

# HIGBEE & ASSOCIATES

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Mar. 18, 2019

**FILED VIA ECF**

Hon. Honorable Arthur D. Spatt  
United States District Judge  
United States District Court  
Eastern District of New York  
P.O. Box 9014  
Central Islip, NY 11722-9014

**Re:** Response to Plaintiff's Letter Motion of 3-15-19 (ECF 28)  
**Docket #:** 18-cv-3353  
**Title:** *Meyer, Suozzi, English & Klein, P.C. v. Mathew K. Higbee, Esq; Higbee & Associates; Nick Youngson; & RM Media, Ltd.*

Dear Judge Spatt:

On behalf of the Higbee Defendants (Mathew K. Higbee, Esq., and Higbee & Associates), I request that the Plaintiff's most recent letter submission filed 3-15-19 (ECF 28) be stricken and disregarded.

The Plaintiff's latest 25-page submission is inappropriate on many levels. For one, Your Honor's individual rules specifically state that: "Parties may request oral argument by letter *at the time their motion papers are filed.*" Here, Plaintiff neglected to request oral arguments or a conference until after the close of all briefs.

Even more inappropriate is that Plaintiff is now attempting to make further substantive arguments and submit further exhibits to support its positions—which it had the opportunity to do at the time it filed its opposition. As the movant, the Higbee Defendants were entitled to submit a reply on their own motion. The Plaintiff, on the other hand, is *not* entitled to a *surreply*. Nor is the Plaintiff entitled to oral arguments, especially where it neglected to request oral arguments in a timely manner. This in addition to the fact that the Plaintiff has now filed three separate letter motion since the beginning of this action, in violation of the Court's rules. *See* Rule IV(B) ("No letter motions will be accepted.") (emphasis in original). If the rules are to be enforced, they should be equally enforced against all parties.

This Court previously required the Higbee Defendants to comply with its rules regarding page length, and permitted us to submit a revised reply. In response, we have submitted a timely Reply that complies with the Court's requirements.

The Plaintiff's argument that the Higbee Defendants have relied on further "extraneous information" in our latest Reply (ECF 27) is without merit. Our latest Reply is an even more truncated version of our prior Reply, and the declaration and exhibits submitted with our latest Reply (ECF 27-1 to 27-3) are identical to those we submitted with last Reply (ECF 25-1). In requesting the Court to strike our last Reply (ECF 25), the Plaintiff merely complained about line spacing/page length but did not raise any issues regarding the Reply containing extraneous information (*see* ECF 26).

In any event, the arguments, declaration and exhibits we have submitted are all matters which are directly related to and integral to the allegations in the Plaintiff's Complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152-53 (2d Cir. 2002); *Brass v. Am Film Techs, Inc.*, 987 F.2d 142, 150 (2d Cir. 2002); *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 48 (2d Cir. 1991) ("Where plaintiff has actual notice of all the information in the movant's papers and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely dissipated.").

For those reasons, and to reduce unnecessary court time and resources, I ask that the Plaintiff's latest submission (ECF 28) be stricken and disregarded in the entirety and the motion be submitted for decision on the papers<sup>1</sup>.

Respectfully,

/s/ Rayminh L. Ngo

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Rayminh L. Ngo, Esq.

Attorney for Defendants Mathew K. Higbee, Esq. and Higbee & Associates

CC:

Kevin Schlosser (Counsel for Plaintiff)  
via ECF

Jeanne Weisneck (Counsel for Defendants RM Media and Nick Youngson)  
via ECF

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<sup>1</sup> I also note that pending before the Court is a separate motion to quash service and dismiss filed by our co-defendants, RM Media and Nick Youngson (ECF 24). RM Media and Nick Youngson are necessary party defendants to this action. Thus, in addition to the reasons provided in the Higbee Defendants' own motion, the claims against the Higbee Defendants could not possibly be sustained should RM Media and Nick Youngson be dismissed.