

1 FREEDMAN & TAITELMAN, LLP
Bryan J. Freedman, Esq. (SBN 151990)
2 Jesse Kaplan, Esq. (SBN 255059)
1901 Avenue of the Stars, Suite 500
3 Los Angeles, California 90067
Tel: (310) 201-0005
4 Fax: (310) 201-0045

5 Attorneys for Plaintiff Mario Lavandeira, dba Perez Hilton
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 MARIO LAVANDEIRA, dba PEREZ) **CASE NO.: CV 08-04764 GAF**
HILTON, an individual,) **(AJWx)**
12)
Plaintiff,)
13) **PLAINTIFF MARIO LAVANDEIRA'S**
v.) **OBJECTIONS TO DEFENDANT**
14) **MARGIE E. ROGERS AND**
INFUSE, LLC, a New Jersey Limited) **ELIZABETH SILVER'S MOTION TO**
15 Liability Company d/b/a) **DISMISS**
www.perezrevenge.com; MARGIE E.)
16 ROGERS; ELIZABETH SILVER-)
FAGAN aka ELIZABETH SILVER;)
17 and DOES 1 through 10, inclusive,)
18 Defendants.)
19)
20)

21 Plaintiff Mario Lavandeira, dba Perez Hilton ("Plaintiff") hereby objects to
22 defendant Margie E. Rogers ("Rogers") and Elizabeth Silver-Fagans' ("Silver-
23 Fagan") (referred to collectively as "Defendants") joint motion to dismiss (the
24 "Motion") filed on November 3, 2008, and electronically noticed on November 6,
25 2008. Plaintiff objects on the ground that the Motion is untimely, the Court has
26 entered defaults against Defendants, Defendants have failed to serve the Motion,
27 Defendants have failed to provide adequate notice as required by Local Rule 6-1,
28 Defendants have failed to meet and confer pursuant to Local Rule 7-3, and because

1 the Motion does not comply with Local Rule 7-5.

2
3 **The Court Has Entered Defaults Against the Defendants**

4 Defendants Motion is late and was filed after the Court entered defaults against
5 Defendants. Defendants were required to move to dismiss prior to October
6 27, 2008, the date their responsive pleadings were due. *See* F.R.Civ.P. 12(b). Upon
7 entry of default, the factual allegations in Plaintiff's complaint, except those relating
8 to damages, are deemed admitted. *E.g., Televideo Sys., Inc. v. Heidenthal*, 826 F.2d
9 915, 917-18 (9th Cir. 1987); *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th
10 Cir. 1977).

11 Defendants have failed to respond to the complaint by October 27, 2008. On
12 September 26, 2008, the Honorable George P. Schiavelli held a Status Conference
13 regarding the Defendants' representation. On September 26, 2008, the Court granted
14 Defendants' application for an extension of time to respond to the complaint and
15 ordered Defendants to file a responsive pleading by 5:00 p.m. on October 27, 2008.
16 Defendants' failed to do so. *See* Court's Order dated September 26, 2008. On
17 October 31, 2008, Plaintiff filed requests to enter default against the Defendants. On
18 November 3, 2008, the Court entered defaults against the Defendants.

19 Based on the Court's entry of defaults against the Defendants, Plaintiff requests
20 that the Court reject Defendants' Motion.

21
22 **Defendants Have Failed to Serve or Provide Adequate Notice of the Motion**

23 Defendants have failed to provide adequate notice of their Motion as required
24 by Local Rule 6-1. In fact, Defendants have failed to serve Plaintiff's counsel with
25 the Motion. Defendants were required to serve the motion by either mail or personal
26 service. *See* L.R. 6-1. Moreover, as the Motion was excluded from electronic filing
27 under General Order 08-02 (General Order 08-02, Section V. (B) states that
28 "Documents filed by pro se litigants will continue to be filed and served in the

1 traditional manner”), Defendants were required to serve it using “traditional means of
2 service.” L.R. 5-3.3. Defendants were required to serve the Motion twenty-four (24)
3 days before the Motion Day designated on the notice if served by mail, or twenty-one
4 (21) days before the Motion Day designated on the notice if personally served. *See*
5 L.R. 6-1.

6 Here, Defendants noticed the Motion for **November 24, 2008**. Accordingly,
7 Defendants were required to serve the Motion by mail no later than November 1,
8 2008, or by personal service no later than November 3, 2008. *See* L.R. 6-1.
9 Defendants apparently filed a hard copy of the Motion with the Court on November 3,
10 2008. Defendants, however, never served the Motion on Plaintiff’s counsel by any
11 means.

12 Even if the Court’s November 6, 2008 electronic notification constitutes
13 personal service, service would be inadequate based on the November 24, 2008
14 Motion date. This notice was only be eighteen (18) days prior to the Motion Day and
15 would only gives Plaintiff four (4) days to oppose the Motion. *See* L.R. 7-9.

16 Based on Defendants’ failure to serve the Motion on Plaintiff’s counsel,
17 Plaintiff requests that the Court reject Defendants’ Motion.

18
19 **Defendants Have Failed To Meet and Confer As Required By Local Rule 7-3**

20 Local Rule 7-3 requires a party contemplating the filing of any motion to first
21 meet and confer, and “discuss thoroughly, *preferably in person*, the substance of the
22 contemplated motion and any potential resolution.” L.R. 7-3. Defendants were
23 required to confer with Plaintiff’s counsel at least five (5) days before moving to
24 dismiss under F.R.Civ.P. 12(b). *See* L.R. 7-3. Defendants were also required to
25 include in their notice of motion a statement indicating that the motion was made
26 following a conference pursuant to Local Rule 7-3. *See* L.R. 7-3.

27 Defendants have failed to make any efforts to contact Plaintiff’s counsel to
28 discuss their motion to dismiss pursuant to F.R.Civ.P. 12(b)(2). While, Defendants

1 are *pro se* parties, the Court has admonished Defendants on several occasions for
2 violating this rule. More specifically, both the Court's August 20, 2008, and August
3 27, 2008, Orders indicate that Defendants' motions for an extension of time to
4 respond to the complaint violated Local Rule 7-3, amongst others. *See Courts'*
5 *Orders* dated August 20, 2008, and August 27, 2008. Accordingly, Defendants were
6 certainly on notice of their obligation to comply with Local Rule 7-3 prior to filing a
7 motion.


8 Based on Defendants' failure to meet and confer as required by Local Rule 7-3,
9 Plaintiff requests that the Court reject Defendants' Motion. *See Superbalife, Int'l v.*
10 *Powerpay*, CV 08-5099, 2008 U.S. Dist. LEXIS 89204 (C.D.C.A. October 7, 2008)
11 (denying motion to dismiss pursuant to F.R.Civ.P. 12(b)(3) based entirely on moving
12 parties failure to adequately meet and confer pursuant to L.R. 7-3).

13
14 **Defendants' Moving Papers Are Incomplete**

15 Defendants were required to include a memorandum and evidence supporting
16 their motion. *See* L.R. 7-5. The Motion that Defendants filed on November 3, 2008,
17 merely contained a Notice of Motion. Based on Defendants' failure to provide a
18 memorandum of law or any supporting evidence as required by Local Rule 7-5,
19 Plaintiff requests that the Court reject Defendants' Motion.

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21
22 Dated: November 7, 2008

FREEDMAN & TAITELMAN, LLP

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24 By: 
25 Bryan J. Freedman, Esq.
26 Attorneys for Plaintiff Mario Lavandeira,
27 dba Perez Hilton
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