

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

SELECT ENERGY SERVICES, LLC,	*	
	*	
Plaintiff,	*	
vs.	*	No. 4:12-cv-000149-SWW
	*	
MICHAEL LABEL,	*	
	*	
Defendant.	*	

ORDER

The Court informs the parties that defendant Michael Lebel's motion to strike and dismiss Select Energy Services, LLC's complaint or alternatively for summary judgment [doc.#5] will be considered solely as a motion for summary judgment as both parties rely on affidavits with respect to this motion and the Court anticipates that witnesses will be called at the hearing on this motion and Select Energy Services's motion [doc.#3] for temporary restraining order and preliminary injunction (which will be considered solely as a motion for preliminary injunction). See *Riehm v. Engelking*, 538 F.3d 952, 961-62 and n.5 (8<sup>th</sup> Cir. 2008) (noting that if matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Fed.R.Civ.P. 56 and the parties must be given a reasonable opportunity to present all the material that is pertinent to the motion).

IT IS SO ORDERED this 23<sup>rd</sup> day of March 2012

/s/Susan Webber Wright  
UNITED STATES DISTRICT JUDGE