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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Moofly Productions, LLC,	)	CV 13-5866 RSWL (PJWx)
	)	
Plaintiff,	)	
v.	)	<b>Order re: Counter-</b>
	)	<b>Claimants' Motion to</b>
Sandra Favila, an	)	<b>Strike Answer Filed on</b>
individual; Estate of	)	<b>Behalf of Counter-</b>
Richard C. Corrales; and	)	<b>Defendant Get Flipped,</b>
Does 1 through 10,	)	<b>Inc. [18]</b>
inclusive,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

Before the Court is Defendants and Counter-Claimants' Sandra Favila ("Favila"), Estate of Richard C. Corrales ("Corrales Estate") (collectively "Defendants"), and Motion Graphix, Inc.'s ("MGI") (collectively "Counter-Claimants") Motion to Strike Answer Filed on Behalf of Counter-Defendant Get Flipped, Inc. [18]. Counter-Defendants Raleigh William Souther ("Souther"), Helena Pasquarella ("Pasquarella"), and Moofly Productions, LLC ("Moofly")

1 (collectively, the "responding Counter-Defendants")  
2 filed an Opposition on October 29, 2013 [21]. This  
3 matter was taken under submission on November 14, 2013  
4 [28]. Having reviewed all papers submitted pertaining  
5 to the Motion, and having considered all arguments  
6 presented to the Court, the Court **NOW FINDS AND RULES**  
7 **AS FOLLOWS:**

8 Counter-Claimants' Motion to Strike is hereby  
9 **GRANTED.**

### 10 I. Background

11 Plaintiff and Counter-Defendant Moofly is a  
12 California LLC. First Amended Compl. ("FAC") ¶ 1.  
13 Counter-Defendants Souther and Pasquarella are the  
14 trustees and settlors of Counter-Defendant Kiss of  
15 Light Trust ("KOL"). First Amended Cross-Compl.  
16 ("FACC") at ¶ 4-5. Counter-Defendant Get Flipped, Inc.  
17 ("GFI") is a California corporation. Id. ¶ 7.

18 Plaintiff Moofly is in the business of selling  
19 products and services related to lenticular images -  
20 three dimensional images. FAC ¶ 10. Moofly alleges  
21 that on October 11, 2012 Defendants Favila and Corrales  
22 Estate sent a letter to Ayala High School, Moofly's  
23 client, making false and unsubstantiated statements  
24 that, *inter alia*, Moofly was infringing Defendants'  
25 intellectual property and that those who transacted  
26 with Moofly were liable to Defendants. Id. at ¶ 11.  
27 Moofly further alleges that Defendants have wrongfully  
28 contacted Moofly's clients, prospective clients, and

1 employees in an effort to divert profits and business  
2 away from Moofly and to Defendants. Id. at ¶ 13.

3 Based on this, Plaintiff Moofly brought the current  
4 Action in California Superior Court against Defendants  
5 for: (1) Intentional Interference with Prospective  
6 Economic Advantage; (2) Intentional Interference with  
7 Present Contractual Relations; (3) Unfair Competition  
8 under Cal. Bus. & Prof. Code § 17200 et seq.; and (4)  
9 Unfair Competition under Cal. Bus & Prof. Code § 17000  
10 et seq. Id. at ¶¶ 17-55.

11 Cross-Complainants, in turn, claim that Richard C.  
12 Corrales ("Corrales") was a Pulitzer Prize winning  
13 photographer for the Los Angeles Times who invented  
14 lenticular software, which merges two or more  
15 photographs into one to allow viewers to see different  
16 photographs depending on the angle of observation.  
17 FACC ¶¶ 12-13. Cross-Complainants allege that Souther  
18 worked with Corrales at the Los Angeles Times as a  
19 photo editor and that they founded MGI together,  
20 Corrales as the 51% majority shareholder and Souther as  
21 the 49% minority shareholder. Id. at ¶ 14. Between  
22 August 10, 2001 and September 7, 2003, Corrales,  
23 Souther, and MGI obtained various patents, copyrights,  
24 and trademarks relating to lenticular software. Id. at  
25 ¶¶ 15-20. MGI either obtained the rights directly or  
26 was assigned the rights by Corrales. Id. From 2000 to  
27 2007, MGI used these rights in its business. Id. at ¶  
28 21.

