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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11	AF Holdings, LLC)	Case 2:12-cv-02144-GMS
12)	The Honorable G. Murray Snow
13	Plaintiff,)	
14	vs.)	Defendant’s Reply to Plaintiff’s
15)	Response to Defendant’s Motion to
16	David Harris)	Dismiss and Defendant’s Response to
17)	Plaintiff’s Cross-motion to
18	Defendant.)	Dismiss Defendant’s
19)	Counterclaims for Failure
20)	To Prosecute

21 **DISCUSSION**

22 **I. Plaintiff Does Not Oppose Defendant’s Request to Dismiss Plaintiff’s Claims**

23 Under this heading Plaintiff presents the premise: “The Court’s Order regarding
24 statutory damages (ECF No. 92) has changed Plaintiff’s stance on further litigating this
25 action”(Resp., 2 at 6). Concluding it is the Court’s Order causing Plaintiff’s claims to be
26 dismissed, not Defendant’s legal argument. That conclusion is beyond the reach of
27 stretching the imagination as the Court’s Order states: “The copyright owner who brings a
28 suit “may elect, at any time before final judgment is rendered, to recover, instead of actual
damages and profits, an award of statutory damages. . . .” (ECF doc 92, 3 at 19).

THEREFORE: Defendant will stipulate Plaintiff not opposing Defendant’s Motion to
dismiss.

Any reasonable thinking person can see that the logical thing and the thing that
would be in the best interest of his client, that is if the aforementioned statement by the

1 Plaintiff's counsel in his response is true, then the Plaintiff's counsel should elect
2 statutory damages instead of actual damages. It is not up to the Court to make that
3 decision for the Plaintiff and the Judge makes that perfectly clear in his order.

4 Plaintiff attempted to keep another secret from this Court, the fact that he had
5 already been awarded statutory damages in this case, however after being caught he
6 elected to seek actual damages from the Defendant, in order to keep his extortion racket
7 from being fully exposed. The fact is Plaintiff has no actual damages, he can't have, as
8 he is not the copyright holder at the time of the alleged infringement, wherefore any and
9 all claims for infringement is pure speculation.

10 Plaintiff has not presented one shred of evidence that Defendant's argument does
11 not stand on solid legal ground. His next paragraph clearly points out the fact that
12 Plaintiff will say anything, regardless of substance: Plaintiff states:

13 For the record, Plaintiff disputes the ground on which Defendant
14 seeks dismissal, namely, the notion that 28 U.S.C. § 1404(1) is a
15 bar to the dismissal and refiling of a case in a different district
16 than where the original action arose. Nothing in the venue statutes
17 suggests that Defendant's legal arguments have any merit. Nor do
18 any of the cases Defendant cites in his memorandum (Resp. 2 at 10).

19 And his footnote:

20 Defendant's citation to 28 U.S.C. § 1404 is inapposite. The venue
21 statute applicable to copyright actions is 28 U.S.C. § 1400(a). E.g.,
22 Goldberg v. Cameron, 482 F. Supp. 2d 1136, 1143 (N.D. Cal. 2007)
23 (Resp. Footnote pg. 2).

24 This is an outrage! Defendant does not seek dismissal on the notion that 28 USC §1404
25 is a bar to the dismissal as stated in Plaintiffs brief. The grounds for Dismissal as clearly
26 stated in Defendant's Motion is Plaintiff's circumventing the statute, not the statute in and
27 of itself. Plaintiff's footnote is laughable insofar as he alleges the statute that Defendant
28 cited is not applicable, and cites another as appropriate. The thing is one does not cancel
out the other they are both appropriate and applicable in this situation and the Plaintiff is
bound by both, **funny** he is in violation of the one he cited as well. This case was not
brought in a district where the Defendant resides, it was brought in the DC District and
was transferred to this district without the consent or knowledge of the District Judge
presiding over the case namely Judge Reggie B. Walton.

1 **II. Plaintiff Opposes Defendant's Request to Amend his Counterclaims**

2 Defendant agrees.

3 **III. The Court Should Dismiss Defendant's Counterclaims for Failure to Prosecute**

4 Upon further research Defendant has discovered that his Counter-Claims should
5 indeed be dismissed, but not for failure to prosecute. There is no failure to prosecute as
6 the Counter-Claims will not accrue until the closing of the case. Therefore Defendant has
7 failed to State a Claim upon which relief can be granted, for the simple reason his
8 Counter-Claims are unripe and should be dismissed. This is well established within the
9 Federal Court System.

10 **ALSO**

11 This statement by the Plaintiff is beyond uncivil and offensive to the Defendant, I believe
12 it is also a violation of Plaintiff's counsel' Oath of Admission required by the Arizona
13 State Bar. Mr. Goodhue stated: "Defendant already admitted to destroying the computer
14 he owned when he was caught infringing on Plaintiff's works" (Resp., 4 at 4).

15 The burden of proof lies on the accuser, this statement is a blatant lie! I did not destroy
16 my computer, let alone admit it, and I was not caught infringing on Plaintiff's works,
17 Plaintiff has not and can not prove the veracity of that statement because:

18 **I DID NOT DOWNLOAD HIS SMUT.** That statement made by the Plaintiff is libelous
19 defamation. Plaintiff has not been shy about asking this court to sanction Defendant, if
20 the aforementioned statement by the Plaintiff is true, then Defendant is not protected by
21 FRCP 37(e) and should be sanctioned, if not, then Plaintiff should be sanctioned or
22 perhaps even cited for perjury.

23

24 **PRAYER FOR RELIEF**

25 **THEREFORE:** For the aforementioned reasons, Defendant prays that this
26 Honorable Court dismiss Plaintiff's claims against Defendant for copyright infringement
27 for the reasons set out in Defendant's Motion.

28 **AND:** Dismiss without prejudice, Defendant's Counter-Claims for Failure to

1 State a Claim for which relief can be granted on the grounds that Defendant's Counter-
2 Claims are unripe.

3

4 I swear or affirm and declare or certify, verify or state under penalty of perjury that the
5 foregoing is true and correct so help me God.

6 Executed this 9th Day of September, 2013

7 By: /s/ David Harris

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 9th Day of September, 2013, a copy of the foregoing
15 was filed electronically and served upon the following by operation of the Court's
16 electronic filing system.

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29 By: /s/ David Harris

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