

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-CV-00636-REB-KLM

VIDEO PROFESSOR, INC.  
Plaintiff,

v.

AMAZON.COM, INC.  
Defendant.

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**AMAZON'S RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED  
RESPONSE *NUNC PRO TUNC* [Docket No. 41, filed November 23, 2009]**

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Defendant Amazon.com, Inc. ("Amazon") hereby submits its Response to Plaintiff's Motion for Leave to File Amended Response *Nunc Pro Tunc* (Docket No. 41, filed November 23, 2009) ("Motion"), and in support thereof, states as follows.

Plaintiff's response to Amazon's Motion for Summary Judgment was due on November 16, 2009 (20 days after filing pursuant to D.C.COLO.LCivR 56.1A). On November 18, 2009, Plaintiff filed a motion for an extension of time within which to file its response to Amazon's motion. Docket No. 39. The Court denied Plaintiff's motion for an extension of time as Plaintiff had failed to comply with the Court's Practice Standards - Civil Actions, Section II.G. See Minute Order, Docket No. 40.

Plaintiff now seeks an order allowing it to file a late amended response to Amazon's Motion for Summary Judgment. Amazon takes no position on Plaintiff's Motion to the extent Plaintiff's amended response includes pinpoint citations and other

non-substantive changes to assist the Court. However, Amazon opposes Plaintiff's Motion to the extent Plaintiff seeks to add a new substantive exhibit to its response, namely, proposed Exhibit 11, and any new material related to that exhibit .

Plaintiff states that in its response, "Plaintiff referenced an exhibit on multiple occasions; however it inadvertently omitted the exhibit." See Motion, at ¶ 5. However, Plaintiff's response includes no references to any such exhibit. The redlined document Plaintiff attached as Exhibit C to its Motion reveals that the only references to Exhibit 11 are in the proposed amended response, but not in the original response Plaintiff filed on November 19, 2009. See Motion, Exhibit C at 11, 19 n.16. This substantive change is improper in light of the Court's order denying Plaintiff's motion for an extension of time in which to file its response.

Respectfully submitted this 24th day of November 2009.

s/ Marc C. Levy  
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Attorneys for Defendant Amazon.com, Inc.

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on November 24, 2009, I electronically filed the foregoing **AMAZON'S RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED RESPONSE *NUNC PRO TUNC* [Docket No. 41, filed November 23, 2009]** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

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/s/ Marc C. Levy  
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