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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
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6 S. ZODY,

7 Plaintiff,

8 vs.

9 MICROSOFT CORPORATION,
10

11 Defendant.
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Case No.: C-12-00942-YGR

**ORDER REGARDING PENDING MOTION TO
AMEND COUNTERCLAIM (DKT. NO. 58) AND
MOTION TO DISMISS AND TO STRIKE (DKT.
NO. 53)**

13 Defendant filed a Motion to Amend Counterclaim on March 26, 2013. (Dkt. No. 58.)
14 Although Plaintiff initially did not consent to the amendment, Plaintiff filed a Non-Opposition to the
15 motion. (Dkt. No. 64.) Defendant has already filed its Amended Answer to Plaintiff's Third
16 Amended Complaint for Damages, and Counterclaim. (Dkt. No. 65.)
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18 The Court notes that because the Motion to Amend Counterclaim had not yet been ruled upon
19 by the Court (and was thus still pending), Defendant should have waited for the Court's authorization
20 to file the amended pleading. However, the Court will deem Dkt. No. 65 to be the operative pleading
21 despite its premature filing. Under Federal Rule of Civil Procedure 15(a)(3), Plaintiffs' response must
22 be filed within 14 days of the date of this Order.

23 Having filed an Amended Answer and Counterclaim, the pending Motion to Dismiss
24 Microsoft Corporation's Counterclaim and to Strike Microsoft Corporation's Affirmative Defenses
25 (Dkt. No. 53) is **MOOT**.

26 The hearing date on Defendant's Motion to Amend Counterclaim scheduled for April 30, 2013
27 is hereby **VACATED**.

28 This Order terminates Dkt. Nos. 53 & 58.

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IT IS SO ORDERED.

Dated: April 9, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE