

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|------------------------------------|---|---------------------------|
| UNITED STATES OF AMERICA |) | |
| and |) | 07cv00681-BB |
| ZUNI INDIAN TRIBE |) | |
| Plaintiffs, |) | ZUNI RIVER BASIN |
| |) | ADJUDICATION |
| -v- |) | |
| |) | |
| STATE OF NEW MEXICO, ex rel. State |) | Subproceeding 1 |
| ENGINEER, et al. |) | Zuni Indian Claims |
| Defendants |) | |
| _____ |) | |

UNITED STATES' MOTION TO STRIKE ANSWER FILED BY NON-PARTIES

The Plaintiff United States of America (“United States”), by its undersigned attorney, hereby moves the Court, pursuant to the Court’s inherent authority and Fed.R.Civ.P. 12(f), to strike the pleading entitled *Various Defendants Answer to the United States’ Subproceeding Complaint and Statement of Claims for Water Rights on Behalf of, and for the Benefit of, the Zuni Indian Tribe and Zuni Allottees and Answer to Zuni Indian Tribe’s Supplemental Subproceeding Complaint*, filed February 1, 2008 (Doc. No. 185) (“Various Non-Parties’ Answer”) for the reason that said pleading (1) is untimely, and (2) was filed on behalf of numerous individuals and entities who are not parties to this Subproceeding. In support of this motion, the United States asserts:

1. Section 3.4 of the Special Master’s January 3, 2008 *Initial Scheduling and Planning Order* (Doc. No. 151) required that all Answers “opposing any of the claims stated by the U.S. Subproceeding Complaint or the Zuni Supplemental Complaint” be filed on or before January 31, 2008. The Various Non-Parties’ Answer

was filed after that deadline without leave of Court.¹ The undersigned Counsel for the United States did, at 4:51 p.m. on January 31, 2008, receive an email from a paralegal with Law & Resource Planning Associates, P.C. (“LRPA”), the firm that subsequently filed the Various Non-Parties’ Answer. That email transmitted a PDF copy of the Various Non-Parties’ Answer and asserted that the paralegal had been unable to access the CM/ECF filing system for 40 minutes. The United States had no difficulty accessing and filing with the CM/ECF system less than 15 minutes prior to receipt of this email, but concedes that technical difficulties do occur from time to time. In such exceptional circumstances, however, paragraph 1(a)(2)(A) of the CM/ECF Administrative Procedures Manual (as revised September 20, 2007) provides that “an attorney may petition the Court for permission to file documents in paper format.” Alternatively, LRPA could, when able to access the CM/ECF system, have filed a motion for leave to file past the January 31, 2008 deadline, supported by whatever allegations of extenuating circumstances were appropriate. LRPA did neither. Accordingly, the Various Non-Parties’ Answer was improperly filed and should be stricken.

2. Section 3.1 of the *Initial Scheduling and Planning Order* provides that “only those parties listed in Section 2.2 of this Order, or in a subsequent order of the Court granting a motion to intervene in Subproceeding 1 consistent with Fed.R.Civ.P. 24, shall be entitled to participate in . . . Subproceeding 1.”² The Various Non-Parties’ Answer asserts that it was filed on behalf of the following named persons or entities who

¹ The document also includes a certificate of service which erroneously asserts that it was filed, and consequently served electronically, on January 31, 2008.

² LRPA did not object to this provision when the *Initial Scheduling and Planning Order* was made available in draft form on December 7, 2007 for review by all parties. (Doc. No. 138)

are not listed in Section 2.2 of the *Initial Scheduling and Planning Order* and who have not been granted leave to intervene in Subproceeding 1:

