

1 John W. Sheller (SBN 67519)  
2 Wendy Wen Yun Chang (SBN 180114)  
3 **HINSHAW & CULBERTSON, LLP**  
4 11601 Wilshire Blvd., Suite 800  
5 Los Angeles, CA 90025  
6 [phone]: (310) 909-8080  
7 [jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)  
8 [wchang@hinshawlaw.com](mailto:wchang@hinshawlaw.com)

9 *Attorneys for Defendants*  
10 *LIPSCOMB, EISENBERG & BAKER, PL,*  
11 *and MICHAEL K. LIPSCOMB*

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MALIBU MEDIA, LLC,  
15 A California Limited Liability Company,

16 Plaintiffs,

17 vs.

18 LIPSCOMB, EISENBERG & BAKER, PL,  
19 a Florida professional limited liability  
20 company; MICHAEL K. LIPSCOMB, an  
21 individual; and DOES 1 to 100, inclusive,

22 Defendants.

Case No. 2:16-CV-04715-R-FFM

**EX PARTE APPLICATION FOR  
EXTENSION OF TIME TO FILE  
RESPONSIVE PLEADING TO  
PLAINTIFF'S COMPLAINT**

**[Declaration of John W. Sheller and  
[Proposed] Order Filed  
Concurrently]**

**Date: TBD  
Time: TBD**

23 **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR**  
24 **ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that Defendants LIPSCOMB, EISENBERG &  
26 BAKER, PL, and MICHAEL K. LIPSCOMB (collectively "Defendants") will and  
27 hereby do move this court *ex parte* for an order granting a thirty-one (31) day  
28 extension of the time to file a responsive pleading to Plaintiff MALIBU MEDIA,  
LLC.'s ("Plaintiff") Complaint.

This *ex parte* application is made pursuant to FRCP 6(b), and Local Rules 7-  
19 and 8-3. Good exists to grant the requested extension because defense counsel  
was only recently retained and assigned to this case, and needs additional time to

1 investigate, and to prepare a legally appropriate response to the Complaint. This  
2 matter involves complex issues and a substantial number of documents. An  
3 appropriate response will require a substantial amount of research. Further, there is  
4 a first filed senior parallel proceeding pending in Florida. Defendants respectfully  
5 contend this also constitutes good cause to grant this motion.

6 Defendants' responsive pleading is currently due on or before July 22, 2016.

7 Defendants asked Plaintiff for a stipulation to extend the time to respond to  
8 the Complaint for thirty-one (31) days. Plaintiff declined to stipulate to the  
9 extension requested.

10 Defendants seek approval of a thirty-one (31) day extension of the time to file  
11 a responsive pleading, until and including Monday, August 22, 2016<sup>1</sup>.

12 By filing this ex parte application, Defendants do not intend to waive any  
13 defenses including that this Court is an improper or inconvenient venue or that it  
14 does not have personal jurisdiction. Defendants hereby expressly reserve the right  
15 to assert any defenses that they may have.

16 No party will be prejudiced should the Court grant this ex parte application.

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26 <sup>1</sup> Defendants are requesting an extension of time from July 22, 2016, when its responsive pleading is due, to August  
27 22, 2016. Thirty days from July 22, 2016 is August 21, 2016, and falls on a Sunday. Defendants are respectfully  
28 requesting an extension to August 22, 2016, the following Monday.

1 This *ex parte* application is based upon this application, the attached  
2 Memorandum of Points and Authorities, the Declaration of John W. Sheller, and all  
3 papers and pleadings previously submitted in this case, and any other argument or  
4 evidence that may be present at the hearing on this *ex parte* application.

