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7 IN THE UNITED STATES DISTRICT COURT FOR THE
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

10
11 AF HOLDINGS LLC,
12 Plaintiff,

v.

13 JOHN DOE

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15 Respondent.
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No. 4:12-cv-02049-PJH

Judge: Hon. Phyllis J. Hamilton

**PLAINTIFF’S ADMINISTRATIVE
MOTION TO STRIKE THIRD-PARTY
RESPONDENT’S RESPONSE TO
MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

18 **INTRODUCTION**

19 Plaintiff AF Holdings LLC (“Plaintiff”) filed a Motion for Leave to File Second Amended
20 Complaint (“Plaintiff’s Motion”) (ECF No. 27.)¹ Having conducted a further investigation, Plaintiff
21 sought to name a defendant as the direct infringer in the instant action through that Second Amended
22 Complaint. After filing Plaintiff’s Motion, the unaffiliated Third-Party Respondent Josh Hatfield
23 (“Respondent”) has filed a Response to Plaintiff’s Motion (“Respondent’s Response”) (ECF No. 30).
24 Plaintiff, by and through its undersigned counsel, now files this Motion to Strike Respondent’s
25 Response.
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¹ Currently, the only “party,” aside from Plaintiff, is a John Doe defendant.

1 As a threshold matter, Respondent does not have standing to respond to Plaintiff's Motion.
2 On September 4, 2012, this Court dismissed Plaintiff's negligence claim against Respondent; as that
3 was Plaintiff's only existing claim against Respondent, Respondent was himself no longer a party to
4 this case. (ECF No. 26.) Tellingly, Respondent does not identify his role in the case anywhere in his
5 Response; Respondent titled his Response "*Josh Hatfield's* Opposition to Plaintiff's Motion to
6 Amend," does not include Respondent's name in the captioning of the case, and does not indicate in
7 any other manner how Respondent may be a party to the case (ECF No. 30 at 1) (Emphasis added.)
8 Respondent's belief that he is entitled to respond to Plaintiff's Motion even though he is not a party
9 to the action is clearly erroneous.

11 ARGUMENT

12 RESPONDENT DOES NOT HAVE STANDING TO RESPOND

13 Plaintiff moves to strike respondent's entire response from the record pursuant to Fed R. Civ.
14 Proc. 12(f) as the response of a non-party is immaterial to the action. Fed R. Civ. Proc. 12 and 15
15 only talk of a "party['s]" right to act in, for instance, respond to filings. Pursuant to Fed R. Civ.
16 Proc. 24, a non-party may be permitted to "intervene" in an action, but such a non-party has to apply
17 for this status and the Court must grant permissible intervention. No such application, request or
18 otherwise is currently before the Court, nor has it ever been. The federal rules say nothing about a
19 permitting a *non-party* to barge into a case to simply insert its opinions without any legal status. On
20 September 4th, 2012, this Court dismissed Plaintiff's negligence claim against Respondent. (ECF No.
21 26.) At that time, the negligence claim was Plaintiff's only alleged cause of action against
22 Respondent (ECF No. 14.) Thus, when this Court dismissed Plaintiff's negligence claim against
23 Respondent, Respondent was no longer a party to the action. Due to Respondent's status as a *non-*
24 *party* to the instant action, he is not entitled to respond to Plaintiff's Motion, and the Court does not
25 have the authority to entertain his arguments – he must first obtain permission to make this Response
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1 as, for instance, an intervener or *amicus curie*. He has not, and according he cannot present his lay
2 opinions to the Court. Respondent's Response should thus be stricken from the record pursuant to
3 Fed. R. Civ. Proc. 12(f).

4 It is inconceivable that just anyone is allowed to insert their opinions into a case and
5 potentially materially affect that matter for the actual parties involved. While we all might have
6 strong opinions on certain hot-button cases that occur in federal court, this curiosity does not mean
7 that we can simply weigh-in on those matters when we please. If we somehow do, we should be
8 ignored. While third-party Respondent was a party at one time, he is no longer. Thus, again,
9 Respondent's Response should thus be stricken from the record pursuant to Fed. R. Civ. Proc. 12(f)
10 because he presently has no standing to make the arguments he makes.

12 **CONCLUSION**

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14 For the reasons contained herein, Plaintiff's Motion to Strike Respondent's Response should
15 be granted.

18 Respectfully Submitted,

19 PRENDA LAW INC.

20 **DATED: October 18, 2012**

21 By: /s/ Brett L. Gibbs

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