| | |
|---------------------------------------|--|
| Charlie H. Allen | Gallup Lumber and Supply Co. |
| Gerald J. Allen | Russ A. Garnaat |
| Marvin J. Allen | Kathleen Louise Bogart Gibson |
| J. Parley Ansley | Beverly Gonzales |
| Diane S. Baretinicich Rev. Trust | Becky Grizzle |
| Carol A. Bell | Henry R. (Hank) Grizzle |
| Jack E. Bell | Brent Harelson |
| Media A. Bell | Karalee Harris |
| Dana Binnion | Gale C. Hawke |
| Carol Bittner | Frances L. or James M. Herman |
| Ross Boehm | Hoffman Living Trust Dated 9-25-02 by |
| Simmie Boehm | DeAnn Hoffman & Karl A. Hoffman |
| H. Darrell Bogart | Natalou Hyder, Trustee of Leslie Hyder |
| John Bogart | Trust |
| Patricia D. Bogart | Wallace H. Jackson Jr. |
| Charles Elwin Bond | M. Bruce Lambson |
| Ellen Louise Bond | Diane Richins |
| Marius Laverl Bond | Kathleen Dolly |
| Mary S. Bond | Linda Faye Lehman |
| Maureen Bond | Alan & Elizabeth Lewis |
| Martha A. Briggs | Cindy Lewis |
| Wendell M. Briggs, | James Rankin Lewis, Sr. |
| Wendell M. and Martha A. Briggs Trust | James R. Lewis, Jr., |
| Theodore M. Broderick | Jamie Lewis |
| Myrna R. Lambson Burgess | Cindy Lewis |
| Ginger Carlock | Gilber Leyba |
| Kenneth R. Carlock | De Ann Leyba |
| Clint Edward Carlson | Edward L. Link |
| Larry W. Carver | Jane C. Martin |
| Sally L. Carver | Janell Renee Martin |
| Larry W. & Sally L. Carver Trust | Lawrence Smith Martin |
| Kyle Casford | Anthony Charles Matkovich |
| R. Grant Clawson | Penny Carlene Matkovich |
| Clawson Farm & Ranch LLC | George McBeath |
| Jerry D. Cosper | Mary Ann McBeath |
| Steve Daniels | Robert D. McClanahan |
| Kitty Glanz | Fay B. Merrill |
| Frederick E. Dickey | Robert E. Merrill |
| Carol A. Dickey | MORC Limited Partnership |
| Veronica L. Feagin | Joe Milosevich |
| Afton Ruth Fisher | John E. Murphy |
| Gregory C. Frank | Sharon Murphy |

John E. & Sharon L. Murphy Revocable
Trust
Bonnie I. Myers
Martin I. Myers
Kay Navarre Latham, Personal
Representative [sic]
Colin E. O'Neill
Johanne O'Neill
Linda Vanderwagon Ortega
Irwin Pablo
Patricia Pablo
Karen Pettit, Trustee
Steven Pettit, Trustee
Leo Chester and Bessie Ruth Pollak
Sleet Raney
Julia Raney
Joseph William Schepps
Theodore B. Schnaidt
Janet Fay Scott
Jana Lee Scott
Leslie S. Reese
Louis H. Scott
Raquel Phillips-Scott,
W.A. Scott
John L Selesky
Beatrice G. Selesky

Donald E. Sharp
Larry O. Smith, Jr.
Rosemary Smith
Sandra Turley Spencer
George L. Strauss
Martha Jean Strauss
JoAnn Strickland
JoAnn Strickland Trust
David W. Swindle
Linda J. Swindle
Franklin Dennis Turley
Patsy Ruth Turley
Sandra Dee Turley
Richard K. White
Raymond A. Wiggins,
J.E. Wilcox
Winnie Mae Wilcox
J.E. and Minnie Mae Wilcox Trust
Tony Williams
Michelle Winfield
Robert Winfield
Tom Wolf, Jr.
Debra Ingram
Western New Mexico Water
Preservation Association

3. Because the persons or entities listed in Paragraph 2 of this motion are not parties to Subproceeding 1,³ the Various Non-Parties' Answer must be stricken. It is clear that the Court can take such action pursuant to its inherent authority to manage its docket. See, Vibe Technologies, LLC v. Suddath, slip op. at 5, 2006 WL 3404811 (D.Colo. 2006) ("As he is not a party to this lawsuit, nor has he properly intervened, Mr. Hansen may not file pleadings or other matters with the Court on behalf of himself or others in this case.");⁴ Maine Yankee Atomic Power Co. v. Bonsey, 107 F.Supp. 2d 47, 57 (D.Me. 2000) ("Although its answer, counterclaims, and motion to dismiss have not

³ In addition, the United States cannot find that LRPA has entered an appearance on behalf of some of the listed persons or entities.

