



First, Plaintiff's Motion to Strike was wholly unnecessary and improper. Contrary to Plaintiff's representation, Plaintiff *never* conferred with Defendants on the Motion, in violation of L.R. CV-7(h). Had Plaintiff done so, its *sole* purported basis for the Motion, *i.e.*, the concern that it not be compelled to respond to Defendants' Letter Briefs (Dkt. Nos. 280 & 287) until such time as the Court ruled upon Defendants' Motion For Leave to File Two Letter Briefs Requesting Permission to File Certain Motions (Dkt. No. 277), would have been allayed. Defendants did not and do not expect Plaintiff to respond to the Letter Briefs until the Court's ruling on their Motion (Dkt. No. 277).

Second, Plaintiff's protest (Dkt. No. 288 at p. 1, ¶ 1) that the Letter Briefs were filed in violation of L.R. CV-7(k) is without merit. Defendants' Motion for Leave sought leave to extend the deadline for summary judgment and to file the Letter Briefs by their respective certain dates due to the ongoing discovery and depositions that impacted the subject matter of the briefing. Plaintiff admits in its Motion to Strike that it received the Briefs *via* the Court's CM/ECF filing system at Dkt. Nos. 280, 287 (Dkt. No. 288 at 1).

Finally, and perhaps most importantly, Defendants' Motion for Leave, the responsive briefing associated with it, and Plaintiff's Motion to Strike and this Response, could have been entirely avoided had Plaintiff simply worked in good faith with Defendants to come to an agreement on a reasonable timeline, with leave of Court, to allow for the filing of the Defendants' two Letter Briefs, as well as any possible letter briefs that Plaintiff sought to file. Instead, Plaintiff wholly refused to cooperate with Defendants in favor of its litigation -by- "gotcha" tactic.

In the light of Defendants' previously-filed Motion for Leave (Dkt. No. 277), Reply in support thereof (Dkt. No. 289), as well as this Response in Opposition, Defendants respectfully request that the Court deny Plaintiff's Motion to Strike.

Dated: January 15, 2013

Respectfully submitted,

/s/ (with permission)

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 15, 2013, the foregoing document was filed electronically in compliance with Local Rule CV-5(a)(3). As such, this document was served on all counsel who are deemed to have consented to electronic service.

*/s/ Eric H. Findlay* \_\_\_\_\_  
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