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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

RALPH A. HUNTZINGER, on
 Behalf of Himself and All Others
 Similarly Situated,

Plaintiff,

v.

AQUA LUNG AMERICA, INC.,
 Defendant.

Case No. 3:15-cv-01146-WQH-KSC

CLASS ACTION

**PLAINTIFF'S NOTICE OF
 MOTION AND MOTION TO
 STRIKE DEFENDANT AQUA LUNG
 AMERICA INC.'S EVIDENTIARY
 SUBMISSION SUBMITTED IN
 SUPPORT OF ITS MOTION TO
 DISMISS**

Hearing Date: September 15, 2015

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

USDJ: William Q. Hayes

Complaint Filed: May 21, 2015
 Trial Date: TBD

DEMAND FOR JURY TRIAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on September 15, 2015, Plaintiff Ralph A. Huntzinger will move this Court for an order striking Defendant Aqua Lung's ("Aqua Lung") evidentiary submissions (ECF Nos. 7-4, 7-5, 7-6, 7-7, 7-8, and 7-9) submitted in support of its motion to dismiss class action complaint. Plaintiff requests that this Court strike the above referenced documents for the following reasons:

In ruling on a motion to dismiss, the Court cannot consider disputed facts outside the complaint, including evidentiary submissions concerning those disputed facts. The above referenced documents are submitted by Aqua Lung solely to dispute facts alleged in Plaintiff's complaint. Accordingly, they must be stricken and not considered on Aqua Lung's motion to dismiss.

Plaintiff's motion is based on this notice of motion and motion and the memorandum in support thereof filed concurrently herewith. These documents were all filed at least twenty-eight (28) days before the hearing pursuant to Local Civil Rule 7.1(e). Plaintiff does not request oral argument on this motion, unless otherwise ordered by the Court.

Dated: August 17, 2015

BLOOD HURST & O'REARDON, LLP
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By: *s/ Timothy G. Blood*
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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 17, 2015.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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