⁴ A copy of this slip opinion is attached to this motion.

been objected to, the court necessarily strikes those pleadings *sua sponte*, as Friends of the Coast is not a party to this suit.”). Allowing the Various Non-Parties’ Answer to remain of record would create great confusion on the docket and effectively allow the persons and entities listed above to perform an end-run around the requirements of this Court’s orders and the Federal Rules of Civil Procedure. In addition, Fed.R.Civ.P. 12(f) provides that a Court may, upon motion or *sua sponte*, “strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Here, the listing of non-party names on the subject answer is, at the very least, immaterial and impertinent.

4. On February 1, 2008, the United States provided a draft of the present motion to the LRPA counsel who filed the Various Non-Parties Answer, who indicated, on February 4, 2008, an intention to oppose the motion.

WHEREFORE the United States respectfully moves the Court to order that the Various Non-Parties’ Answer (Doc. No. 185) be stricken from the record in this Subproceeding.

DATED: February 4, 2008

Electronically Filed

/s/Bradley S. Bridgewater

BRADLEY S. BRIDGEWATER
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294
(303) 844-1359

COUNSEL FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 4, 2008, I filed the foregoing *United States' Motion To Strike Answer Filed By Non-Parties* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants by first class mail, postage prepaid:

JOSEPH DEAN BOND
P.O. BOX 802
RAMAH, NM 87321

REGINA FREDRICKSON
2742 VERANDA RD. N.W.
ALBUQUERQUE, NM 87107

MILDRED C. CORDOVA
10309 RIO PUERCO TR. SW
ALBUQUERQUE, NM 87121

RONALD B. PORATH
10537 CALLE ALBA NW
ALBUQUERQUE, NM 87114

DANIEL G. CORDOVA
10309 RIO PUERCO TR. SW
ALBUQUERQUE, NM 87121

MARZELLA PORATH
10537 CALLE ALBA NW
ALBUQUERQUE, NM 87114

EDWARD J. BAWOLEK AND
SUZAN J. BAWOLEK TRUST
2200 WEST SAGEBRUSH COURT
CHANDLER, AZ 85224

SFFL, LLC
P.O. BOX 3834
MILAN, NM 87021

CRAIG FREDRICKSON
2742 VERANDA RD. N.W.
ALBUQUERQUE, NM 87107

MATTHEW SILVA
9204 CAMINO DEL SOL NE
ALBUQUERQUE, NM 87111

PAUL WOLF, JR.
HC 31 BOX 20
FENCE LAKE, NM 87315

_____/s/_____
Bradley S. Bridgewater

Slip Copy
Slip Copy, 2006 WL 3404811 (D.Colo.)
(Cite as: Slip Copy)

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Vibe Technologies, LLC v. Suddath
D.Colo.,2006.
Only the Westlaw citation is currently available.
United States District Court,D. Colorado.
VIBE TECHNOLOGIES, LLC, a Colorado limited
liability company, Plaintiff,

v.

Ralph M. SUDDATH, Kay Ekwall, and Allen
Heart, Defendants.

Civil Case No. 06-cv-00812-LTB-MEH.

Nov. 22, 2006.

J. Mark Smith, Pendleton, Friedberg, Wilson &
Hennessey, P.C., Denver, CO, for Plaintiff.
Ralph M. Suddath, Hickory Creek, TX, pro se.
Kay Ekwall, Cave Junction, OR, pro se.
Allen Heart, Cave Junction, OR, pro se.

ORDER

LEWIS T. BABCOCK, Chief Judge.

*1 This case is before me on the recommendation of the magistrate judge that: 1. Plaintiff's Motion to Strike Pursuant to [Fed.R.Civ.P. 12\(f\)](#), or, in the Alternative, Motion For More Definite Statement Pursuant to [Fed.R.Civ.P. 12\(e\)](#) [Filed June 29, 2006: docket # 10] be granted with regard to Plaintiff's request that certain filings be stricken and denied as moot with regard to Plaintiff's request for a more definite statement; 2. Plaintiff's Renewed Motion to Strike the Filings of Defendant Ralph Suddath [Filed August 30, 2006; docket # 22] be granted; 3. that the court strike in their entirety the filings made by Defendant Suddath as set forth in Dockets # 2, # 19 and # 20; and 4. that the court strike, in its entirety, the filing made by Alvin Joseph Hansen as set forth in Docket # 9.

