

1 Steven James Goodhue (#029288)  
Law Offices of Steven James Goodhue  
2 9375 East Shea Blvd., Suite 100  
Scottsdale, AZ 85260  
3 Telephone: (480) 214-9500  
Facsimile: (480) 214-9501  
4 E-Mail: [sjg@sjgoodlaw.com](mailto:sjg@sjgoodlaw.com)

5 *Attorney for Plaintiff*  
*AF Holdings, L.L.C.*

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

9  
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 MOTION FOR LEAVE  
TO FILE A MOTION TO STRIKE, OR  
IN THE ALTERNATIVE, A SUR-  
REPLY TO THE NON-PARTIES'  
REPLY IN SUPPORT OF THEIR  
MOTION FOR ATTORNEYS' FEES**

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16  
17 Plaintiff AF Holdings, L.L.C. ("Plaintiff"), through its undersigned counsel, hereby submits  
18 its Motion for Leave to File a Motion to Strike or, in the Alternative, a Sur Reply to the Non-Parties  
19 Reply in Support of their Motion for Attorney's Fees, and as grounds therefore, states as follows:

20 Plaintiff acknowledges that the use of motions to strike and sur-replies are generally  
21 disfavored, but submits that the instant circumstances warrant one or both of these motions.

22 On August 2, 2013, a Motion for Attorneys' Fees was filed by John Doe. (ECF No. 88.)  
23 Plaintiff submitted its opposition on August 16, 2013. (ECF No. 89.) In its Opposition, Plaintiff  
24 noted that the record was "uncontroverted" with respect to Plaintiff's ownership. (*Id.*) On August 25,

1 2013, Movant submitted his reply. (ECF No. 93.) Along with his reply, Movant raised new  
2 arguments, pointed to new evidence and even submitted new requests for relief in the form of an  
3 evidentiary hearing. Movant's efforts blatantly contravene the Local Rules, well settled Ninth Circuit  
4 precedent and deprive Plaintiff of a meaningful opportunity to respond. *See* Local Rules Civ. 7.2  
5 (“the moving party shall serve and file with the motion’s papers a memorandum setting forth the  
6 points and authorities relied upon in support of the motion”); *Provenz v. Miller*, 102 F.3d 1478, 1483  
7 (9th Cir. 1996) (*quoting Black v. TIC Inv. Corp.*, 900 F.2d 112, 116 (7th Cir. 1990) (“where new  
8 evidence is presented in a reply to a motion ... district courts should not consider the new evidence  
9 without giving the non-movant an opportunity to respond.”)); *DocuSign, Inc. v. Sertifi, Inc.*, 2006  
10 WL 3000134, \*2 (W.D. Wash. 2006) (*citing United States v. Patterson*, 230 F.3d 1168, 1172 n.3  
11 (9th Cir. 2000) (“It is well established that new arguments and evidence presented for the first time  
in Reply are waived.”)).

12 Further, Movant has substantially mischaracterized the newly proffered excerpts of record  
13 from other proceedings, the law regarding his new arguments and entirely failed to address whether  
14 he is entitled to seek the new forms of relief he seeks. “To permit [Movant] to supplement the record  
15 further at this stage of the proceedings in order to correct deficiencies in the original showing would  
16 simply prejudice [Plaintiff] further and reward [Movant’s] questionable litigation strategy.” *Glow*  
17 *Indus., Inc. v. Lopez*, 252 F. Supp. 2d 962, 1005 n.150 (C.D. Cal. 2002).

18 For these reasons, Plaintiff respectfully requests leave to file a Motion to Strike or, in the  
19 Alternative, a Sur-Reply to Movant’s Reply in Support of its Motion for Attorneys’ Fees, in order to  
20 object to the new evidence submitted by Movant, to address the new arguments raised by Movant, to  
21 oppose the newly requested forms of relief and/or to clarify what Plaintiff contends are grossly  
22 misleading and incorrect statements of law and fact.

23 Contemporaneously herewith, Plaintiff has lodged its proposed Motion to Strike, or in the  
24 Alternative, Sur-Reply to the Non-Parties’ Reply in Support of their Motion for Attorneys’ Fees.

1  
2 Dated this 16<sup>th</sup> day of September, 2013

3  
4 Law Offices of Steven James Goodhue

5  
6 By: /s/ Steven James Goodhue

7 Steven James Goodhue (#029288)

8 9375 East Shea Blvd., Suite 100

9 Scottsdale, AZ 85260

10 *Attorney for Plaintiff*

11 *AF Holdings, L.L.C.*

12 I hereby certify that on September 16, 2013, I electronically filed the foregoing with the  
13 Clerk of the Court for filing and uploading to the CM-ECF system which will send notifications of  
14 such filing to all parties of record.

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

18 Honorable G. Murray Snow \*([snow\\_chambers@azd.uscourts.gov](mailto:snow_chambers@azd.uscourts.gov))

19 U.S. District Court

20 Sandra Day O’Connor Courthouse Suite 324

21 401 West Washington Street, SPC 82

22 Phoenix, Arizona 85003-7550

23 David Harris\* ([troll.assassins@cyber-wizards.com](mailto:troll.assassins@cyber-wizards.com))

24 4632 East Caballero Street, #1

Mesa Arizona 85205

Paul Ticen, Esq.\* ([paul@kellywarnerlaw.com](mailto:paul@kellywarnerlaw.com))

Kelly/Warner, PLLC

404 S. Mill Ave, Suite C-201

Tempe, Arizona 85281

/s/ Steven James Goodhue