

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 10-1573 AG (PLAx) Date March 23, 2011

Title CHARLES EDWARD LINCOLN III v. DAYLIGHT CHEMICAL
INFORMATION SYSTEMS, INC., et al.

Present: The Honorable ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [IN CHAMBERS] ORDER ON PENDING REQUESTS FOR
LEAVE TO FILE**

Defendants Orly Taitz, D.D.S., J.D., and Law Offices of Orly Taitz submitted a written request ("First Request") for leave to file a Motion to Dismiss. The First Request is attached to this Order as Exhibit A. The First Request for leave to file is GRANTED but the request to shorten time is DENIED.

Defendants Daylight Chemical Information Systems, Inc., and Yosef Taitz also submitted and filed a written request ("Second Request") for leave to file a Motion to Dismiss. (Dkt. # 79.) The Second Request for leave to file is GRANTED, but the request to shorten time is DENIED.

Initials of
Preparer


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EXHIBIT A

LAW OFFICES
FORD, WALKER, HAGGERTY & BEHAR

LIMITED LIABILITY PARTNERSHIP

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March 23, 2011

VIA EMAIL and MAIL

Honorable Andrew Guilford
United States District Court
Central District of California
Southern Division
411 West Fourth Street
Room 1053
Santa Ana, California 92701

Re: **Lincoln v. Daylight Chemical, et al.**
Our Clients: Orly Taitz, D.D.S., J.D. and Law Office of Orly Taitz
Our File No: 01211 004

Dear Hon. Guilford:

Pursuant to the Order of the Court, defendants Orly Taitz, D.D.S., J.D. and Law Offices of Orly Taitz (collectively hereinafter "Defendants") hereby seek leave of court to file a motion to dismiss this action pursuant to Federal Rules of Civil Procedure ("FRCP") 41(b) and 12(b)(1).

Plaintiff filed his First Amended Complaint on November 5, 2010, in response to which defendants filed a motion to dismiss. (Dkt. # 5.) On February 14, 2011, the Court granted the motion to dismiss in its entirety as to Claims One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven and Thirteen. (Dkt. # 44). The Court also granted the motion to dismiss as to all defendants save Orly Taitz, D.D.S., J.D. with respect to Claim 12. (*Id.*) The Court ordered a Second Amended Complaint to be filed within 30 days of the order (i.e., March 16, 2011). (*Id.*)

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To date, plaintiff has not filed a Second Amended Complaint. FRCP 41(b) authorizes dismissal of an action "if the plaintiff fails to prosecute or to comply with...a court order..." [See *Yourish v. California Amplifier* (9th Cir. 1999) 191 F.3d 983, 986 (dismissal of action for failure to amend the complaint after a Rule 12(b) motion to dismiss was granted with leave to amend).] Here, plaintiff's failure to file a timely Second Amended Complaint warrants dismissal of the action in its entirety as to Law Offices of Orly Taitz ("Law Offices") and a dismissal of all claims against Orly Taitz, D.D.S., J.D. ("Dr. Taitz") except Claim Twelve for Breach of Employment Contract or, in the alternative, Equitable Action in Quantum Meruit.

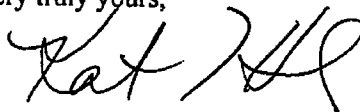
With only one remaining claim against Dr. Taitz, Dr. Taitz will move for dismissal of Claim Twelve pursuant to FRCP 12(b)(1) on the grounds that the court lacks subject matter jurisdiction. Federal courts have original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiff's Twelfth Cause of Action does not arise out of a federal statute. Rather, it arises out of state equitable principles and/or state employment/contractual law. Thus, there is no basis for federal question jurisdiction.

Additionally, if plaintiff seeks to establish subject matter jurisdiction via diversity, which Defendants contest, the amount in controversy does not exceed \$75,000, as required pursuant to 28 U.S.C. § 1332. Specifically, according to the First Amended Complaint, plaintiff seeks compensation for 1200 hours of work at \$40 per hour, along with reimbursement for Lexis-Nexis fees in the amount of \$7,200¹, which totals \$55,200. Plaintiff's failure to meet this threshold amount in controversy warrants dismissal of Claim Twelve and, thus, the entire action, against Dr. Taitz.

Defendants met and conferred with plaintiff regarding dismissal of the action pursuant to Local Rule 7-3 to no avail.

In the interests of judicial economy, Defendants request a shortened time for the hearing on the foregoing motion to dismiss so as to hear the motion on the same date as plaintiff's motion to suspend all deadlines and co-defendants' motion to dismiss presently scheduled on April 18, 2011.

Very truly yours,



KATHERINE M. HARWOOD
For FORD, WALKER, HAGGERTY & BEHAR

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¹ According to the First Amended Complaint, this alleged debt was not incurred by plaintiff, but by another person, Robert J. Ponte.

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CC:

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