

The Honorable Judge Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS MONTGOMERY,

Plaintiff,

v.

JAMES RISEN, HOUGHTON MIFFLIN
HARCOURT PUBLISHING CO., HOUGHTON
MIFFLIN HARCOURT CO.,

Defendants.

No. 2:15-CV-01955-JLR

DEFENDANTS' MOTION TO
STRIKE AND/OR SURREPLY

Plaintiff Dennis Montgomery filed an unauthorized brief on December 24, 2015, in response to the pending discovery motion previously filed by Defendants James Risen, Houghton Mifflin Harcourt Publishing Company and Houghton Mifflin Harcourt Company, improperly sued as HMH Holdings, Inc., (collectively, "Defendants"). Defendants respectfully request that the Court strike Montgomery's "Supplement" brief (Dkt. No. 6) because it is procedurally and substantively improper.

First, Montgomery's brief is improper under the rules. The Local Rules generally allow three rounds of briefing: the motion, the opposing party's response and the movant's reply. *Sheet Metal Workers v. Northshore Sheet Metal, Inc.*, No. CV12-01903RSL, 2013 WL 1412931, at *1 (W.D. Wash. Apr. 8, 2013). Montgomery's brief constitutes an improper fourth-round filing. The Local Rules constrain fourth briefs to a sole purpose: the nonmovant

1 may file a surreply in order to request that the Court strike certain material contained in or
2 attached to the movant's reply. CR 7(g). *Sheet Metal Workers*, 2013 WL 1412931, at *1. The
3 nonmovant must first provide notice of intent to file the brief. LCR 7(g)(1).

4 Here, Montgomery failed to provide the required notice of intent to file a surreply.

5 Second, Montgomery's brief is also substantively improper: it is not a request to strike
6 evidence Defendants proffered in their reply – nor could it be. *See Lewis v. Everett High Sch.*,
7 2007 WL 2712976, at *1 (W.D. Wash. Sept. 14, 2007) (“Plaintiff's surreply did not contain a
8 request to strike material contained in defendants' reply brief and was therefore not authorized
9 by the Local Rule 7(g).”). Instead, Montgomery's brief simply reiterates Montgomery's
10 previous claim that Defendants' Motion is untimely. *See Plaintiff's Response to Motion to*
11 *Compel Compliance with Subpoena* (Dkt. 4); Dkt. 6 (Supplement) at 2-4. Reiterating previous
12 arguments “is not a proper use of the surreply motion to strike allowed for under the Local
13 Rules.” *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 308 F. Supp. 2d 1224, 1225 (W.D.
14 Wash. 2003).

15 Third, Montgomery lacks standing to challenge enforcement of the subpoena, which
16 compels testimony and documents from a third party, Istvan Andras Burgyan. *See Reply in*
17 *Support of Motion to Compel* (Dkt. 5). Montgomery nowhere disputes that he lacks standing.
18 *See Supplement to Montgomery's Response* (Dkt. 6). For the reasons stated in Defendants'
19 Reply at 3-4, the cases cited in the “Supplement” are inapposite where, as here, this is a
20 miscellaneous action and the underlying action is pending in another jurisdiction and where, in
21 any event, there is good cause.

22 For these reasons, the Court should strike Plaintiff's brief. *See, e.g., Holland v. Draper*,
23 No. C12-1409-JCC, 2013 WL 1914388, at *2 (W.D. Wash. May 8, 2013).

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25 DATED this 28th day of December, 2015.
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DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing Motion to be served upon the following counsel of record:

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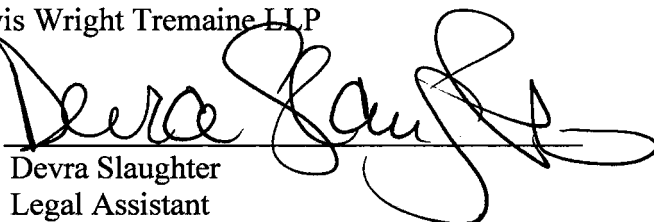
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DATED this 28th day of December, 2015.

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By



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