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6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

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10 AF HOLDINGS, L.L.C., a St. Kitts and Nevis
limited liability company,

11 Plaintiff,
12 v.

13 DAVID HARRIS,
14 Defendant.

CASE NO.: 2:12-CV-02144-PHX-GMS

**PLAINTIFF'S RESPONSE TO THE
LODGED PROPOSED NON-
PARTIES' REPLY TO
PLAINTIFF'S RESPONSE TO
ORDER TO SHOW CAUSE**

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17 Plaintiff AF Holdings, L.L.C. ("Plaintiff"), through its undersigned counsel, hereby responds
18 to the Lodged Proposed Non-Parties Reply to Plaintiff's Response Order to Show Cause as follows:

19 On June 4, 2013, certain non-parties lodged a response with the Court pending the Court's
20 ruling on their motion for leave to file. (ECF 62.) Subject to its objection to the non-parties'
21 attempts to proceed pseudonymously and interject arguments on behalf of the actual parties, Plaintiff
22 hereby respectfully responds to the substance of the lodged response. The non-parties' lodged
23 response is as instructive for what it *does not* contain as for what it *does* contain. Plaintiff first
24

1 responds to the substance of the non-parties' lodged response and then identifies the uncontested
2 arguments which are dispositive to the issues raised by the Court's order to show cause.

3 **I. THE NON-PARTIES' FIRST ATTACK RELIES ON A FALSE PREMISE**

4 The non-parties' first attack is that "Mr. Steele's purported limited involvement...cannot
5 survive scrutiny in light of these GoDaddy documents establishing that Mr. Steele indeed used Mr.
6 Cooper's identity, and undoubtedly his electronic signature when accepting GoDaddy terms and
7 conditions." (ECF No. 62 at 3.) This premise is simply false. Steele expressly stated that his first
8 attempt to help Cooper was helping him start a business through which Cooper could capitalize on
9 opportunities. (ECF 56 at 6) ("Eventually, Steele and Cooper agreed that Steele would help Cooper
10 form a business entity that would allow Cooper to pursue these opportunities."); (ECF 59-4 at ¶ 8)
11 ("I agreed to help him set up a company for him and help him out in getting started in his
12 business."). The GoDaddy documents corroborate Steele's testimony.

13 Steele's offer to make an introduction to Plaintiff occurred only after it was clear that Cooper
14 was not going to follow through on the ideas that Steele proposed to him. (ECF 56 at 6) ("Cooper
15 ended up not moving forward with the ideas Steele proposed to him, but he continued to express
16 interest in connection with people in the industry to learn more about the business."); (*see also* ECF
17 59-4 at ¶¶ 9-11.) Because the non-parties' first attack on Plaintiff's response relies on a false
18 premise, Plaintiff respectfully submits that the Court should reject it.

19 **II. THE NON-PARTIES' SECOND ATTACK LACKS SUBSTANCE**

20 The non-parties' second attack is that testimony in a different proceeding, "undeniably
21 directly contradicts Steele's declaration." (ECF 62 at 5.) Examples would normally accompany
22 such an emphatic statement, but the non-parties do not provide a single example of how the two
23 testimonies are contradictory. (*See generally id.*) There is nothing contradictory between Steele's
24 affidavit and the non-parties' summary of the testimony in question. The non-parties appear to

1 confuse the concept of *supplementary* facts with the concept of *contradictory* facts. At the
2 deposition referenced by the non-parties, the deponent stated that Steele was Plaintiff's connection to
3 Cooper. *Ingenuity 13 v. John Doe*, No. 12-cv-08333 (C.D. Cal. Mar. 7, 2013), ECF No. 71 at
4 149:10-13. Further, the deponent stated that at the time of the deposition, Steele could not provide
5 Plaintiff with many of the facts regarding Cooper's repudiation due to the lawsuit Cooper filed
6 against Steele. *Ingenuity 13 v. John Doe*, No. 12-cv-08333 (C.D. Cal. Mar. 7, 2013), ECF No. 71 at
7 126:19-127:2. Steele is now able to provide Plaintiff and the Court with more facts regarding
8 Cooper's involvement. Far from contradicting the deposition in question, Steele's testimony
9 supplements the deposition testimony to provide a more complete picture of the background of
10 Cooper's repudiation. For these reasons, Plaintiff respectfully submits that the Court should reject
11 the non-parties' second attack on Plaintiff's response.

