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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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9 Gabriel Prado, an individual; and Sandy)
10 Kreiman, an individual)

No. CV-11-00371-PHX-GMS

11

Plaintiffs,)

ORDER

12

vs.)

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Cunningham & Associates Inc., an)
14 Arizona corporation,)

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Defendant.)

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Cunningham & Associates Inc., an)
17 Arizona corporation,)

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Counterclaimant,)

19

vs.)

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Gabriel Prado, an individual,)

21

Counterdefendant.)

22

Cunningham & Associates Inc., an)
23 Arizona corporation,)

24

Third-Party Plaintiff,)

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vs.)

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Auction Nation LLC, an Arizona limited)
27 liability company,)

28

Third-Party Defendant.)

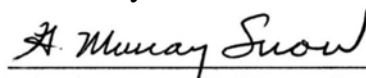
1 Auction Nation LLC, an Arizona limited)
 liability company,)
 2)
 Counterclaimant,)
 3)
 vs.)
 4)
 Cunningham & Associates Inc., an)
 5 Arizona corporation.)
 6 Counterdefendant.)
 _____)
 7)

8 Pending before the Court is the Motion for Judgment on the Pleadings (Doc. 19) filed by
 9 Third-Party Plaintiff/Third-Party Counterdefendant Cunningham and Associates, Inc.
 10 (“Cunningham”). Federal Rule of Civil Procedure 12(d) states that “[i]f, on a motion under . . .
 11 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must
 12 be treated as one for summary judgment under Rule 56.” Because Cunningham’s 12(c) motion relies
 13 on matters outside the pleadings, namely that Auction Nation granted Cunningham an implied
 14 nonexclusive license, the Court must treat Cunningham’s motion as a motion for summary
 15 judgment, even though Auction Nation has conceded in its Response that it granted such a license.
 16 (Doc. 19).

17 Rule 12(d) provides that “[a]ll parties must be given a reasonable opportunity to present all
 18 the material that is pertinent to the motion.” Accordingly,

19 **IT IS THEREFORE ORDERED** that Third-Party Defendant/Third-Party Counterclaimant
 20 Auction Nation shall have **15 days from the date of this Order** within which to either file
 21 “pertinent” supplemental material or present its position on the Court’s application of Rule 12(d).
 22 Third-Party Plaintiff/Third-Party Counterdefendant Cunningham shall have **15 days** from the date
 23 that Auction Nation files its brief within which to respond and file any relevant supplemental
 24 material.

25 DATED this 9th day of June, 2011.

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 27 _____
 G. Murray Snow
 United States District Judge