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 6 Defendant, *pro se*

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9 SAN JOSE DIVISION

10 COUPONS, INC., a California corporation,)	Case No.: 5:07-cv-03457-HRL
11 Plaintiff,)	EX-PARTE MOTION TO STRIKE PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
12 vs.)	
13 JOHN STOTTMIRE, and DOES 1-10,)	
14 Defendant)	Courtroom: 2, 5 th Floor Judge: Hon. Howard R. Lloyd

15 **MOTION**

16 Pursuant to Civil Local Rule 7-10 and the doctrine of *United States v. 416.81 Acres of*
 17 *Land*, 514 F.2d 627, 630 (1975 7th Cir.)(The essence of a motion to strike – whether made by a
 18 party or by the court sua sponte – is the consideration of the defense on its face without further
 19 facts or elaboration, and in that sense a hearing is quite unnecessary) Defendant John Stottlemire
 20 (Defendant) respectfully moves to strike Coupons’s Memorandum of Points And Authorities In
 21 Opposition To Defendant Stottlemire’s Motion To Dismiss Or In The Alternative Motion For
 22 Summary Judgment, Opposition To Request For Judicial Notice, Objections To Evidence And
 23 Motion To Strike, Coupons’s Opposition To Defendant’s Motion For Sanctions (hereinafter
 24 referred to as “Opposition”) filed on behalf of Coupons, Inc (Plaintiff) based on its failure to
 25 comply with Federal Rules Of Civil Procedure 11(a).

26 **PROCEDURAL HISTORY**

27 EX PARTE MOTION TO STRIKE PLAINTIFF’S OPPOSITION TO DEFENDANT’S
 28 MOTION TO DISMISS
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1 On July 2, 2007 Plaintiff filed its Complaint with this Court alleging violations of the
2 Digital Millennium Copyright Act 17 U.S.C. § 1201 and related state law claims against
3 Defendant.

4 On July 2, 2007 the Court referred this case to ECF.

5 On July 24, 2007 Defendant filed an Administrative Motion to Extend Time to File
6 Response to the Complaint.

7 On July 26, 2007 Plaintiff filed its opposition to Defendant's Administrative Motion to
8 Extend Time to File Response to the Complaint.

9 On August 1, 2007 this Court Granted In Part Defendant's Administrative Motion to
10 Extend Time to File Response to the Complaint.

11 On August 29, 2007 Plaintiff filed its First Amended Complaint with this Court again
12 alleging violations of the Digital Millennium Copyright Act 17 U.S.C. § 1201 and related state
13 law claims against Defendant.

14 On September 24, 2007 Defendant filed its Motion for Dismissal or in the Alternative
15 Motion for Summary Judgment. The date of November 13, 2007 was agreed upon by Defendant
16 and Plaintiff's lead counsel, Hollis Hire as the date the motion would be heard by the Court
17 whereby giving Plaintiff 35 days to file any opposition.

18 On October 15, 2007 Defendant filed its Motion for Sanctions Pursuant to Rule 11 of the
19 Federal Rules of Civil Procedure against Plaintiff and Plaintiff's lead counsel, Hollis Hire. The
20 date of November 20, 2007 was agreed upon by Defendant and Plaintiff's lead counsel, Hollis
21 Hire as the date the motion would be heard by the Court whereby giving Plaintiff 14 days to file
22 any opposition.

23 On October 19, 2007 Plaintiff filed its Substitution of Attorneys.

24 On October 22, 2007 Plaintiff filed its Motion to Continue Hearing and Case
25 Management Dates through its alleged attorney Dennis M. Cusack of Farella Braun & Martel
26 LLP and Defendant filed its Opposition to Continue Hearing and Case Management Dates.

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EX PARTE MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS
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1 On October 24, 2007 the Court, through its own motion, extended deadlines as they relate
2 to pending motions filed by the Defendant. The Court also denied as moot Plaintiff's Motion to
3 Continue Hearing and Case Management Dates.

4 On November 13, 2007 Plaintiff, by and through its alleged attorney Dennis M. Cusack
5 of Farella Braun & Martel LLP filed its Opposition to motions Defendant currently has pending
6 before this Court. Plaintiff, by and through its attorney Hollis Hire of Wilson, Sonsini, Goodrich
7 and Rosati filed its Opposition to Defendant's Motion for Sanctions currently pending before this
8 Court.

9 ARGUMENT

10 Plaintiff's alleged counsel, Farella Braun & Martel, LLP should not be recognized by the
11 Court as the attorney of record in this action and Defendant respectfully requests the Court strike
12 the Opposition filed in violation of Federal Rules of Civil Procedure 11(a) which Plaintiff filed
13 on November 13, 2007.

