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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

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

15 Plaintiff,

16 v.

17 DAVID HARRIS,

18 Defendant.

Case No.: 2:12-cv-02144-PHX – GMS

**NON-PARTIES' RESPONSE TO  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE MOTION TO  
STRIKE, ALTERNATIVELY, TO  
FILE SUR-REPLY TO NON-  
PARTIES' REPLY IN SUPPORT OF  
THEIR MOTION FOR  
ATTORNEYS' FEES**

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19  
20 Non-parties, who are identified by IP Address Nos. 72.223.91.187,  
21 68.230.120.162, 68.106.45.9, 68.2.87.48, 98.165.107.179 and 68.2.92.187 and targeted  
22 through a subpoena duces tecum issued in connection with this matter, respond to  
23 Plaintiff's Motion for Leave to File a Motion to Strike, or alternatively, File a Sur-Reply  
24 to the Non-Parties' Reply in support of their Motion for Attorneys' Fees. In short,  
25 Plaintiff's position that the non-parties have raised new evidence, arguments and  
26 requests for relief is without merit and offers nothing more than conclusory labels.

27 Plaintiff's example that the non-parties introduce new evidence, namely, an e-  
28 mail from John Steele's lawyer admitting that John Steele has an interest in Prenda  
Law's larger clients, is without merit. By taking this position, Plaintiff essentially claims

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1 that the Non-Parties' Reply brief interjects new evidence into this case for the first time.  
2 However, the Non-Parties countered Plaintiff's argument (set forth in Doc 89) that the  
3 Non-Parties "sole basis" establishing John Steele's ownership in Plaintiff is Judge  
4 Wright's by pointing to exhibits previously on the record (without Plaintiff previously  
5 objecting or moving to strike<sup>1</sup>) in this case. See Doc 89 at 8:1-3; See Doc 93 at 53:13-  
6 17 citing Docs 63, 63-2 and 63-3. Plaintiff's labeling this as new evidence doesn't make  
7 it new evidence.

8 Likewise, Plaintiff's contention that the non-parties make "new argument" with  
9 respect to "demand letters" is conclusory without any substance explaining its "new  
10 argument" label. The Non-Parties moved for attorneys' fees because Plaintiff's subpoena  
11 was issued in bad faith. The Non-Parties argument merely countered Plaintiff's absurd  
12 position that the Non-Parties and others identified in the subpoena at issue were part of  
13 Mr. Harris' swarm in June 2011. Again, Plaintiff's label of "new argument" doesn't  
14 make it a new argument.

15 And last Plaintiff's moved for the attorneys' fees by requesting the Court enter a  
16 joint and several award against John Steele, Paul Hansmeier and Paul Duffy personally.  
17 See Doc 88 at 9:6-10:16. This cannot be disputed. The requested relief is the finding  
18 that these three individuals should be held joint and severally liable to pay for the Non-  
19 Parties' attorneys' fees, not an evidentiary hearing. Any mention of an evidentiary  
20 hearing defers to the Court if it is not satisfied with the existing evidence on the record  
21 in this case and other proceedings for a finding of the requested relief. Plaintiff's  
22 argument would have merit if the Non-Parties requested that the attorneys' fees award be  
23 entered personally against Steele, Hansmeier and Duffy for the first time in the Reply  
24 brief. But that's clearly not the case.

25  
26 Plaintiff acknowledges that motions to strike and sur-replies are rarely granted,  
27 but yet fails to offer a sound basis why it should be granted this relief. "[A] sur-reply is  
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<sup>1</sup> see LRCiv 7.2(m)(2).

1 appropriate when a party raises new issues or new evidence in a reply brief ... however  
2 [they] are generally discouraged as they usually are a strategic effort by the nonmoving  
3 party to have the last word on a matter. *ML Liquidating Trust v. Mayer Hoffman*  
4 *McCann P.C.*, 2011 WL 10451619 \* 1 (D. Ariz. 2011), citing *Provenz v. Miller*, 102  
5 F.3d 1478, 1483 (9th Cir. 1996).

6 , Therefore, the Non-Parties respectfully request that the Court deny Plaintiff's  
7 Motion for Leave in its entirety.  
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10 RESPECTFULLY submitted this 3rd day of October, 2013.

11 **KELLY / WARNER, PLLC**

12  
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**CERTIFICATE OF FILING AND SERVICE**

Pursuant to the Case Management/Electronic Case Filing Administrative Policies and Procedures Manual (“CM/ECF Manual”) of the United States District Court for the District of Arizona, I hereby certify that on October 3, 2013, I electronically filed:

**NON-PARTIES' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION TO STRIKE, ALTERNATIVELY, TO FILE SUR-REPLY TO NON-PARTIES' REPLY IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES**

with the U.S. District Court clerk’s office using the ECF system, which will send notification of such filing to the assigned Judge and to the following counsel of record:

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