1           In January 2005, Corrales and Souther had  
2 disagreements over their respective roles in the  
3 company. Id. at ¶ 22. Counter-Claimants allege that  
4 in June 2005, Souther began doing business exploiting  
5 MGI's copyrights and trademarks under the name "Get  
6 Flipped," even though MGI owned the trademark for "Get  
7 Flipped." Id. at ¶ 23. Souther also registered a  
8 copyright for a website entitled "Get Flipped!." Id.  
9 at ¶ 24. Corrales died in 2005 and his sister, Favila,  
10 was appointed the executrix of his estate. Id. at ¶  
11 25. In February 2006, Souther decided to dissolve MGI  
12 and to transfer its assets to his new company, Get  
13 Flipped, Inc. Id. at ¶ 26. In March, 2006, Souther  
14 and Pasquarella founded Get Flipped, Inc. and, later  
15 that year, caused Get Flipped, Inc. to file  
16 registrations for two trademarks already held by MGI:  
17 "Flip Zone" and "Get Flipped." Id. at ¶¶ 29-31. In  
18 2006, Souther caused MGI to abandon its patent  
19 applications with the USPTO. Id. at ¶ 28. In February  
20 2007, Souther purported to have MGI sell all of its  
21 assets, including MGI's intellectual property, to Get  
22 Flipped, Inc. for no consideration and without the  
23 consent of its majority shareholder. Id. at ¶ 32. In  
24 March 2007, Souther caused Get Flipped, Inc. to  
25 register the assignment of MGI's various copyrights and  
26 trademarks in Get Flipped, Inc.'s name. Id. at ¶ 33.  
27 Souther then purported to dissolve MGI. Id. at ¶ 34.

28           On October 30, 2007, the Corrales Estate brought a

1 lawsuit in California state court, case number  
2 BC379462, against Souther and Get Flipped, Inc., which  
3 resulted in a judgment for the Corrales Estate against  
4 Souther and Get Flipped, Inc. (the "Souther/Corrales  
5 Judgment"). Id. at ¶¶ 37-38. The Souther/Corrales  
6 Judgment included, among other things, an award of all  
7 software code, trademarks, copyrights, and patents  
8 related to the software from Souther and Get Flipped,  
9 Inc. to the Corrales Estate. Id. at ¶ 40. Counter-  
10 Claimants further allege that to date, neither Souther  
11 nor Get Flipped, Inc. has complied with any of the  
12 judgment terms and Souther has explicitly stated his  
13 intent to not cooperate with the terms of the judgment.  
14 Id. at ¶¶ 42-44. Instead, Souther and Pasquarella  
15 established a new website and began doing business  
16 under the name "3DCheeze" through their newly formed  
17 entity, Plaintiff Moofly. Id. at ¶¶ 45-50. Counter-  
18 Claimants allege that to date, Souther and Pasquarella  
19 have continued to use MGI's intellectual property even  
20 though those properties belong to the Corrales Estate.  
21 Id. at ¶¶ 51-52.

22       Based on this, Counter-Claimants filed a Counter-  
23 Complaint against Counter-Defendants in California  
24 State Court for: (1) Fraudulent Transfer; (2)  
25 Conversion; (3) Federal Copyright Infringement; (4)  
26 Federal Trademark Infringement; (5) Unfair Competition  
27 under the Lanham Act, Cal. Bus. & Prof. Code § 17200 et  
28 seq. and the common law; (6) Fraudulent Transfer; (7)

1 Unjust Enrichment; and (8) for Preliminary and  
2 Permanent Injunctions. Id. at ¶¶ 56-111. Counter-  
3 Claimants then proceeded to remove this Action on  
4 August 12, 2013 [1].