12 **III. THE NON-PARTIES' THIRD ATTACK IS MERELY AN ATTEMPT TO IMPUGN**
13 **STEELE'S CHARACTER**

14 The non-parties' third attack on Plaintiff's response does not go to its merits, but instead is
15 merely a character attack on Steele which casts him as retaliatory, vengeful, and threatening. (ECF
16 62 at 5-6.) There are at least two obvious problems with this attack. First, character attacks are not
17 relevant to the issues before the Court. Second, the non-parties' character attacks are completely
18 unsubstantiated. While the non-parties make reference to voicemails purportedly left by Steele, they
19 do not identify actual retaliatory, vengeful, or threatening content in them. (*See generally id.*) Based
20 on Plaintiff's review of the purported voicemails, they appear to contain dialogue that is associated
21 with routine litigation matters. For example, Steele inquires whether Cooper will be represented by
22 counsel in a lawsuit, attempts to arrange a mutually convenient time to schedule discovery motions
23 and notifies Cooper of impending default proceedings. *Ingenuity 13 v. John Doe*, No. 12-cv-08333
24 (C.D. Cal. Mar. 13, 2013), ECF No. 79-1. While Cooper may not enjoy being sued for, *inter alia*,

1 destroying Steele’s guest cabin with a chainsaw, Cooper’s disdain for such litigation does not speak
2 to Steele’s character.

3 **IV. THE NON-PARTIES IMPLIEDLY CONCEDE PLAINTIFF’S CORE ARGUMENTS**

4 Perhaps the most notable aspect of the non-parties’ lodged response is what it impliedly
5 concedes. While the non-parties attempt to undermine Steele’s statements regarding Cooper’s
6 repudiation, the non-parties leave unchallenged Plaintiff’s core arguments regarding the relevance—
7 or lack thereof—of the issues raised by the repudiation. The non-parties, for example, appear to
8 have no rejoinder for Plaintiff’s contention that the assignment is valid irrespective of Cooper’s
9 repudiation because it is: 1) written; and 2) signed by the assignor. (*See generally* ECF No. 62.)
10 Further the non-parties fail to articulate any link between Cooper’s repudiation and the merits of
11 Plaintiff’s claims against Defendant. (*Id.*) Plaintiff continues to believe that it has a viable copyright
12 infringement claim against Harris and that its pleadings state *prima facie* claims arising from
13 Defendant’s infringing activity.

14 **V. THE NON-PARTIES’ EXHIBITS CONSTITUTE INADMISSIBLE EVIDENCE**

15 Plaintiff objects to the introduction of the non-parties’ lodged exhibits into evidence. The
16 exhibits are not authenticated, are irrelevant in that they concern other litigation and contain
17 inadmissible hearsay. There are substantial grounds for concerns regarding the accuracy of the non-
18 parties’ assertions, which are based on these exhibits. For example, the non-parties suggest that
19 Steele formed a Minnesota company—VPR, Inc.—on Cooper’s behalf. Yet, a basic search of the
20 Minnesota Secretary of State’s business records reveals that “VPR” was registered as an assumed
21 name on March 14, 2003 by a Jonathon Vincent Martin. No other companies by the name “VPR”
22 appear in search results. Basic errors like this should undermine confidence in the non-parties’
23 assertions and the exhibits underlying them.

24

1 **CONCLUSION**

2 For the reasons set forth above, the Court should reject the arguments raised by the non-
3 parties.

4 Dated this 6th day of June, 2013

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13 I hereby certify that on June 6, 2013, I electronically filed the foregoing with the Clerk of the
14 Court for filing and uploading to the CM-ECF system which will send notifications of such filing to
15 all parties of record.

16 **A COPY** of the foregoing was mailed (or
17 served via electronic notification if indicated by
18 an “*”) on June 6, 2013, to:

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