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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALAN LEE,

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,  
INC.,

Defendant.

Case No. 15-cv-05235-EMC

**ORDER RE REPORT AND  
RECOMMENDATION; AND  
DEFENDANT'S MOTION TO COMPEL  
ARBITRATION**

Docket Nos. 12, 21

Currently pending before the Court is Judge James's report and recommendation ("R&R") in which she recommends that Plaintiff Alan Lee's complaint be dismissed without prejudice based on a failure to prosecute and to comply with Court deadlines and orders. *See* Docket No. 21 (R&R). Mr. Lee has objected to the R&R. For the reasons discussed below, the Court declines to adopt the R&R; however, the Court also compels the case to arbitration.

On November 23, 2015, Defendant Samsung Electronics America, Inc. filed a motion to compel arbitration. *See* Docket No. 12 (motion). Under the Civil Local Rules, Mr. Lee's opposition to the motion was due on December 7, 2015. Mr. Lee failed to file an opposition by that day, which prompted Judge James to issue an order to show cause ("OSC") as to why the case should not be dismissed for failure to prosecute and failure to comply with Court deadlines. Judge James instructed Mr. Lee to file a response to the OSC by December 17, 2015. *See* Docket No. 20 (OSC). Mr. Lee failed to file a response to the OSC, and therefore Judge James issued her R&R, recommending that the case be dismissed (without prejudice). *See* Docket No. 21 (R&R).

On December 22, 2015, *i.e.*, the day after the R&R was filed, Mr. Lee filed an objection to the R&R, in which he explained why he had failed to file a response to the OSC. *See* Docket No. 24 (objection). The gist of the explanation is that there have been problems with ECF which led to

1 his counsel not receiving e-mail notifications. Mr. Lee, however, failed to provide any  
2 explanation as to why he failed to file an opposition to Samsung's motion to compel arbitration by  
3 December 7, 2015 (especially as that motion was served by e-mail and by mail) – the omission  
4 which resulted in Judge James issuing the OSC in the first place.

5 In light of the above circumstances, the Court rules as follows. The Court shall not dismiss  
6 Mr. Lee's case based on a failure to prosecute. Mr. Lee's current actions show that he has some  
7 level of investment in litigating the case on the merits. The Court also shall not dismiss the case  
8 based on a failure to comply with Court deadlines. Dismissal is a drastic sanction that is not  
9 appropriate at this point in the proceedings.

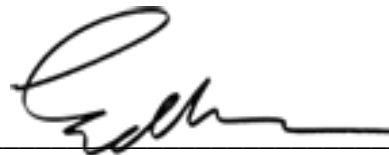
10 That being said, Mr. Lee's actions or rather his failure to act is not without any  
11 consequence. Samsung's motion to compel was filed more than a month ago, and Mr. Lee has yet  
12 to file an opposition to the motion. Mr. Lee has not provided any explanation as to why he has not  
13 filed an opposition. The Court therefore deems Mr. Lee's failure to respond as a concession that  
14 arbitration of his case is proper.

15 Accordingly, the Court **DECLINES** to adopt Judge James's R&R but **GRANTS**  
16 Samsung's motion to compel as unopposed. This case is **STAYED** pending arbitration.

17 This order disposes of Docket Nos. 12 and 21.

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19 **IT IS SO ORDERED.**

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21 Dated: January 5, 2016



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23 EDWARD M. CHEN  
United States District Judge

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