## 5 **II. Legal Standard**

6 Under Federal Rule of Civil Procedure 12(f), the  
7 Court may, by motion or on its own initiative, strike  
8 "an insufficient defense or any redundant, immaterial,  
9 impertinent or scandalous" matters from the pleadings.  
10 The purpose of Rule 12(f) is "to avoid the expenditure  
11 of time and money that must arise from litigating  
12 spurious issues by disposing of those issues prior to  
13 trial." Whittlestone, Inc. v. Handi-Craft Co., 618  
14 F.3d 970, 973 (9th Cir. 2010) (quoting Fantasy, Inc. v.  
15 Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993)).

16 The grounds for a motion to strike must appear on  
17 the face of the pleading under attack. See SEC v.  
18 Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995). In  
19 addition, the Court must view the pleading under attack  
20 in the light more favorable to the pleader when ruling  
21 upon a motion to strike. In re 2TheMart.com, Inc. Sec.  
22 Litig, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000)  
23 (citing California v. United States, 512 F. Supp. 36,  
24 39 (N.D. Cal. 1981)). As a rule, motions to strike are  
25 regarded with disfavor because striking is such a  
26 drastic remedy; as a result, such motions are  
27 infrequently granted. Freeman v. ABC Legal Servs.,  
28 Inc., 877 F. Supp. 2d 919, 923 (N.D. Cal. 2012).

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3 **III. Discussion**

4 **A. Motion to Strike**

5 Under Federal Rule of Civil Procedure 17(b)(2), the  
6 “[c]apacity to sue or to be sued is determined” for  
7 corporations “by the law under which [the corporation]  
8 is organized.” Fed. R. Civ. P. 17(b)(2). Counter-  
9 Defendant GFI is registered under California law - as a  
10 result, California law applies. FACC ¶ 7.

11 Under California Revenue & Tax Code § 23301 and  
12 California Corporations Code § 2205, a suspended  
13 corporation cannot prosecute or defend an action in  
14 California court. Crestmar Owners Ass’n v. Stapakis,  
15 157 Cal. App. 4th 1223, 1230 (2007); Timberline, Inc.  
16 v. Jaisignhani, 54 Cal. App. 4th 1361, 1365 (1997). In  
17 other words, a suspended California corporation may not  
18 participate in any litigation activities. Palm Valley  
19 Homeowners Ass’n v. Design MTC, 85 Cal. App. 4th 553,  
20 560-61 (2000).

21 Counter-Claimants and the responding Counter-  
22 Defendants agree that Counter-Defendant GFI is  
23 suspended. See Mot. 3:11-12; Opp’n 3:5-6. The  
24 responding Counter-Defendants’ primary argument is that  
25 because the Souther/Corrales Judgment imposed a  
26 constructive trust on Counter-Defendant GFI’s assets,

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1 GFI's ownership is currently ambiguous and in dispute.<sup>1</sup>  
2 Opp'n 3:14-21.

3 Counter-Defendants are correct in that leniency is  
4 routinely given in situations where the corporation's  
5 suspended status "only comes to light during  
6 litigation." Timberline, 54 Cal. App. 4th at 1366. In  
7 such situations, the routine practice is to "permit a  
8 short continuance to enable the suspended corporation  
9 to effect reinstatement." Id. This is so because  
10 "[t]he suspension statutes are not intended to be  
11 punitive;" rather, they are intended "to motivate  
12 delinquent corporations to pay back taxes or file  
13 missing statements." Cadle Co. v. World Wide  
14 Hospitality Furniture, Inc., 144 Cal. App. 4th 504, 512  
15 (2006) (citations omitted). Thus, "[l]eniency permits  
16 a delinquent corporation to secure a revivor, even at  
17 the time of the hearing, at the request of the  
18 corporation or on the trial court's own motion." Id.  
19 (citations omitted).

