

FILED

SEP 10 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *WPC* DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIATIMOTHY ANDREW ROPER,
Plaintiff,
v.
PHILIP YANNI,
Defendant.

Case No.: 18cv489-WQH(KSC)

**ORDER IN RESPONSE TO
PLAINTIFF'S MOTIONS FOR
CLARIFICATION****[Doc. Nos. 15 and 19]**

Before the Court are the following documents filed by plaintiff: (1) a Motion for Clarification and Early Neutral Evaluation Conference [Doc. No. 15]; and (2) a Motion for Clarification and Early Neutral Evaluation [Doc. No. 19]. In these Motions, plaintiff has requested that the Court set an Early Neutral Evaluation Conference or expedite the case in some way.

Background

As background, plaintiff's original Complaint was filed on March 7, 2018. [Doc. No. 1]. A proof of service filed in the Court's record on March 19, 2018 indicates defendant was served in the action on March 15, 2018. [Doc. No. 3.] On March 26, 2018, plaintiff filed a First Amended Complaint. [Doc. No. 4.]

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2 On April 11, 2018, defendant filed a Motion for Summary Judgment. [Doc. No.
3 8.] Federal Rule of Civil Procedure 56(b) states that “a party may file a motion for
4 summary judgment at any time until 30 days after the close of discovery.” Fed.R.Civ.P.
5 56(b). The District Court denied defendant’s Motion for Summary Judgment on July 26,
6 2018 but did not set a deadline for defendant to answer or otherwise respond to the First
7 Amended Complaint. [Doc. No. 13.]

8 **Discussion**

9 Based on a review of the Court’s docket, it appears that defendant’s Motion for
10 Summary Judgment was filed in lieu of an answer or one of the responsive motions
11 permitted under Federal Rule of Civil Procedure 12(b). Fed.R.Civ.P. 12(a)(1)(A)(i)&(ii);
12 Fed.R.Civ. P. 12(b)(1)-(6). If a defendant files a Rule 12(b) motion, Federal Rule
13 12(a)(4) “alters” the time for the defendant to file a responsive pleading. Rule
14 12(a)(4)(A) states as follows: “if the court denies the motion or postpones its disposition
15 until trial, the responsive pleading must be served within 14 day after notice of the court’s
16 action. . . .” Fed.R.Civ.P. 12(a)(4)(A). The time to answer or otherwise respond is
17 unclear when the defendant files a Motion for Summary Judgment rather than an answer
18 or a Rule 12(b) motion. Fed.R.Civ.P. 12; Fed.R.Civ.P. 56. Under the circumstances
19 presented, it therefore appears appropriate for the Court to set a deadline for the
20 defendant to file an answer or otherwise respond to the First Amended Complaint.

21 **Conclusion**

22 Based on the foregoing, IT IS HEREBY ORDERED that defendant shall file and
23 serve an answer or otherwise respond to the First Amended Complaint **no later than**
24 **September 24, 2018**. If defendant does not file and serve an answer or otherwise respond
25 to the First Amended Complaint by **September 24, 2018**, a default and a default judgment
26 may be entered against defendant under Federal Rule of Civil Procedure 55 at plaintiff’s
27 request.

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1 Plaintiff is advised that the Court will set an Early Neutral Evaluation Conference
2 if the defendant files an answer. If the case does not settle at an Early Neutral Evaluation
3 Conference, the Court will set a Case Management Conference and other deadlines in the
4 case, including a deadline for the parties to participate in a Rule 26(f) Conference.

5 IT IS SO ORDERED.

6 Dated: September 7, 2018

A handwritten signature in black ink, appearing to read 'Karen S. Crawford', written over a horizontal line.

Hon. Karen S. Crawford
United States Magistrate Judge