5 Respectfully submitted,

6  
7 DATED: July 20, 2016

HINSHAW & CULBERTSON LLP

8  
9 By: /s/ John W. Sheller

John W. Sheller  
Wendy Wen Yun Chang  
Attorneys for Defendants LIPSCOMB,  
10 EISENBERG & BAKER, PL,  
11 and MICHAEL K. LIPSCOMB  
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

3           With this *ex parte* application, Defendants LIPSCOMB, EISENBERG &  
4 BAKER, PL, and MICHAEL K. LIPSCOMB ("Defendants") respectfully request an  
5 order from this Court for a thirty-one (31) day extension of the time for Defendants  
6 to file a responsive pleading to Plaintiff MALIBU MEDIA, LLC'S ("Plaintiff")  
7 Complaint up to and including Monday, August 22, 2016.

8           The specific background and circumstances which establish good cause for  
9 the requested extension are set forth below:

10          On June 10, 2016, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for  
11 Miami-Dade County, Florida, Lipscomb, Eisenberg & Baker, PL, and Michael  
12 Keith Lipscomb filed a confidential complaint and demand for jury trial against  
13 Malibu Media LLC, Pillar Law Group, PLLC, Digital Content, Inc., an  
14 administratively dissolved Wyoming Corporation, and Data Analytics, Inc., stating  
15 causes of action in contribution, breach of contract, unjust enrichment, defamation,  
16 declaratory judgment (accounting), declaratory judgment (withdrawal), and  
17 violation of the Computer Fraud and Data Recovery Act. That action was served on  
18 Malibu Media LLC on July 1, 2016.

19          This lawsuit, for legal malpractice and related causes of action, was filed by  
20 Malibu Media LLC against Lipscomb, Eisenberg & Baker, PL, and Michael K.  
21 Lipscomb eighteen days later, on June 28, 2016, in Los Angeles, California. (Dkt.  
22 1). Pillar Law Group PLLC is the plaintiff's attorney of record in the present matter.  
23 Plaintiff served this lawsuit on Defendants on July 1, 2016. (Dkt. 8).

24          The law firm of Hinshaw & Culbertson, LLP was retained on July 13, 2016 to  
25 defend Defendants in this Los Angeles action. Decl. Sheller ¶4.

26          On July 15, 2016, Hinshaw & Culbertson LLP Attorney John W. Sheller  
27 contacted Art Kalantar of Pillar Law Group by phone and requested a thirty (30) day  
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1 extension to prepare a responsive pleading in this action; and offered a like  
2 extension in the Florida action. On July 18, 2016, Mr. Kalantar declined the  
3 extension request. Decl. Sheller ¶5.

4 Good cause exists to grant the requested extension because defense counsel  
5 was only recently retained, and needs additional time to investigate, and to prepare a  
6 legally appropriate response to the Complaint because this matter involves complex  
7 issues and a substantial number of documents. An appropriate response will require  
8 a substantial amount of research. Decl. Sheller ¶7. Further, there is a first filed  
9 senior parallel proceeding pending in Florida. Decl. Sheller ¶7. There may be the  
10 need to challenge the Pillar firm's role in this matter based on a recent transfer of  
11 personnel and documents from the Defendant Lipscomb, Eisenberg & Baker, PL, to  
12 the Pillar firm.

13 Defendants respectfully contend this constitutes good cause to grant this  
14 motion. Decl. Sheller ¶7.

15 On July 20, 2016, in a further effort to resolve the issue informally and to  
16 meet and confer with respect to this application, Mr. Sheller contacted Plaintiff's  
17 counsel, Mr. Kalantar, again and requested that he reconsider his refusal to stipulate  
18 to an extension. Mr. Kalantar rejected Mr. Sheller's request. Decl. Sheller ¶13, and  
19 Ex. A. Mr. Sheller gave Plaintiff's counsel *ex parte* notice of this application, *to wit*,  
20 that due to the lack of stipulation, Defendants intended to file the present *ex parte*  
21 application as of this date, and asked Plaintiff's counsel whether he would oppose  
22 the application. Decl. Sheller ¶8. Counsel said he would oppose this Application.  
23 See Ex. A. Plaintiff's counsel was given notice of his right to file opposition within  
24 24 hours. Decl. Sheller ¶9, and Ex. B. Thus, notice of this application was given in  
25 accordance with Local Rule 7-19. Decl. Sheller ¶9.