20 The Court finds, however, that even assuming that a  
21 constructive trust was imposed on Defendant GFI's  
22 assets, such a constructive trust would not include

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24 <sup>1</sup> Counter-Defendants allude to pleadings in state  
25 court and correspondence between Counter-Claimants and  
26 Counter-Defendants where Counter-Claimants allegedly  
27 take differing positions on their ownership of Counter-  
28 Defendant GFI. See Opp'n 3:14-21. The Court notes,  
however, that Counter-Defendants fail to produce or  
specify the allegedly inconsistent pleadings and  
correspondences.



1 ownership of the GFI entity. No fair reading of the  
2 Souther/Corrales Judgment would remotely suggest that  
3 the constructive trust awarded the Corrales Estate  
4 ownership of Counter-Defendant GFI - the  
5 Souther/Corrales Judgment does not, for example,  
6 despite an exhaustive listing of assets, specify any  
7 ownership interest in Counter-Defendant GFI. See Dkt.  
8 #2, Ex. 1, p.2.

9 Furthermore, there is, of course, a critical and  
10 crucial distinction between the property and assets (or  
11 the "capital stock") of a corporation and the shares of  
12 a corporation. The capital stock of a corporation  
13 means "not the shares of which the nominal capital is  
14 composed, but the actual capital-i.e., assets-with  
15 which the corporation carries on its corporate  
16 business." Schulte v. Boulevard Gardens Land Co., 164  
17 Cal. 464, 468 (1913). In contrast, the "shares" of a  
18 corporation are "the units into which the proprietary  
19 interests in a corporation are divided in the  
20 articles." Cal. Corp. Code § 184. In other words,  
21 "shares are the interest that the shareholder has in  
22 the corporation." 9 Witkin, Summary 10th (2005)  
23 Corporations, § 123, p. 898 (citing Kohl v. Lilienthal,  
24 81 Cal. 378, 385 (1889)). The difference between  
25 owning the assets and owning the shares of a  
26 corporation is a fundamental - and basic - legal  
27 concept.

28 In other words, this is not a case like Design Data

1 Corp. v. Unigate Enter., where the court stayed the  
2 case as to two suspended-corporation defendants. Case  
3 No. 12-cv-04131-WHO, 2013 U.S. Dist. LEXIS 132161 (N.D.  
4 Cal. Sep. 12, 2013). In that case, the plaintiff filed  
5 a motion to strike the answers of two suspended-  
6 corporation defendants. Id. at \*2. The other  
7 defendants opposed the motion, but specified that they  
8 believed one of the suspended corporations had been  
9 dissolved earlier and that the other, while suspended,  
10 currently had an application pending to revive its  
11 corporate status. Id. at \*2-3. The other defendants  
12 requested a stay until they could revive one suspended-  
13 corporation defendant and determine why the other had  
14 not yet been legally dissolved. Id. at \*3. The court  
15 granted the stay for two reasons: first, the court  
16 noted that these defendants did not assert an  
17 affirmative corporate right or privilege with knowledge  
18 that the corporate status had been suspended and,  
19 second, because a default would likely be set aside  
20 once the suspended-corporation defendants' statuses  
21 were resolved. Id. at \*4-6.

22       Such is not the case here. First, Counter-  
23 Defendants have not indicated what steps, if any, they  
24 have taken to revive Counter-Defendant GFI, or if they  
25 intend to do so. To the extent that Counter-Defendants  
26 are taking the position that Counter-Defendant GFI's  
27 ownership is ambiguous and contested, such a position  
28 is entirely without merit given the plain language of

1 the Souther/Corrales Judgment and the legal distinction  
2 between corporate assets and shares.