The recommendations were entered and served on September 18, 2006. Defendants have filed no written objections to the magistrate judge's recommendations and therefore are barred from *de novo* review. Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion to Strike Pursuant to [Fed.R.Civ.P. 12\(f\)](#), Docket No.10, is GRANTED and the Motion in The Alternative For More Definite Statement, Docket No. 10, is DENIED AS MOOT; 2. Plaintiff's Renewed Motion to Strike the Filings of Defendant Ralph Suddath, Docket No. 22, is GRANTED; 3. filings by Defendant Suddath, Docket Nos. 2,19 and 20 are STRICKEN IN THEIR ENTIRETY; and 4. the filing made by Alvin Joseph Hansen, Docket No. 9, is STRICKEN IN ITS ENTIRETY.

MICHAEL E. HEGARTY, United States Magistrate Judge.

RECOMMENDATION TO GRANT MOTION TO STRIKE AND RENEWED MOTION TO STRIKE

This matter has been referred to this Court by the Order of Reference to United States Magistrate Judge, filed on June 30, 2006 (Docket # 12) for purposes of hearing and determining nondispositive motions and making recommendation on dispositive matters. Before the Court is Plaintiff's Motion to Strike Pursuant to [Fed.R.Civ.P. 12\(f\)](#), or, in the Alternative, Motion for More Definite Statement Pursuant to [Fed.R.Civ.P. 12\(e\)](#) ("Motion to Strike"), filed on June 29, 2006 (Docket # 10), and Plaintiff's Renewed Motion to Strike the Filings of Defendant Ralph Suddath ("Renewed Motion to Strike") (Docket # 22). Oral argument in this regard would not materially assist the Court in adjudicating the matters before it. For the reasons stated below, it is **recommended** that the Plaintiff's motions be **granted**, and filings by the Defendant Suddath and those made by nonparty Alvin Joseph Hansen be stricken. Because the striking of these documents will result with none of the Defendants having an Answer or other responsive pleading filed of record in this case, default of *pro se* parties becomes a consideration. Therefore, the matter is deemed dispositive and is being handled by recommendation under the Order of Reference in this

case.

Be advised that all parties shall have ten (10) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. [FED.R.CIV.P. 72](#). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a *de novo* determination by the District Judge of the proposed findings and recommendations. [United States v. Raddatz, 447 U.S. 667, 676-83 \(1980\); 28 U.S.C. § 636\(b\)\(1\)](#). Additionally, the failure to file written objections to the proposed findings and recommendations within ten (10) days after being served with a copy may bar the aggrieved party from appealing the factual findings of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140,155 (1985); [Moore v. United States, 950 F.2d 656, 659 \(10th Cir.1991\)](#); [Niehaus v. Kansas Bar Ass'n, 793 F.2d 1159, 1164 \(10th Cir.1986\)](#).

BACKGROUND

*2 This is an action for trademark infringement, which was filed by the Plaintiff on April 27, 2006 (Docket # 1). Plaintiff alleges that Defendants' website contains materials that infringes Plaintiff's copyrighted works, content and format, and violates the Plaintiff's rights under applicable trademark statutes and violates the Lanham Act. Defendant Ralph M. Suddath as served in this action on May 5, 2006. On May 15, 2006, Defendant Suddath filed 40 pages of documents, which are variously titled (Document # 2), but which the Plaintiff and this Court would presume to be some type of response to the Complaint. Thereafter, on May 26, 2006, Alvin Joseph Hansen, who is not named as a Defendant in this action and from the attorney roles of this Court does not appear to be an attorney admitted to practice before this Court, filed a document

entitled "Hansen, Ekwall & Heart's Demurrer and Transfer to Courts of Open Criminal Contempt Proceedings, and Open Arrest Warrants Conspiracy to Evade Debt Hobbs Act [18 USC 1951](#)," together with 121 pages of attachments (Docket # 9).

