

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER dba
ENCYCLOPEDIADRAMATICA.SE,

Defendant.

CIVIL ACTION NO. 17-cv-10356-PBS

**PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S MAY 26, 2017
ANSWER AND COUNTERCLAIM**

Paul B Seels

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Pursuant to Fed. R. Civ. P. 12 (f) Plaintiff Jonathan Monsarrat requests the Court to strike Defendant Zaiger's May 26, 2017 Answer and Counterclaim (ECF# 24) filed in violation of the Fed. R. Civ. P. 12(a)(1)(A)(i) deadline or in the alternative, if the Court should find the requisite "excusable neglect" under Fed. R. Civ. P. 6(b)(1)(B) and consequently grant Defendant Zaiger's May 23, 2017 motion for an extension of time (ECF# 20) to order the answer and counterclaim to be concurrently entered on the docket. The affidavit of Plaintiff's counsel and a proposed Order are filed as Exhibits A and B, respectively.

Defendant Zaiger admits that the deadline established by Fed. R. Civ. P. 12(a)(1)(A)(i) for his response to the complaint was May 17, 2017. ECF# 20 at 1. See also ECF# 25-1 documenting a series of communications between Defendant Zaiger and Plaintiff's counsel.

On May 23, 2017, following Plaintiff's application for entry of notice of default, ECF # 17, Defendant Zaiger filed a motion seeking leave to file to a response to the complaint. ECF #20. Informed that Plaintiff would oppose the motion, See Affidavit of Richard Goren, ECF# 25-1 ¶¶ 6, 7, on May 26, 2017, and without leave of Court to do so, Defendant Zaiger filed an Answer and Counterclaim. ECF #24. After Plaintiff filed his opposition to the motion for