14 Federal Rules of Civil Procedure 11(a) states:

15 "Every pleading, written motion, and other paper shall be signed by at least one
16 attorney of record in the attorney's individual name, or, if the party is not
17 represented by an attorney, shall be signed by the party. Each paper shall state the
18 signer's address and telephone number, if any. Except when otherwise
19 specifically provided by rule or statute, pleadings need not be verified or
20 accompanied by affidavit. An unsigned paper shall be stricken unless omission of
21 the signature is corrected promptly after being called to the attention of attorney
22 or party."

23 General Order 45, Electronic Case Filing IV(C) further states:

24 "Notification of Appearance. Because the ECF system's e-mailed Notices of
25 Electronic Filing (see Sec. II.G) will only be delivered to the original addressee, it
26 is important to keep the list of counsel current. Counsel shall follow these
27 instructions: (A) *A Notice of Appearance should be filed whenever counsel joins*
28 *a case;* (B) In the event that counsel from the same firm replace one another as
representatives of a client, a Notice of Substitution of Counsel shall be filed.; (C)
In the event that a particular counsel ceases to be involved with a case when the
party is still represented by other counsel, a Notice of Change in Counsel shall be
filed.; (D) The withdrawal of a party's sole remaining counsel is governed by
Civil Local Rule 11-5 and requires an order of the court.; (E) *The replacement of*
one firm by another as counsel for a party also requires an order of the court."
(emphasis added)

1 General Order 45 IV(C) requires a party file a Notice of Appearance before an attorney
2 appears on behalf of the party, alternatively, a party must file a motion with the Court whereby
3 obtaining a court order if the party seeks to substitute one law firm for another. In this
4 immediate action, Plaintiff filed a substitution of counsel in an attempt to substitute the law firm
5 of Wilson, Sonsini, Goodrich and Rosati for that of Farella Braun & Martel LLP. The
6 substitution filed by Plaintiff was not filed in the style of Civil Local Rule 7 and merely makes
7 the statement Plaintiff has substituted counsel, subsequently an order from the Court has not
8 been issued granting Plaintiff's substitution of counsel.

9 Given the above facts, the Court on October 24, 2007 denied as moot a motion previously
10 filed by Plaintiff's alleged attorney, Dennis Cusack from the law firm of Farella, Braun & Martel
11 LLP. In that order, the Court further stated the "alleged ineffectual substitution of counsel"
12 would be addressed at the hearing on Defendant's Motion for Sanctions. Defendant fully
13 respects the order of the Court however with its latest filing, Plaintiff has compounded the issue.
14 Once again Dennis Cusack, from the law firm of Farella, Braun & Martel LLP, has filed papers
15 with the Court on behalf of Plaintiff without an order in place recognizing him as attorney of
16 record for Plaintiff. Dennis Cusack has also failed to file a notice of appearance adding himself
17 as attorney of record. These actions by Dennis Cusack violate Federal Rules of Civil Procedure
18 11(a) which require Plaintiff's Opposition be "signed by at least one attorney of record".

19 Defendant humbly request the Court not view this motion as disrespect for the order
20 issued by the Court on October 24, 2007 as Defendant fully respects that order and patiently
21 awaits the Court's opinion as it relates to the ineffectual substitution of counsel. Defendant now
22 seeks to address the continued non compliance of Plaintiff with General Order 45 IV(C) and with
23 Federal Rules of Civil Procedure 11(a). After the October 24, 2007 order Plaintiff has been
24 given 20 days to either comply with General Order 45 IV(C) or file papers with the Court
25 through its recognized attorney of record and while the Court did not issue this mandate with its
26 order dated October 24, 2007 no such order should have been required as there is nothing to
27 suggest that General Order 45 IV(C) is without effect. Conversely, the Court in its October 24,
28 2007 order referenced General Order 45 stating it is "[p]articularly applicable to this situation".

EX PARTE MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS
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1 Although the Court waits until Defendant's Motion for Sanctions hearing to address the
2 ineffectual substitution of counsel this does not relieve the requirement for Plaintiff to comply
3 with General Order 45 IV(C) thus Defendant respectfully moves the Court to strike the
4 Opposition filed by Plaintiff's alleged attorney, Denis Cusack as it has been filed in violation of
5 Federal Rules of Civil Procedure 11(a).

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9 Dated: November 14, 2007

By: _____/s/_____
John A Stottlemire, *pro se*