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8  
9 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

10 ELF-MAN, LLC,

11 Plaintiff,

12 vs.

13 RYAN LAMBERSON,

14 Defendant.

No. 2:13-CV-00395-TOR

DEFENDANT LAMBERSON'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE

**Without Oral Argument**

Date: 1/16/15

Time: 6:30 p.m.

15  
16 Defendant Ryan Lamberson submits this Opposition to plaintiff's Motion to  
17 Strike, ECF No. 105. This Opposition is supported by the Declaration of his counsel,  
18 J. Christopher Lynch and its exhibits.  
19  
20

1 The challenged Declaration ECF No. 104 and its exhibits are proper “reply”  
2 submitted directly in response to plaintiff’s multi-section opposition. Neither law nor  
3 equity support plaintiff’s Motion to Strike and it should be denied.

4 This Court has addressed Fed. R. Civ. P. 12(f) in footnote 1 of *United*  
5 *Brotherhood of Carpenters v. Building and Construction Trades Dept.*, 911 F.  
6 Supp.2d 1118 (2012): “the purpose of a Rule 12(f) motion is to avoid the costs that  
7 arise from litigating spurious issues by dispensing with those issues prior to trial,”  
8 citing *Sidney-Vinstein v. AH Robins*, 697 F.2d 880, 885 (9th Cir. 1983). “Immaterial  
9 matter is defined as matter that ‘has no essential or important relationship to the claim  
10 for relief or the defenses being pleaded.’”

11 The matters of ECF No. 104 are not immaterial: the testimony has an important  
12 relationship to explaining the issue at hand – the scope of work undertaken in Mr.  
13 Lamberson’s defense. The matters are also not immaterial because they go to  
14 plaintiff’s unclean hands. For the same reasons, the matters are not impertinent or  
15 spurious. Consequently, the matters are not scandalous because they are not  
16 impertinent or spurious. Elf-Man LLC’s use of Declarations of a fictitious person  
17 might be scandalous, but they are directly material as to plaintiff’s unclean hands,  
18 and, thus, should not be removed from the record under Fed. R. Civ. P. 12(f).

1 The matters to which Mr. Lamberson's counsel has attested are admissible as  
2 his direct observations, personal knowledge, and state of mind.

3 Each of the challenged Declaration paragraphs was submitted in direct reply to  
4 a section of plaintiff's opposition. Mr. Lamberson's Reply Memorandum, ECF No.  
5 103, is organized directly from plaintiff's opposition, ECF No. 102. Each of the  
6 challenged Declaration paragraphs supports an identified point of argument of the  
7 Reply Memorandum. In this way, each of plaintiff's opposition points has  
8 corresponding reply. This Memorandum is similarly organized.

9 Plaintiff's paragraph-by-paragraph challenges of ECF No. 104 are not  
10 persuasive.

11 Paragraph 4 is proper because it clarifies by way of reply the tracking and  
12 billing of time that plaintiff challenged in its opposition. Lynch Dec. at ¶4.

13 Paragraph 5 is proper because it clarifies by way of reply the decisions on the  
14 rate charged and time written down that plaintiff challenged in its opposition. Lynch  
15 Dec. at ¶5.

16 Paragraph 6 is proper because it clarifies the Lee & Hayes invoice numbers of  
17 the bills sent that plaintiff challenged in its opposition. Lynch Dec at ¶6.

1 Paragraph 7 is proper because it clarifies by way of reply the process of  
2 submission of the timesheets for which recovery is sought that plaintiff challenged in  
3 its opposition. Lynch Dec. at ¶7.

4 Paragraph 8 is proper because it clarifies by way of reply the basis for the  
5 Counterclaims that plaintiff challenged in its opposition. Lynch Dec. at ¶8.

6 Paragraph 9 is proper because it clarifies by way of reply the basis for the  
7 sanctions motions that plaintiff challenged in its opposition. Lynch Dec. at ¶9.

8 Paragraph 10 is proper because it clarifies by way of reply the fact of plaintiff's  
9 use of a fictitious declarant that plaintiff challenged as irrelevant in its opposition.  
10 Lynch Dec. at ¶10.

11 Paragraph 11 is proper because it clarifies by way of reply the basis for the  
12 work with other counsel that plaintiff challenged in its opposition. Lynch Dec. at ¶11.

13 Paragraphs 12 and 13 are proper because they clarify by way of reply the basis  
14 for the work reviewing the default Declarations that plaintiff challenged in its  
15 opposition. Lynch Dec. at ¶¶12-13.

16 Paragraph 14 is proper because it clarifies by way of reply the apparent failure  
17 of plaintiff's counsel to inform Elf-Man LLC of Mr. Lamberson's offers to settle the  
18 case as the rules require. Lynch Dec. at ¶14.

1 Paragraph 15 is proper because it clarifies by way of reply the obfuscation of  
2 its investigation that the plaintiff challenged in its opposition. Lynch Dec. at ¶15.