3 Second, even assuming, *arguendo*, that Counter-  
4 Defendants are correct in that Counter-Claimants are  
5 the current owners of Counter-Defendant GFI, that would  
6 still not supply a reason to deny this Motion. Not  
7 only have Counter-Claimants not indicated any desire to  
8 revive Counter-Defendant GFI, but such a situation  
9 would still not supply good cause for setting aside a  
10 default. Indeed, if Counter-Claimants in fact did own  
11 GFI, it would be nonsensical for Counter-Claimants to  
12 seek entry of default against, to set aside a default  
13 as to Counter-Defendant GFI, or to try to collect from  
14 their own corporation.

15 As a suspended corporation, Counter-Defendant GFI  
16 cannot, and could not, participate in this litigation.  
17 As a result, its Answer is, on its face, legally  
18 insufficient. It is therefore appropriate for this  
19 Court to strike Counter-Defendant GFI's Answer.  
20 Moreover, the Court finds that the responding Counter-  
21 Defendants have failed to provide any coherent reason  
22 to deny Counter-Claimants' Motion. As a result, the  
23 Court **GRANTS** Counter-Claimants' Motion to Strike Answer  
24 on Behalf of Counterclaim Defendant Get Flipped, Inc.  
25 [18].

26 **B. Request for Entry of Default**

27 Counter-Claimants also request that this Court  
28 enter default against Counter-Defendant GFI. Mot.

1 6:16-20.

2 Pursuant to Federal Rule of Civil Procedure 55(a),  
3 "[w]hen a party against whom a judgment for affirmative  
4 relief is sought has failed to plead or otherwise  
5 defend, and that failure is shown by affidavit or  
6 otherwise," default may be entered. Fed. R. Civ. P.  
7 55(a). A Defendant must file a responsive pleading  
8 within 21 days after being served with the summons and  
9 Complaint. Fed. R. Civ. P. 12(a)(1)(A). As this Court  
10 has stricken Counter-Defendant GFI's Answer, it also  
11 enters default against Counter-Defendant GFI.

12 Accordingly, the Court **GRANTS** Counter-Claimants'  
13 request for this Court to enter default against  
14 Counter-Defendant GFI.

15 **C. Request for Sanctions**

16 Counter-Claimants include in their Reply a request  
17 for sanctions against Counter-Defendants and Counter-  
18 Defendants' counsel. Reply 6:18-7:3. To the extent  
19 that Counter-Claimants seek sanctions against Counter-  
20 Defendants, they have failed to specify the grounds  
21 under which sanctions are warranted. To the extent  
22 that Counter-Claimants are seeking sanctions pursuant  
23 to Federal Rule of Civil Procedure 11, that Rule  
24 requires that a "motion for sanctions [] be made  
25 separately from any other motion and [] describe the  
26 specific conduct that allegedly violates Rule 11(b)."  
27 Fed. R. Civ. P. 11(c). To the extent that Counter-  
28 Claimants seek sanctions under 28 U.S.C. § 1927 for

1 vexatious or unreasonable multiplication of the  
2 proceedings, such sanctions "must be supported by a  
3 finding of subjective bad faith." New Alaska Dev.  
4 Corp. v. Guetschow, 869 F.2d 1298, 1306 (9th Cir.  
5 1989).

6 As a result, the Court hereby **DENIES** Counter-  
7 Claimants' request for sanctions.

8 **IV. Conclusion**

9 For the foregoing reasons, the Court hereby **GRANTS**  
10 Counter-Claimants' Motion to Strike Answer Filed on  
11 Behalf of Counterclaim Defendant Get Flipped, Inc.  
12 [18]. The Court hereby **ORDERS** that the Answer filed on  
13 behalf of Counter-Defendant GFI be stricken from the  
14 record. The Court also **ORDERS** that the Clerk shall  
15 enter default against Counter-Defendant GFI.

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17 **IT IS SO ORDERED.**

18 DATED: November 25, 2013

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20 RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW  
22 Senior U.S. District Judge  
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