

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SONDRA J. ALLPHIN,

Plaintiff,

v.

PETER K FITNESS, LLC; PETER T.
KOFITSAS; FULCO FULFILLMENT, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No.: 13-CV-01338-LHK

ORDER GRANTING REQUEST TO
DISMISS DEFENDANT IDEAL
JACOBS (XIAMEN)

PETER K. FITNESS, LLC, a New Jersey
Limited Liability Company,

Third-Party Plaintiff,

v.

IDEAL JACOBS CORPORATION, IDEAL
JACOBS (XIAMEN) CORPORATION,
ANDREW CONRAD JACOBS, XIAMEN
IDEAL JACOBS INTERNATIONAL
LIMITED, IDEAL JACOBS XIAMEN
CORPORATION, IDEAL JACOBS
MALAYSIA CORPORATION

Third-Party Defendants.

1 On March 25, 2013, Third-Party Plaintiff Peter K. Fitness, Inc. (“Peter K. Fitness”) filed a
2 Third-Party Complaint, naming as Defendants Ideal Jacobs Corporation, and Ideal Jacobs
3 (Xiamen) Corporation (“Ideal Jacobs (Xiamen)”). ECF No. 4.

4 On May 28, 2013, Peter K. Fitness filed a request for entry of default against Ideal Jacobs
5 (Xiamen). ECF No. 24. Default was entered as to Ideal Jacobs (Xiamen) on May 29, 2013. ECF
6 No. 25.

7 On June 5, 2013, the parties filed a stipulation to file an Amended Third-Party Complaint,
8 naming the original two Defendants and several others, as reflected in the caption of this action.
9 ECF No. 27. The Court granted the stipulation on June 7, 2013. ECF No. 31. Third-Party
10 Defendant Andrew Conrad Jacobs filed an Answer to the Amended Third-Party Complaint on June
11 27, 2013, alleging in relevant part that Ideal Jacobs (Xiamen) was dissolved on or about July 26,
12 2011. ECF No. 36, at 2.

13 On July 1, 2013, Peter K. Fitness filed a request to vacate the May 29, 2013 Default entered
14 against Ideal Jacobs (Xiamen), and to dismiss Ideal Jacobs (Xiamen), “a dissolved New Jersey
15 Corporation,” from this action without prejudice. ECF No. 37. Accordingly, the Court vacated the
16 May 29, 2013 Default entered against Ideal Jacobs (Xiamen). ECF No. 39.

17 However, on July 2, 2013, Peter K. Fitness filed a new Amended Third-Party Complaint,
18 again naming Ideal Jacobs (Xiamen) as a Defendant. ECF No. 38. On July 8, 2013, the Court
19 requested clarification from Peter K. Fitness as to whether the July 2, 2013 filing constitutes a
20 Second Amended Complaint, and whether Peter K. Fitness continues to seek the dismissal without
21 prejudice of Ideal Jacobs (Xiamen). ECF No. 39.

22 On July 10, 2013, Peter K. Fitness filed a response to the Court’s request for clarification,
23 confirming that it continues to seek the dismissal without prejudice of Ideal Jacobs (Xiamen), a
24 dissolved New Jersey corporation. ECF No. 40 (“Response to Request for Clarification”). The
25 Court hereby GRANTS this request, and dismisses Peter K. Fitness from this action, without
26 prejudice.

27 Peter K. Fitness’s Response to the Request for Clarification also explained that the new
28 Amended Third-Party Complaint filed on July 2, 2013, was an edited version of the Amended

1 Third-Party Complaint which the Court granted leave to file on June 7, 2013, pursuant to
2 stipulation of the parties. ECF No. 31. Peter K. Fitness represents to the Court that these
3 additional edits were made “with the consent of the parties.” However, the Court has not granted
4 leave to file a further amended complaint. If Peter K. Fitness wishes to file a Complaint other than
5 the one the Court granted leave to file on June 7, 2013, Peter K. Fitness shall file a motion to file a
6 Second Amended Complaint. If all parties consent to this further amendment, the parties shall file
7 a stipulation to that effect.

8 **IT IS SO ORDERED.**

9
10 Dated: July 15, 2013



LUCY H. KOH
United States District Judge