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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

United States District Court  
Northern District of California

KIRBY MARTENSEN,  
  
Plaintiff,  
  
v.  
  
WILLIAM KOCH and DOES 1-25,  
inclusive,  
  
Defendant.

Case No.: C-12-05257 JSC

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS; DENYING  
DEFENDANT'S MOTION TO  
STRIKE AS MOOT**

Now pending before the Court are Defendant's motions to (1) dismiss Plaintiff's Complaint (i) under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction; (ii) under Rule 12(b)(3) for improper venue, or in the alternative, to transfer the case under 28 U.S.C. § 1404(a) to the Southern District of Florida or to the District of Colorado; and (iii) under Rule 12(b)(6) for failure to state a claim for relief; and (2) strike Plaintiffs' punitive damages allegations in Paragraph 23 of the Complaint and Paragraph 2 of the Prayer for Relief, under Federal Rule of Civil Procedure 12(f). (Dkt. No. 14.) After having the benefit of oral argument on February 28, 2013, and in light of Plaintiff's request to amend the Complaint and the Court's conclusion that such amendment would not necessarily be futile, Defendant's motion to dismiss is GRANTED with leave to amend.

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Defendant’s motion to strike Plaintiff’s punitive damages allegations is accordingly DENIED as moot.

An amended complaint, if any, shall be filed no later than March 14, 2013. Defendant shall file his motion to dismiss any amended complaint no later than March 28, 2013. The hearing on Defendant’s motion to dismiss the amended complaint shall occur on April 25, 2013 at 9:00 a.m. In addition, a Case Management Conference (“CMC”) is set for April 25, 2013 at 9:00 a.m. A joint CMC statement shall be filed by April 18, 2013.

IT IS SO ORDERED.

Dated: March 1, 2013

  
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JACQUELINE SCOTT CORLEY  
UNITED STATES MAGISTRATE JUDGE