26 As of the date and time of this filing, Defendant has been unable to obtain a  
27 stipulation from Plaintiff extending the time to file a responsive pleading, thus  
28

1 necessitating this *ex parte* application. Decl. Sheller ¶10.

2 **II. GOOD CAUSE EXISTS TO GRANT THE REQUESTED EXTENSION**

3 *Federal Rule of Civil Procedure* 12(a)(1)(A)(i) requires a defendant to serve  
4 its responsive pleading within 21 days after service of the summons and complaint.  
5 Local Rule 8-3 allows for extensions to respond to a complaint, and requires that  
6 stipulations for extensions to respond to the complaint beyond thirty (30) days to be  
7 approved by the Court. *Federal Rule of Civil Procedure* 6(b) provides that, upon a  
8 showing of "good cause," the court may sign an order (with or without notice)  
9 extending the time within which any act is required to be done.

10 Still further, United States District Court Central District of California  
11 Civility and Professionalism Guidelines B(2) states that "Unless time is of the  
12 essence, as a matter of courtesy we will grant first requests for reasonable extensions  
13 of time to respond to litigation deadlines."

14 Here, good cause exists for the requested extension because defense counsel  
15 was very recently retained, and needs additional time to investigate and to prepare a  
16 legally appropriate response to the Complaint because this matter involves complex  
17 issues and a substantial number of documents. An appropriate response will require  
18 a substantial amount of research. Further, there is a first filed senior parallel  
19 proceeding pending in Florida. Defendants will be severely prejudiced should it not  
20 be allowed the additional time.

21 Still further, the interest of justice favors the requested extension. This matter  
22 has just commenced. It is undeniable that no substantial hardship or prejudice  
23 would befall any party from the granting of the extension sought. To the contrary,  
24 Defendants will be substantially prejudiced if it is effectively denied the opportunity  
25 for assigned counsel of record to evaluate and file a timely response to the  
26 Complaint.

1 **III. THE NEED FOR EX PARTE RELIEF**

2 An emergency exists because, as noted above, the principal reason for seeking  
3 ex parte order is that assigned counsel of record, has only recently been retained to  
4 respond to this complaint, and Plaintiff has declined a requested stipulation for  
5 extension. A properly noticed motion will push resolution of this issue presented  
6 herein past the July 22, 2016 deadline to file a responsive pleading, which will in  
7 turn substantially prejudice Defendants.

8 Neither party will be prejudiced should the Court grant this motion.

9 **IV. CONCLUSION**

10 For all the foregoing reasons Defendants respectfully request this Court to  
11 grant its Application, and extend their deadline to respond to the complaint up to  
12 and including Monday, August 22, 2016, and for any other relief that this Court  
13 deems just and proper.

14 Respectfully submitted,

15 DATED: July 20, 2016

HINSHAW & CULBERTSON LLP

17 By: /s/ John W. Sheller

18 John W. Sheller  
19 Wendy Wen Yun Chang  
20 Attorneys for Defendants LIPSCOMB,  
21 EISENBERG & BAKER, PL,  
22 and MICHAEL K. LIPSCOMB  
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1 prepare a responsive pleading in this action; and offered a like extension in the  
2 Florida action. On July 18, 2016, Mr. Kalantar declined the extension request.

3 6. By this *ex parte* application, Defendants seek a thirty-one (31) day  
4 extension to respond to the complaint, up to and including Monday, August 22,  
5 2016. Defendants' responsive pleading is currently due on July 22, 2106.

