

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FARIBA RAHIMIAN MARNANI,
Plaintiff,
v.
MEZZETTI FINANCIAL SERVICES, INC.,
a California corporation; JOSE MEZZETTI
individually and in his official capacity;
HOLMES & USOZ LLP, a California
limited liability partnership; and LESLIE
HOLMES, individually and in her official
capacity,
Defendants.

Case No.: 14-CV-04743-LHK

ORDER GRANTING MOTION TO STRIKE

On January 9, 2015, Defendants filed three separate Answers to Plaintiff’s Complaint. ECF Nos. 19, 20, 21. On January 30, 2015, Plaintiff filed a Motion to Strike all of the affirmative defenses contained in each of Defendants’ Answers. ECF No. 22. According to the text accompanying electronic docket number 22, Defendants’ Oppositions to Plaintiff’s motion were due by February 13, 2015. Defendants filed none.

On February 24, 2015—eleven days after Defendants’ Oppositions were due—Plaintiff

1 filed a Statement of No Opposition, indicating that “Plaintiff’s counsel has not been served with
2 any opposition to the Motion to Strike Affirmative Defenses Contained in Defendants’ Answers
3 (Doc. 22) filed herein on January 30, 2015” and requesting “that the Court grant [Plaintiff’s]
4 Motion to Strike Affirmative Defenses Contained in Defendants’ Answers immediately and
5 without a hearing.” ECF No. 24. To date, Defendants have not filed any Opposition to Plaintiff’s
6 Motion to Strike.

7 “A court must consider the following five factors before striking a pleading or declaring
8 default: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
9 manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the
10 disposition of cases on their merits; and (5) the availability of less drastic sanctions.” Hester v.
11 Vision Airlines, Inc., 687 F.3d 1162, 1169 (9th Cir. 2012) (internal quotation marks omitted).
12 Factors one, two, three, and five all favor granting Plaintiff’s motion. The public’s interest in the
13 expeditious resolution of cases and the Court’s need to manage its docket are best served by
14 granting Plaintiff’s unopposed motion now, rather than waiting until after the hearing date set for
15 May 21, 2015—three months from today. Further, the risk of prejudice to Defendants is low
16 because the Court will allow Defendants leave to file amended Answers.

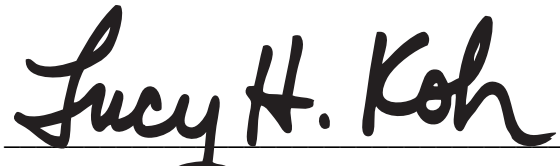
17 Accordingly, the Court hereby GRANTS Plaintiff’s unopposed Motion to Strike and,
18 pursuant to Civil Local Rule 7-1(b), VACATES the motion hearing set for May 21, 2015, at 1:30
19 p.m. See Bd. of Trs. of Laborers Health & Welfare Trust Fund for N. Cal. v. Kudsk Const., Inc.,
20 No. C 12-165 CW, 2012 WL 3010981, at *2-3 (N.D. Cal. July 23, 2012) (granting the plaintiffs’
21 unopposed motion to strike the defendants’ answer). Defendants may file amended Answers
22 within thirty (30) days of the date of this Order. See Barnes v. AT&T Pension Benefit Plan-
23 Nonbargained Program, 718 F. Supp. 2d 1167, 1176 (N.D. Cal. 2010) (granting motion to strike
24 affirmative defenses but allowing leave for the defendant to file an amended answer).

25 **IT IS SO ORDERED.**

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Dated: February 24, 2015



LUCY H. KOH
United States District Judge