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9  
 10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **DISTRICT OF ARIZONA**

12 GLOBAL ROYALTIES, LTD., a Canadian  
 13 corporation; BRANDON HALL, a  
 14 Canadian citizen,

15 Plaintiffs,

16 v.

17 XCENTRIC VENTURES, L.L.C. *et al.*,

18 Defendants.

Case No.: CV 07-956 PHX-FJM

**MOTION TO STRIKE PLAINTIFF'S  
 NOTICE OF SUPPLEMENTAL  
 AUTHORITY**

(Assigned to Hon. Frederick J. Martone)

19 Pursuant to Fed. R. Civ. P. 12(f), Defendants EDWARD MAGEDSON  
 20 (“Magedson”) and XCENTRIC VENTURES, L.L.C. (“Xcentric”) respectfully move this  
 21 Honorable Court for an order striking Plaintiff GLOBAL ROYALTIES, LTD.’s (“Global  
 22 Royalties”) “Notice of Filing Supplemental Authority”.

23 The single item of “supplemental authority” attached to Plaintiff’s notice is an  
 24 order from a federal court in Texas *denying* a Rule 12(b)(2) Motion to Dismiss for lack of  
 25 Personal Jurisdiction brought by Defendants. Global Royalties appears to suggest that the  
 26 Texas Court’s ruling (finding that under the specific facts of that case, Defendants had  
 27 sufficient contacts with Texas and were subject to personal jurisdiction in Texas)  
 28 represents “authority” upon which this Court could find that Defendants are subject to  
 personal jurisdiction in Canada. This argument is improper and completely devoid of  
 legal and factual merit and Plaintiff’s notice should be stricken pursuant to Fed. R. Civ. P.  
 12(f).

1 First, the *denial* of a Motion to Dismiss is a non-final, non-appealable order. *See*  
2 *Van Cauwenberghe v. Biard*, 486 U.S. 517, 526 108 S.Ct. 1945, 1952 (1988)  
3 (recognizing, “the denial of a claim of lack of jurisdiction is not an immediately  
4 appealable collateral order.”) (citing *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct.  
5 631, 633, 89 L.Ed. 911 (1945)). As a non-final order, the denial of a Motion to Dismiss  
6 is, by definition, “not final” and is expressly subject to revision at any time before entry of  
7 final judgment. *See* Fed. R. Civ. P. 54(b).

8 Second, because of their interlocutory nature, non-final orders such as the one cited  
9 by Plaintiff are not entitled to either *res judicata* or collateral estoppel effect and therefore  
10 the order cited by Plaintiff has no precedential value whatsoever in this case. *See*  
11 *generally* 47 Am. Jur. 2d *Judgments* § 489 (stating rule that collateral estoppel does not  
12 apply unless, *inter alia*, “the prior adjudication resulted in a final judgment on the  
13 merits.”) (citing extensive authority for premise).

14 Third, to the extent Plaintiff is attempting to invoke the doctrine of *stare decisis* by  
15 asking this Court to follow a non-final decision from another district court in a different  
16 state, that position fails for the same reason—*stare decisis* does not apply to either  
17 unpublished or non-final decisions, and both such defects are present here. *See* 20 Am.  
18 Jur. 2d *Courts* § 133 (noting, “The principle of *stare decisis* is said to apply only to ...  
19 published decisions ...” and “the following have no *stare decisis* effect: ... Nonfinal  
20 decisions.”) (emphasis added) (citing *Newberry v. City of St. Louis*, 234 Mo. App. 104,  
21 109 S.W.2d 876 (1937); *see also Starbuck v. City and County of San Francisco*, 556 F.2d  
22 450, 457 note 13 (9<sup>th</sup> Cir. 1977) (observing, “The doctrine of *stare decisis* does not  
23 compel one district court judge to follow the decision of another . . . Thus a decision of  
24 one district court is not binding upon a different district court.”) (emphasis added)  
25 (quoting *Palo Alta v. San Francisco*, 548 F.2d 1374 (9<sup>th</sup> Cir. 1977) (citing 1B *Moore's*  
26 *Federal Practice* P 0.402(1), p. 61 (2d ed. 1947)).

27 Based on these principles, the “supplemental authority” which Plaintiff attempts to  
28 cite is simply not “authority” at all. It is a non-final order which is not material here.

1 Fourth, as previously explained in Defendants’ Motion to Dismiss filed in this case,  
2 the determination of personal jurisdiction in this matter is controlled by the Restatement  
3 (Third) of Foreign Relations Law (1987):

4  
5 **§ 482. Grounds For Nonrecognition Of Foreign Judgments**

6 (1) A court in the United States may not recognize a judgment of the court of a  
7 foreign state if:

8 ...

9 (b) the court that rendered the judgment did not have jurisdiction over the  
10 defendant in accordance with the law of the rendering state and with the  
11 rules set forth in § 421. (emphasis added)

12 Although some parts of the applicable tests are similar, this unique body of law  
13 concerning questions of international jurisdiction is simply not the same as the usual  
14 “minimum contacts” standards applied in U.S. Courts. Although not explained by  
15 Plaintiff, the Texas Court in the “authority” cited by Plaintiff resolved an issue of whether  
16 Defendants were subject to personal jurisdiction in Texas. That ruling (which Defendants  
17 will appeal if they are not successful on the merits) was based solely on U.S. law, and did  
18 not in any way involve the application or interpretation of either Canadian law or the  
19 Restatement of Foreign Relations Law. Thus, even if Plaintiff’s “supplemental authority”  
20 was appropriate for citation here (which it is not), the authority is entirely irrelevant and  
21 immaterial because the issues involved were different both legally and factually.

22 For each of the foregoing reasons, Defendants respectfully move this Honorable  
23 Court for an order striking Plaintiff’s “Notice of Filing Supplemental Authority” pursuant  
24 to Fed. R. Civ. P. 12(f).

25 DATED this 10<sup>th</sup> day of October 2007.

26 **JABURG & WILK, P.C.**

27 /s/ David S. Gingras

28 Maria Crimi Speth

David S. Gingras

Attorneys for Defendant Xcentric  
Ventures, L.L.C. and Ed Magedson

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**Certificate of Service**

I hereby certify that on October 10, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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And a copy of the foregoing hand delivered on October 10, 2007, to:

Honorable Frederick J. Martone  
United States District Court  
District of Arizona

s/Debbie Gower\_\_\_\_\_