Plaintiff filed its Motion to Strike on June 29, 2006 (Docket # 10). In the motion, the Plaintiff argues that Defendant Suddath's filing fails to comply with the rules of pleading and requests that it be stricken. Alternatively, the Plaintiff requests that the Defendant be required to provide a more definite statement pursuant to [Fed.R.Civ.P. 12\(e\)](#). Additionally, the Plaintiff seeks to have the documents filed by Alvin Hansen stricken because he is not a party to this case. The Court directed that the Defendants would have until and including July 19, 2006, in which to respond to the motion (Docket # 15). The Court's directive was mailed to each of the Defendants on July 6, 2006 (Docket # 15-2). The record demonstrates that none of the mailings was returned by the United States Post Office.

Plaintiff filed its Amended Complaint in this action on July 27, 2006, with the Certificate of Service indicating that the pleading was mailed to the Defendants on that date (Docket # 16). On August 4, 2006, Defendant Allen Heart filed a letter and 133 pages of attachments consisting of various documents and other information (Docket # 17). The filing was cross-referenced in the text of the docketing notes as being filed in response to the Amended Complaint, but a review of the materials demonstrated that the purpose of the filing was not clearly discernable from the materials. The Court struck the filing from the record as nonresponsive (Docket # 18). ^{FNI} Defendant Heart has made no attempt to clarify the matter. On August 15, 2006, Defendant Suddath made two separate filings, one of 20 pages in length (Docket # 19) and another of almost identical materials which is 18 pages in length (Docket # 20). The materials are not captioned with the case information from this lawsuit, but do contain copies of the electronic filing docket from this matter.

^{FNI}. The docket notation in this regard,

however, mistakenly identifies this ruling as granting the Plaintiff's Motion to Strike.

To date, no clearly designated responses to the Plaintiff's motions have been filed, nor have any extensions of time in which to respond have been requested.

DISCUSSION

*3 Because the Defendants in this action have proceeded without counsel, the Court must construe any pleadings and other filings made by any of them liberally. See [Haines v. Kerner](#), 404 U.S. 519, 52021 (1972); [Hall v. Bellmon](#), 935 F.2d 1106, 1110 (10th Cir.1991). However, the Court should not be the *pro se* litigant's advocate. [Hall](#), 935 F.2d at 1110. Although the Court must liberally construe *pro se* pleadings, *pro se* status does not excuse the obligation of any litigant to comply with the same rules of procedure that govern other litigants. See [Green v. Dorrell](#), 969 F.2d 915, 917 (10th Cir.1992); [Nielsen v. Price](#), 17 F.3d 1276, 1277 (10th Cir.1994).

[Rule 8\(b\) of the Federal Rules of Civil Procedure](#) provides that “[a] party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies.” A pleading which constitutes a “gross violation” of [Rule 8](#) may be stricken. See [Asay v. Hallmark Cards, Inc.](#), 594 F.2d 692, 696 n. 2 (8th Cir.1979). More commonly, however, a pleading is excluded based on the provisions of [Fed.R.Civ.P. 12\(f\)](#), which states:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Motions to Strike made under [Rule 12\(f\)](#) are viewed with disfavor by the federal courts, and are infrequently granted. See C. WRIGHT & A.

MILLER, [5C FED. PRAC. & PROC.3D § 1380](#). The rule should be used only when the allegations being challenged have no relation to the plaintiff's claims. *Id.*

Plaintiff contends that Defendant Suddath's filing neglects to address any of the Plaintiff's claims and fails to comply with the basic rules of pleading under [Rule 8](#). Plaintiff also describes the documents as immaterial and impertinent, constituting a violation of [Fed.R.Civ.P. 12](#). Plaintiff also seeks to strike the filings of nonparty Alvin J. Hansen under the same arguments, together with allegations that the materials are scandalous. Upon review of the materials, this Court would agree.