3 Paragraph 16 is proper because it clarifies by way of reply the basis for the  
4 Vision Films subpoenas that plaintiff challenged in its opposition. Lynch Dec. at ¶16.

5 Paragraph 17 is proper because it clarifies by way of reply the basis for the time  
6 spent on the 30(b)(6) deposition that plaintiff challenged in its opposition. Lynch Dec.  
7 at ¶17.

8 Paragraph 18 is proper because it clarifies by way of reply the facts as to the  
9 Certificate of Service that plaintiff challenged in its opposition. Lynch Dec. at ¶18.

10 Paragraph 19 is proper because it clarifies by way of reply the context for the  
11 severance that plaintiff challenged in its opposition. Lynch Dec. at ¶19.

12 Paragraph 20 is proper because it clarifies by way of reply the basis for the  
13 work about deposing foreigners that plaintiff challenged in its opposition. Lynch Dec.  
14 at ¶20.

15 Paragraph 21 is proper because it clarifies by way of reply the basis for the bad  
16 faith negotiation that plaintiff demonstrated in its opposition. Lynch Dec. at ¶21.

17 Paragraph 22 is proper because it clarifies by way of reply the basis for briefing  
18 after plaintiff's Motion to Dismiss its own case that plaintiff challenged in its  
19 opposition. Lynch Dec. at ¶22.

1 Paragraph 23 is proper because it clarifies by way of reply the timing of the  
2 Motion to Compel that plaintiff challenged in its opposition. Lynch Dec. at ¶23.

3 Paragraph 24 is proper because it clarifies by way of reply the reason for the  
4 Motion to Strike that plaintiff challenged in its opposition. Lynch Dec. at ¶24.

5 Paragraph 25 is proper because it clarifies by way of reply the requested rates  
6 that plaintiff challenged in its opposition. Lynch Dec. at ¶25.

7 Paragraphs 26 and 27 are proper because they clarify by way of reply the  
8 request for immediate payment that must accompany any sizeable award that plaintiff  
9 challenged in its opposition. Lynch Dec. at ¶¶26-27.

10 ECF No. 104, Exhibit A is proper because it supports the reply about the use  
11 of a fictitious witness that plaintiff challenged in its opposition.

12 ECF No. 104, Exhibits B, C, and D are proper because even if technical  
13 hearsay, they are subject to exceptions. FRE 807 makes the news articles admissible.  
14 The articles cite events of an official proceeding on the record which creates requisite  
15 circumstantial guarantees of trustworthiness. Since the filing of ECF No. 104, Mr.  
16 Lamberson's counsel has secured a true and correct copy of the Order that Mr. Macek  
17 be made available in Australia for cross examination based on the order of Judge  
18 Perram. Lynch Dec. at Exhibit C.

1 ECF No. 104 Exhibit E is sworn testimony that proves that plaintiff's joinder  
2 claims are impossible. This sworn testimony was filed in a case where Daniel Macek  
3 was the witness and where an identical joinder claim was made as in this case. The  
4 percentage chance that plaintiff's joinder claim in this case is true is zero.

5 Plaintiff again shows its approach to litigation with this Motion to Strike. The  
6 motion again delays Mr. Lamberson's right to be made whole. Plaintiff does not like  
7 its reflection in the mirror – this is its third tedious paragraph-by-paragraph Fed. R.  
8 Civ. P. 12(f) Motion to Strike. Each Motion to Strike has been a hypocritical and  
9 transparent attempt to delay justice and purge truth from the record.

10 Mr. Lamberson did not submit any time for the preparation of its Reply  
11 Memorandum and corresponding Declaration, ECF Nos. 103 and 104. But, Mr.  
12 Lamberson does request attorneys' fees in preparation of this opposition and  
13 declaration. An additional six hours for Mr. Lynch and one hour for Mr. Smith are  
14 requested for review of the motion, related legal research, record checking, exhibit  
15 selection, and preparation of these pleadings. Lynch Dec. at ¶31.

16 Mr. Lamberson respectfully requests (i) that plaintiff's Motion to Strike be  
17 denied; (ii) that Mr. Lamberson be awarded total attorneys' fees for 450.2 hours of  
18 Mr. Lynch's work at \$400 per hour, for 87.0 hours of Mr. Smith's work at \$300 per  
19 hour, and 46.8 hours for Mr. Barney at \$250 per hour; (iii) that the requested costs of  
20

1 \$1515.19 be awarded, (iv) that the award be doubled under equity; and (v) that  
2 plaintiff be ordered to pay the award immediately or to post a plaintiff's bond under  
3 RCW 4.84.210.

4 DATED this 19 day of December, 2014.

5 LEE & HAYES, PLLC

6  
7 By: s/ J. Christopher Lynch

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18  
19 *Counsel for Defendant Ryan Lamberson*  
20



**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of December, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David A. Lowe                      [lowe@lowegrahamjones.com](mailto:lowe@lowegrahamjones.com)

Collette C. Leland                [ccl@winstoncashatt.com](mailto:ccl@winstoncashatt.com)

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