

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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ARMENIAN LIBRARY AND MUSEUM OF AMERICA, INC.,

Plaintiff,

U.S. DISTRICT COURT  
Case No. 11-cv-11862-MASS

v

Hon. Mark L. Wolf

MAYER MORGANROTH,

Defendant.

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**DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE  
PLAINTIFF ARMENIAN LIBRARY AND MUSEUM OF AMERICA, INC.'S  
SUPPLEMENTAL NOTICE**

## **STATEMENT OF FACTS**

On November 8, 2011, Defendant filed his Motion to Dismiss For Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) (the “Motion to Dismiss”) which is currently pending before this Court.

On November 18, 2011, Plaintiff filed its response in opposition to the Motion to Dismiss (the “Response”).

On February 7, 2012, Plaintiff filed its Supplemental Notice apparently in further support of its Response.

Plaintiff did not seek leave of this Court prior to filing its Supplemental Notice, and there is no authority which permits the filing of such Supplemental Notice. In addition, the Supplemental Notice is inaccurate. Therefore, the Supplemental Notice should be stricken by this Court.

## **ARGUMENT**

### **I. STANDARDS OF REVIEW.**

Plaintiff purports to file its Supplemental Notice pursuant to Fed. R. Civ. P. 15(d). However, Fed. R. Civ. P. 15(d) does not provide any such authority. Specifically, Fed. R. Civ. P. 15(d) states:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time. (emphasis added).

Fed. R. Civ. P. 7(a) states:

Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer. (emphasis added).

L.R. 7.1(b)(3) states:

All other papers not filed as indicated in subsections (b)(1) and (2), whether in the form of a reply brief or otherwise, may be submitted only with leave of court. (emphasis added).

Fed. R. Civ. P. 12(f) states:

The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Inasmuch as Plaintiff did not seek leave of this Court prior to filing its Supplemental Notice, and there is no authority to support the filing of the Supplemental Notice, the Supplemental Notice should be stricken pursuant to Local Rules of this Court, Fed. R. Civ. P. 15(d) and/or pursuant to Fed. R. Civ. P. 12(f).

**II. THE SUPPLEMENTAL NOTICE SHOULD BE STRICKEN PURSUANT TO FED. R. CIV. P. 15(d), 12(f) AND/OR LOCAL RULE 7.1(b)(3).**

As a threshold matter, because the Supplemental Notice does not serve to supplement a

pleading<sup>1</sup>, as “pleading” is defined by Fed. R. Civ. P. 7(a), Fed. R. Civ. P. 15(d) simply does not apply to this matter at all. However, even if the Response somehow could be considered a pleading which the Supplemental Notice seeks to supplement, it still could only be supplemented pursuant to Fed. R. Civ. P. 15(d) following a motion seeking to leave to permit such supplementation. Plaintiff did not file any motion seeking leave prior to filing its Supplemental Notice. Therefore, the Supplemental Notice should be stricken because Plaintiff did not seek leave to file such a supplemental “pleading” as required by Fed. R. Civ. P. 15(d).

In addition, to the extent the Supplemental Notice is somehow considered a “pleading,” it should be stricken pursuant to Fed. R. Civ. P. 12(f) because it is immaterial to the matter at bar. Plaintiff’s Motion to Dismiss was based exclusively upon Defendant’s assertion that this Court lacks jurisdiction over Defendant. The Motion to Dismiss was not premised upon the fact that there was pending litigation in the State of Michigan between the Estate of Dr. Kevorkian (the “Estate”) and Plaintiff in this case. In any event, the Michigan Court which dismissed without prejudice the action between the Estate and Plaintiff expressly held that, if Plaintiff’s Motion to Dismiss pending in this case “is granted then [the Estate] may seek to re-open [the Michigan Case]<sup>2</sup>.” See, Supplemental Notice, Exh. B at 12 (footnote added).

In fact, the Supplemental Notice is simply an attempt to further brief Plaintiff’s Response to the Motion to Dismiss. The Local Rules of this Court govern motion practice, and expressly prohibit such additional briefing. L.R. 7.1(b)(3) makes clear that any papers other than a motion and opposition thereto may be submitted “only with leave of the court.” (emphasis added). Because Plaintiff did not seek such leave, the Supplemental Notice should be stricken pursuant

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<sup>1</sup> The Supplemental Notice seeks to supplement Plaintiff’s Response to Defendant’s Motion to Dismiss, which is not a pleading.

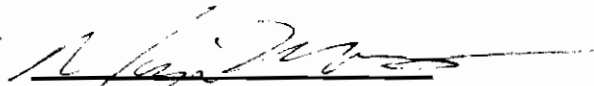
<sup>2</sup> Plaintiff tellingly fails to quote this portion of the Michigan Court’s ruling in its Supplemental Notice.

to L.R. 7.1(b)(3)<sup>3</sup>.

**CONCLUSION**

WHEREFORE, Defendant respectfully requests that this Honorable Court grant the instant Motion, and strike the Supplemental Notice.

Respectfully submitted,



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Dated: February 9, 2012

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<sup>3</sup> Although Fed. R. Civ. P. 12(f) has sometimes been used to support striking of documents other than pleadings, West's FEDERAL CIVIL RULES HANDBOOK (2012 ed) at 491-492, such application is not necessary here because Plaintiff failed to comply with the Local Rules regarding motion practice. Thus, the Local Rules alone provide ample authority to strike the Supplemental Notice.