6 7. Good cause exists to grant the requested extension because defense  
7 counsel was only recently retained, and needs additional time to investigate, and to  
8 prepare a legally appropriate response to the Complaint because this matter involves  
9 complex issues and a substantial number of documents. An appropriate response  
10 will require a substantial amount of research. Further, there is a first filed senior  
11 parallel proceeding pending in Florida. My client is in Florida. I am brand new to  
12 the case which involves an attorney client relationship of some years involving  
13 litigation across the country. There appears to be an issue to examine which may  
14 give rise to a challenge to the Pillar law firm's involvement herein based on the  
15 transfer of personnel and documents from the defendant law firm to the Pillar law  
16 firm.

17 8. On July 20, 2016, in a further effort to meet and confer with respect to  
18 this application, I contacted Attorney Kalantar again and requested that he  
19 reconsider his refusal to stipulate to an extension. Plaintiff's counsel refused. See  
20 Ex. A.

21 9. On July 20, 2016, I gave Mr. Kalantar *ex parte* notice of this  
22 application, *namely*, that due to the lack of stipulation, Defendants intended to file  
23 the present *ex parte* application as of this date, and asked Mr. Kalantar whether he  
24 would oppose the application. Plaintiff's counsel stated that he would oppose the  
25 application. See Ex. A.

26 Notice of Plaintiff's right to file opposition within 24 hours was sent by my  
27 email as attached hereto as Exhibit "B." Notice of this application was given in  
28

1 accordance with Local Rule 7-19.

2 10. As of the date and time of this filing, Defendant has been unable to  
3 obtain a stipulation from Plaintiff extending the time to file a responsive pleading,  
4 thus necessitating this *ex parte* application.

5 11. By filing this application, Defendants do not intend to waive any  
6 defenses including that this Court is an improper or inconvenient forum or that it  
7 does not have personal jurisdiction. Defendants hereby expressly reserve the right  
8 to assert any defenses that they may have.

9 12. This matter is just starting. No party will be prejudiced should the  
10 Court grant this *ex parte* application, having just been filed.

11 13. According to Mr. Kalantar's email this afternoon, a true and correct  
12 copy of which is attached hereto as Exhibit "A", he was willing to wait sixty (60)  
13 days for the defendants' appearance, before he chose to serve them.

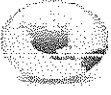
14 I declare under the penalty of perjury of the laws of the United States of  
15 America that the foregoing is true and correct.

16 Executed this 20<sup>th</sup> day of July, 2016, at Los Angeles, California.

17 /s/ John W. Sheller

18 John W. Sheller  
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# **EXHIBIT "A"**



Re: Malibu media Lipscomb,Eisenberg & Baker pleadings  
Art Kalantar to: [jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)

07/20/2016 03:15 PM

History:

This message has been forwarded.

Hi John,

We will oppose defendants' ex parte motion to extend the time to plead beyond 21 days.

We filed this suit on June 28, 2016 and on the very same day I emailed a copy of the conformed complaint to Mr. Lipscomb and his two partners. In my email I asked him if he would agree to accept service. No one even replied to my email and we served them on July 1st.

Mr. Lipscomb is very familiar with FRCP and had he needed more time to file his responsive pleading he would have accepted the service and timely waived it. It would give him 60 days to respond, instead of 21 days. But, he had chosen not to accept service.

I am not in the office now and will ask Ana to email you a copy of my email to Mr. Lipscomb and his partners.

Thank you,

Art

Art Kalantar, Esq.  
Pillar Law Group, APLC  
150 S. Rodeo Dr., Suite 260  
Beverly Hills, CA 90212  
(310) 999-0000  
[www.pillar.law](http://www.pillar.law)

On Jul 20, 2016, at 2:32 PM, "[jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)" <[jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)> wrote:

Art,

I left a message this morning ; and called again just now. I was informed by your receptionist you are not planning to be in the office today. She suggested I write you an e mail and gave me this address.

I would ask you to reconsider your decision not to sign a stipulation to extend the time for my client to plead in this matter which we discussed Monday this week..

If you are firm in that decision , then this will serve as notice that my firm will file an ex parte motion , late this afternoon ,

to extend the time to plead by 31 days .


