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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GLEN ALEXANDER BASS,

Plaintiff(s),

v.

JAMES HARRIS, et al.,

Defendant(s).

Case No. 2:11-CV-1017 JCM (GWF)

ORDER

Presently before the court are the report and recommendation of Magistrate Judge Hoffman. (Doc. # 75). Defendant Titan International USA (hereinafter “defendant” or “Titan”) filed an objection, (doc. # 76), to which plaintiff Glenn Alexander Bass (hereinafter “plaintiff”) responded, (doc. # 77).

I. Background

On June 21, 2011, plaintiff brought the instant action against defendant Titan, its individual co-defendants James Harris (“Harris”) and John Braff (“Braff”), and numerous other unnamed defendants. (Doc. # 1). Plaintiff alleged that defendants owed plaintiff money for work performed under his employment, compensation, and software license agreements with defendant Titan. (Doc. # 76).

The parties engaged in a settlement conference on April 9, 2013, and reached a settlement agreement which was reduced to writing. (Doc. # 59). As a result, the instant action was dismissed with prejudice. (Doc. # 69).

The agreement discharged the individual defendants from liability. (Doc. # 76). Defendant Titan agreed to pay \$30,000 within 60 days of execution of the settlement agreement, and a further \$100,000 to be paid in three equal installments within three years from the date of

1 the first payment. (Doc. # 76-1). These conditions were set forth at paragraph 2, entitled
2 “payment.” (Doc. # 76-1). In exchange for this payment, defendants were permitted to continue
3 using software created and developed by plaintiff. (Doc. # 77).

4 However, at paragraph 3 of the agreement, entitled “security for Titan’s payment,”
5 defendant also agreed that in the event of default on payment obligations, it would cease using
6 any and all software created or developed by plaintiff. (Doc. # 76-1).

7 The agreement provided that defendant would have ten days to cure default, and would
8 be required to cease use on the eleventh day if it did not comply. (Doc. # 76-1). This paragraph
9 also provided that defendant would physically turn over the software and eliminate it from its
10 systems by the fifteenth day of default. (Doc. # 76-1).

11 On or about November 1, 2013, defendant made the initial payment of \$30,000. (Doc. #
12 76-1). On September 11, 2014, plaintiff filed a motion to enforce settlement agreement and
13 reduce to judgment. (Doc. # 71). Plaintiff stated that defendant had failed to make its first
14 installment payment within the requisite one-year period. (Doc. # 71). Accordingly, plaintiff
15 requested that the court reduce the settlement to judgment. (Doc. # 71).

16 Defendant Titan did not file a response. However, defendant Harris filed a notice of
17 letter in response to plaintiff’s motion on behalf of defendant Titan. (Doc. # 74).

18 Judge Hoffman then considered the motion and issued a report and recommendation.
19 (Doc. # 75). He noted that a corporation must appear by licensed counsel, and that failure to
20 comply with this requirement may result in default or dismissal. (Doc. # 75). Because defendant
21 failed to comply with this requirement, Judge Hoffman recommended that plaintiff’s motion be
22 granted. (Doc. # 75). Defendant then filed the instant objection through counsel. (Doc. # 76).

23 **II. Legal Standard**

24 A party may file specific written objections to the findings and recommendations of a
25 United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
26 LR IB 3-2. Where a party timely objects to a magistrate judge’s report and recommendation, the
27 court is required to “make a de novo determination of those portions of the [report and
28 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). The court “may accept,

1 reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”
2 Id.

3 Pursuant to Local Rule IB 3-2(a), a party may object to the report and recommendation of
4 a magistrate judge within fourteen days from the date of service of the findings and
5 recommendations. LR IB 3-2(a). Similarly, Local Rule 7-2 provides that a party must file an
6 opposition to a motion within fourteen days after service of the motion. LR 7-2.

7 **III. Discussion**

8 Defendant entitles its objection as an “opposition to motion to enforce settlement
9 agreement and objections to report and recommendation.” (Doc. # 76). In this filing, defendant
10 states that “Titan is unable to make the installment payment and is therefore turning over the
11 software and eliminating all Bass created and developed software from Titan’s systems pursuant
12 to the terms and conditions of the Agreement.” (Doc. # 76).

13 Plaintiff first argues that his motion should be granted because defendant’s opposition
14 and objections are untimely. (Doc. # 77). Plaintiff also contends that his motion should be
15 granted on the merits due to defendant’s failure to make its installment payment in a timely
16 manner. (Doc. 77).

17 Finally, plaintiff states that all defendants are in breach of the terms of the settlement
18 agreement because they continue to use the software at issue. Plaintiff notes that defendants
19 continue to market their product and that he has not received any notice of code modifications.
20 (Doc. # 77).

21 Defendant argues that “the Agreement does not allow for the entry of judgment for the
22 balance of the installment payments if there is a default or breach in said payments.” (Doc. #
23 76). The court disagrees. The software conditions were included in the agreement as security
24 for Titan’s payment. While paragraph 3 of the agreement requires defendant to cease use and
25 surrender the software in the case of default, it does not discharge defendant’s payment duties
26 pursuant to paragraph 2.

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Despite its untimeliness, defendant filed an opposition through counsel, which Judge Hoffman never had a chance to consider. However, the court concurs with his recommendation to grant the motion for the reasons above. Therefore, plaintiff's motion to enforce settlement and reduce to judgment will be granted.


IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the court DECLINES TO ADOPT the report and recommendation of Magistrate Judge Hoffman, (doc. # 75), because they are now moot.

IT IS FURTHER ORDERED that plaintiff's motion to enforce settlement, (doc. # 71), be, and the same hereby is, GRANTED.

DATED December 16, 2014.


UNITED STATES DISTRICT JUDGE