

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ERICH SPECHT, an individual and doing	)	
business as ANDROID DATA CORPORATION,	)	
and THE ANDROID’S DUNGEON	)	
INCORPORATED,	)	
	)	Civil Action No. 09-cv-2572
Plaintiffs-Counterdefendants,	)	
v.	)	Judge Harry D. Leinenweber
	)	
GOOGLE INC.,	)	Magistrate Judge Jeffrey Cole
	)	
Defendant-Counterplaintiff.	)	

**PLAINTIFFS’ MOTION TO STRIKE GOOGLE’S  
STATEMENT OF UNCONTESTED MATERIAL FACTS IN SUPPORT  
OF MOTION FOR SUMMARY JUDGMENT AND CERTAIN EXHIBITS**

Plaintiffs Erich Specht (“Specht”), an individual and doing business as Android Data Corporation (“ADC”), and The Android’s Dungeon Incorporated (“ADI”), by and through their attorneys, file this Motion to Strike Google’s Statement of Uncontested Material Facts in Support of Motion for Summary Judgment and Certain Exhibits (the “Motion”):<sup>1</sup>

**THE STATEMENT OF FACTS  
SHOULD BE STRICKEN IN ITS ENTIRETY**

1. On August 24, 2010, Google filed its motion for partial summary judgment on the issue of abandonment (the “Summary Judgment Motion”). On the same date, Google filed its Google’s Statement of Uncontested Material Facts in Support of Motion for Summary Judgment (the “Statement of Facts”).

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<sup>1</sup> This Motion addresses only those defects in the Statement of Facts, and supporting documents, which require it to be stricken. Other objections are addressed in Plaintiffs’ Response to Google’s Statement of Uncontested Material Facts in Support of Motion for Summary Judgment (Docket No. 271).

2. The Statement of Facts does not comply with this Court's local rules. Specifically, Local Rule 56.1(1)(a)(1)(A) requires that statements of material facts in support of summary judgment motions contain "a description of the parties." Local Rule 56.1(1)(a)(1)(B) further requires that statements of material facts in support of summary judgment motions contain "all facts supporting venue and jurisdiction in this court." Google's Statement of Facts does not include any description of the parties, any facts supporting venue or any facts supporting jurisdiction. Therefore, it is defective and should be stricken.

**GOOGLE'S UNAUTHENTICATED  
SUMMARY JUDGMENT EXHIBITS, AND  
AND THE PARAGRAPHS OF THE STATEMENT OF  
FACTS THAT RELY ON THEM, SHOULD BE STRICKEN**

3. The Statement of Facts includes many exhibits upon which it relies. Although "documents and exhibits identified by affidavit may be submitted to support a motion for summary judgment," FDIC v. Lauterbach, 626 F.2d 1327, 1331 (7th Cir. 1980), documents which are *not* authenticated -- by affidavit, deposition or otherwise -- may *not* be considered. E.g., Hamilton v. Keystone Tankship Corp., 539 F.2d 684, 686 (9th Cir. 1976) (refusing to consider summary judgment exhibits which were not authenticated by affidavit).

4. As the Seventh Circuit has explained:

It bears repeating that the purpose of summary judgment is to determine whether there is any genuine issue of material fact in dispute and, if not, to render judgment in accordance with the law as applied to the established facts. The facts must be established through one of the vehicles designed to ensure reliability and veracity--depositions, answers to interrogatories, admissions and affidavits. When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.

Martz v. Union Labor Life Ins. Co., 757 F.2d 135, 138 (7th Cir. 1985).

5. Here, Google did not provide any affidavits to authenticate any of the exhibits to the Statement of Facts. The Court should strike the following unauthenticated exhibits and should not consider them in connection with Google's Summary Judgment Motion: 5, 31, 40-41, 50-52 and 57.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully requests that the Court grant this Motion and enter an Order:

- A. Striking Google's Statement of Facts;
- B. Or, in the alternative, striking Google's Exhibits 5, 31, 40-41, 50-52 and 57; and
- C. Granting Plaintiffs such other and further relief as is appropriate.

Respectfully submitted,

ERICH SPECHT, an individual, and  
doing business as ANDROID DATA  
CORPORATION and THE ANDROID'S  
DUNGEON INCORPORATED

By:           /s/ P. Andrew Fleming            
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**CERTIFICATE OF SERVICE**

P. Andrew Fleming, an attorney, certifies that he caused copies of the foregoing to be served by electronically filing the document with the Clerk of Court using the ECF system this 11th day of October, 2010.

/s/ P. Andrew Fleming