For my declaration , and under the rules, I would appreciate an indication whether you intend to oppose the motion , so I may inform the Court .

Thanks,

Kind Regards,

John

# **EXHIBIT "B"**

Re: Malibu media Lipscomb,Eisenberg & Baker pleadings   
John W Sheller to: Art Kalantar

07/20/2016 04:29 PM

Thanks for getting back to me , Art.  
Per the rules , this is notice you have 24 hours to file your opposition to my client's ex parte motion. Our papers will be filed and served on you within the hour.  
Kind Regards,  
John

John W Sheller  
Partner  
Hinshaw & Culbertson LLP  
11601 Wilshire Blvd., Suite 800, Los Angeles, CA 90025  
Tel: 310-909-8000 | Fax: 310-909-8001  
E-mail: [jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)

Certified Specialist in Legal Malpractice Law by the State Bar of California's Board of Legal Specialization

**HINSHAW**

& CULBERTSON LLP

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Art Kalantar

Hi John, We will oppose defendants' ex parte m...

07/20/2016 03:15:30 PM

From: Art Kalantar <[art@pillar.law](mailto:art@pillar.law)>  
To: "jsheller@hinshawlaw.com" <[jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)>,  
Date: 07/20/2016 03:15 PM  
Subject: Re: Malibu media Lipscomb,Eisenberg & Baker pleadings

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I am not in the office now and will ask Ana to email you a copy of my email to Mr. Lipscomb and his partners.

Thank you,  
Art

Art Kalantar, Esq.

Pillar Law Group, APLC  
150 S. Rodeo Dr., Suite 260  
Beverly Hills, CA 90212  
(310) 999-0000  
[www.pillar.law](http://www.pillar.law)

On Jul 20, 2016, at 2:32 PM, "[jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)" <[jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)> wrote:

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I would ask you to reconsider your decision not to sign a stipulation to extend the time for my client to plead in this matter which we discussed Monday this week..

If you are firm in that decision ; then this will serve as notice that my firm will file an ex parte motion , late this afternoon ,

to extend the time to plead by 31 days .

For my declaration , and under the rules, I would appreciate an indication whether you intend to oppose the motion , so I may inform the Court .

Thanks,

Kind Regards,

John

John W Sheller  
Partner  
Hinshaw & Culbertson LLP  
11601 Wilshire Blvd., Suite 800, Los Angeles, CA 90025  
Tel: 310-909-8000 | Fax: 310-909-8001  
E-mail: [jsheller@hinshawlaw.com](mailto:jsheller@hinshawlaw.com)

Certified Specialist in Legal Malpractice Law by the State Bar of California's Board of Legal Specialization

<mime-attachment.jpg>

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& CULBERTSON LLP

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communication or any attachments.

**PROOF OF SERVICE**  
**Mivu Media, LLC v. Liscomb, Eisenberg & Baker, PL**  
**USDC Case No. 2:16-cv-04715**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action(s); my business address is One California Street, 18th Fl., San Francisco, CA 94111.

On July 20, 2016, I served the document(s) entitled, **EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING TO PLAINTIFF'S COMPLAINT; [PROPOSED] ORDER** on the interested parties in this action:

Pillar Law Group, APLC Art Kalantar Henrik Mosesi Anthony H. Lupu 150 South Rodeo Drive, Ste. 260 Beverly Hills, CA 90212	
--	--

**(BY MAIL):** X I deposited/caused to be deposited such envelope in the mail at Los Angeles, California, with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(BY E-MAIL OR ELECTRONIC TRANSMISSION):** X Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person[s] at the e-mail address[es] set forth herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. See Cal.R.Ct.R. 2060

**(BY CM/ECF SERVICE):** I caused such document(s) to be delivered electronically via CM/ECF as noted herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 20, 2016, at Los Angeles, California.

  
**MELANIE INGRID DAVIS**