J. Cohen on
16 Plaintiff’s Opposition to Defendant’s Motion to Dismiss for Lack of Jurisdiction, Improper Venue
17 and Insufficient Service of Process or in the Alternative to Transfer to the District of Arizona.”
18 ECF Nos. 64, 65. This filing, too, was done without leave of the Court, in violation of Civil Local
19 Rules 7-3(a), 7-3(d), and 7-2(a). Moreover, M. Cohen’s *ex parte* motion for notification of fraud
20 upon the Court does not meet the requirements for *ex parte* motions under Civil Local Rule 7-10.
21 Accordingly, M. Cohen’s *ex parte* motion for notification of fraud upon the Court is likewise
22 DENIED without prejudice.

23 **IT IS SO ORDERED.**

24
25 Dated: September 6, 2012

26 
27 LUCY H. KOH
28 United States District Judge