Even under the most liberal construction of the pleading requirements contained in [Fed.R. Civ.P. 8](#), the documentation submitted by Defendant Suddath does not raise any defense to the Plaintiff's claims nor does it admit or deny the allegations contained in the Complaint. Defendant has additionally failed to respond to the Plaintiff's motions requesting that the filing be stricken, nor has the Defendant attempted to amend the materials to clarify their intent or make any attempt to refile a proper responsive pleading. As detailed by the Plaintiff:

One of the documents filed in response states that “a declaration of war has been levied,” and asks plaintiff's counsel, “Do I know you and are you representing me without my license?” See For The Record; At Law, at 1. The Response also includes an “Invoice for Labor,” which “bills” plaintiff for Suddath's time and effort in answering the Complaint, and comments that “\$25,000.00 is a bargain for you in responding with my labor to you.” See Invoice for Labor, at 1. This document also states, “due to the sensitive nature by your position, I recommend we communicate in code.” See *id.*...

*4 MEMORANDUM IN SUPPORT OF MOTION TO STRIKE, Docket # 11, p. 4.

One of the purposes of [Rule 12\(f\)](#) is to allow the Court to conserve time and resources by avoiding the litigation of matters that will have no effect on the outcome of a case. See [Sierra Club v. Tri-](#)

State Generation & Transmission Ass'n, 173 F.R.D. 275, 285 (D.Colo.1997). As the Plaintiff has pointed out, the documents submitted by Defendant Suddath are replete with matters which have no bearing on the case at hand. These filings made by Defendant Suddath has no distinguishable connection to the controversy, and is therefore immaterial. *See id.* (“Immaterial matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded...”). Further, the materials “consist of statements that do not pertain, and are not necessary, to the issues in question,” and are therefore impertinent. *See* WRIGHT & MILLER, CIVIL 3D § 1382 at 463. Finally, the many pages of documents filed by Defendant Suddath are clearly in gross violation of the pleading requirements of Fed.R.Civ.P. 8. The general purpose of the rules of pleading is to “apprise the opponent of the allegations in the complaint that stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable plaintiff to prevail.” *See* WRIGHT & MILLER, CIVIL 3D § 1261 at 526. The materials filed by Defendant Suddath fail in any manner to provide the Plaintiff with fair notice of this Defendant's defenses to the allegations raised by the Plaintiff, in order that the Plaintiff may fully and fairly prosecute this case, nor do they provide any basis upon which the Court can determine whether any defense exists, whether it is a valid defense, or whether it is a defense available to this Defendant. The Court would literally be required to become the Defendant's advocate, and scour through the documents to discern or fashion some type of an Answer or other responsive pleading on his behalf. Such action would be well beyond the mere liberal construction afforded to *pro se* litigants, and would enter into the impermissible territory of the Court having to become the *pro se* litigant's advocate. The filings made by Defendant Suddath fail to give any reasonable notice of the allegations in the Complaint or Amended Complaint sought to be placed at issue, and therefore, the filings should be stricken in their entirety.

Defendant could argue that he should be allowed time and opportunity to amend his filings to

conform more fully with the pleading rules, in an attempt to avoid potential default in this action. While leave to amend “shall be freely given when justice so requires,” FED.R.CIV.P. 15(a), refusing leave to amend is justified if amendment would cause undue delay or undue prejudice to the opposing party, be offered in bad faith or under a dilatory motive, fail to cure deficiencies by amendments previously allowed, or be futile, Frank v. U.S. West, Inc., 3 F.3d 1357, 1365 (10th Cir.1993). Courts may deny leave, however, if the movant “ ‘knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original [pleading].’ ” Pallottino v. City of Rio Rancho, 31 F.3d 1023, 1027 (10th Cir.1994) (quoting State Distributors, Inc. v. Glenmore Distilleries, 738 F.2d 405, 416 (10th Cir.1984) (citations omitted)).

*5 Based on the record, this Court finds that granting leave to the Defendant to amend his filings to conform to the rules would be untimely, that Defendant did not diligently pursue the basis of such amendments in his second filings made on August 15, 2006, despite being on notice of the deficiencies raised in the Motion to Strike which was pending at the time, and that the facts behind such amendments would have been known to the Defendant at the initiation of this action. Defendant has proceeded in this Court consistently in the same violative fashion, instead of under any other facts or theories of which the Defendant would have known, amounting to a choice made by the Defendant, not excusable neglect. Therefore, allowing the Defendant an opportunity to amend his pleadings would not be justified.

