

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF COLORADO**

Honorable Marcia S. Krieger

Civil Action No. 08-CV-00309 MSK-KMT

SUZANNE SHELL,

Plaintiff,

v.

AMERICAN FAMILY RIGHTS ASSOCIATION, et. al.,

Defendants.

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**DEFENDANT KIEFER'S RESPONSE TO PLAINTIFF'S RESPONSE (#282)**  
**FILED ON 8/24/09 TO DEFENDANT KIEFER'S MOTION TO QUASH**  
**SERVICE AND DISMISS**

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COMES NOW, Defendant Cletus Kiefer, a living man, by special appearance, and (pursuant to F.R.C.P.R. 12(b) hereby MOVES this Court to dismiss the Plaintiffs case against him, and for the Court to levy sanctions against Plaintiff. The Defendant Cletus Kiefer in no way voluntarily submits to personal jurisdiction. In support of this response and the original motion, Defendant states as follows:

1. The Defendant certifies that, pursuant to D.C. Colo. L. Civ. R. 7.1(A), this response was not discussed with Plaintiff due to the fact that this pertains to a Rule 12 Motion to Dismiss, and it is expected that Plaintiff will oppose the Response.
2. The Plaintiff's response to the motion is the same response she has submitted to the many motions to dismiss already submitted in this case that she does not have to at this

point submit every detail of her case against the defendants. However, because the defendants must give specific details in any motion to dismiss or any other special motions they might file the Plaintiff's complaint must contain enough specific detail including dates, times etc. for the defendants to effectively mount a defense against the allegations. This is plainly stated in the Federal Rules of Civil Procedure (FRCP) Rule 9 as shown below:

A. Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General.

Except when required to show that the court has jurisdiction, a pleading need not allege:

- (A) a party's capacity to sue or be sued;
- (B) a party's authority to sue or be sued in a representative capacity; or
- (C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues.

**(a) To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.**

**(b) Fraud or Mistake; Condition of Mind.**

**In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.** Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

**(c) Conditions Precedent.**

**In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.**

(d) Official Document or Act.

In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place.

An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages.

If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim.

(1) How Designated.

If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of [Rules 14\(c\)](#), [38\(e\)](#), and [82](#) and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) Designation for Appeal.

A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within [28 U.S.C. § 1292\(a\)\(3\)](#).

3. In the Plaintiff's response, Ms. Shell claims that the defendants have all responded with allegations against her that fall outside the realm of the specific allegations contained in her lawsuit. In attempting to control the flow of information to the court Ms. Shell is only trying to perpetuate the fraud and malicious prosecution against the Defendants. The real fact and law is as stated in FRCP Rule 9 Section 2(a) that when pleading Special Matters such as Motions to Dismiss for Jurisdiction and Under the Doctrine of Unclean Hands the Defendants **are required under this section to state any supporting facts that are peculiarly within the party's knowledge. When defendants file a Motion to Dismiss and add their proofs, they are stating supporting facts, and this is required of defendants, and also is what Ms. Shell wants defendants to be barred from doing.**
4. Similarly, FRCP Rule 9 Section 2(b) sets the conditions for a party to the case to raise the issue of fraud. Once again the defendants in this case are required to submit proof to this type of allegation and they have repeatedly done so. This section also states the mindset of the party may be alleged generally, but in this case the defendants have also provided numerous instances of proof that the Plaintiff and her associates have a long

history of this type of activity. Therefore, with the proof provided and the history provided which establishes the mindset of the Plaintiff, the Defendants have easily met this requirement set in the rules of procedure and have gone above and beyond to show the mindset of the Plaintiff.

5. In section 1 (a) of her response the Plaintiff states that as the Plaintiff she “defines the issues of her complaint and that it is improper for the defendants to manhandle the court to consider any other issues”. This is just more of the Plaintiff’s continuing attempts to use the court to further her criminal enterprise; if the plaintiff is allowed to control the information available to the court it severely limits the court in its ability to dispense justice in this case. Despite the claims of the plaintiff, the defendants have faithfully submitted to this court evidence, within the rules provided above, to provide the court with a clear picture in order to make fair decisions in this case.
6. In section 3 of her response the Plaintiff suggests this defendant “has filed his response for improper purposes and not in the good faith belief her complaint is deficient”. This Defendant hereby states for the record that he has filed his motion in the good faith knowledge that the Plaintiff is a criminal and fraud and is doing nothing more than making this court aware of that truth.
7. The Plaintiff is illegally attempting to establish jurisdiction by use of a supposed “contract” from her website. Plaintiff has not alleged facts demonstrating a proper offer to enter into a contract, that Defendant had knowledge of the so-called contract, or that he assented to any of her terms. Contracts may be formed, for example, by clicking “I agree” in order to manifest one’s assent. *See, e.g., Caspi v. Microsoft Network, LLC, 732 A.2d 528, 530 (N.J. Super. Ct. App. Div. 1999)* (a membership agreement requiring

a prospective subscriber to click on “I Agree” created a contract); *Specht v. Netscape Communications Corp.*, 306 F.3d 17, 35 (2nd Cir. 2002) Court determined that a website's terms of use unenforceable where a user had unimpeded access to the website contents and could only become aware of the terms of use by clicking on a separate icon located elsewhere on the website. In addition, an examination of the Copyright Notice demonstrates that there are no terms enumerated in the “contract.” Her Copyright Notice is not an invitation to enter into a contract; it is an invitation to be exposed to her penalties. Thus, her Copyright Notice is not a contract; it is a two-page penalty clause and invalid on its face. See, e.g., *Butler v. Lembeck*, 182 P.3d 1185, 1191 (Colo. Ct. App. 2007) (A contract provision for liquidated damages is invalid as a penalty if it is unreasonably large for the expected loss from a breach of contract.) citing *Klinger v. Adams County Sch. Dist. No. 50*, 130 P.3d 1027, 1034 (Colo. 2006).

8. Considering the fact the Plaintiff has not made a legitimate case for jurisdiction, the rest of her response, other than being the same tired allegations she has repeatedly inflicted upon this court, is moot. However, Defendant Kiefer denies all other allegations and will address the specific allegations against him in the response to her affidavit the Plaintiff submitted with her response.

### **Conclusion**

The Plaintiff, in her response has made no case for this court to have jurisdiction over Defendant Kiefer in this case. Defendant Kiefer prays this court dismiss for lack of Jurisdiction and Quash Service of Summons against him. Further Defendant Kiefer prays this court take note of the above mentioned Federal Rules of Civil Procedure and take the proper notice of all the evidence that has been submitted pertaining to the Plaintiff and her associates and justly dismiss

this case with prejudice against the Plaintiff and to impose sanctions against the Plaintiff as the court seems fit.

Respectfully Submitted

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Cletus W. Kiefer, Sui Juris, Pro Se

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CERTIFICATE OF SERVICE**

This is to certify that the Defendant has caused a copy of the above-named document was mailed by first class mail to the following interested persons on 8<sup>th</sup> of September, 2009. Defendant will have no contact with Plaintiff via e-mail.

Suzanne Shell  
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/s Brandy Slater

Judge Marcia S. Krieger  
Alfred A. Arraj US Courthouse A941  
Courtroom A901  
901 19th Street  
Denver, Colorado 80294-3589

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Cletus W. Kiefer, Sui Juris, Pro Se

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.