With regard to the materials filed by nonparty Alvin Hansen, nonparty participation in an adversary proceeding is dependent on intervention. *See, generally, In re Latimer, 918 F.2d 136, 137 (10th Cir.1990)*. In federal court, intervention in an adversary proceeding is governed by Fed.R.Civ.P. 24. In this case, Mr. Hansen has made no attempt to intervene under the authority of Rule 24 or under any other authority. As he is not a party to this lawsuit, nor has he properly intervened, Mr. Hansen

may not file pleadings or other matters with the Court on behalf of himself or others in this case. Additionally, there is no evidence that Mr. Hansen is an attorney who is seeking to appear on behalf of the Defendants in this action, and the Court takes judicial notice that he is not an attorney admitted to practice in the United States District Court for the District of Colorado [FN2](#). By federal statute, non-attorney *pro se* litigants cannot represent other *pro se* parties. See [28 U.S.C. § 1654](#). Finally, under [Rule 12\(f\)](#), the materials submitted by Mr. Hansen are not only immaterial and impertinent, but also scandalous. Allegations are considered scandalous if they degrade a party's moral character, contain repulsive language, or detract from the dignity of the court. See [WRIGHT & MILLER, CIVIL 3D § 1382 at 465](#); see, also, [Sierra Club, 173 F.R.D. at 285](#). As noted by the Plaintiff:

[FN2](#). This Court may take judicial notice of court documents and matters of public record. See, e.g., [Lovelace v. Software Spectrum Inc., 78 F.3d 1015, 1017-18 \(5th Cir.1996\)](#); [Henson v. CSC Credit Services, 29 F.3d 280, 284 \(7th Cir.1994\)](#); see, also, [Southmark Prime Plus, L.P. v. Falzone, 776 F.Supp. 888, 892 \(D.Del.1991\)](#). The records of the Bar of this Court are available to the public through the Office of the Clerk.

Hansen's filing also includes outrageous allegations, including statements that plaintiff's counsel "kidnapped, tortured, terrorized, falsely imprisoned and violently made many attempts on my life, and murdered beneficiaries raped and controlled my wife Jacqueline and murdered my canine Companion Penni."

Memorandum in Support of Motion to Strike, Docket # 11, p. 6.

It is difficult to imagine filings less concise, and more immaterial and impertinent than those made by Defendant Suddath and Mr. Hansen. It is also difficult to imagine a less prejudicial or more burdensome task than to require the Plaintiff to attempt to determine which facts have been admitted

or denied, evaluate settlement possibilities, or prepare for trial in light of the filings that have been repeatedly made. See [Sierra Club, 173 F.R.D. at 285](#) ("Even where the challenged allegations fall within the categories set forth in the rule, a party must usually make a showing of prejudice before the court will grant a motion to strike."). The record establishes that the request by the Plaintiff that the filings be stricken from the record should be granted.

CONCLUSION

*6 For the foregoing reasons, and upon the materials on file herein, it is hereby **recommended** as follows:

1. Plaintiff's Motion to Strike Pursuant to [Fed.R.Civ.P. 12\(f\)](#), or, in the Alternative, Motion For More Definite Statement Pursuant to [Fed.R.Civ.P. 12\(e\)](#) [*Filed June 29, 2006; Docket # 10*] be **granted** with regard to Plaintiff's request that certain filings be stricken and **denied** as moot with regard to Plaintiff's request for a more definite statement.

2. Plaintiff's Renewed Motion to Strike the Filings of Defendant Ralph Suddath [*Filed August 30, 2006; Docket # 22*] be **granted**.

3. The District Court **strike**, in their entirety, the filings made by Defendant Suddath as set forth at Dockets # 2, # 19 and # 20.

4. The District Court **strike**, in its entirety, the filing made by Alvin Joseph Hansen as set forth at Docket # 9.

D.Colo.,2006.

Vibe Technologies, LLC v. Suddath
Slip Copy, 2006 WL 3404811 (D.Colo.)

END OF DOCUMENT