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Attorneys for Plaintiff MALIBU MEDIA, LLC,
a California limited liability company.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,
a California limited liability company.

Plaintiff

v.

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

Defendants.

Case No. 2:16-cv-04715-R-FFMx

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' EX PARTE
APPLICATION FOR EXTENSION OF
TIME TO FILE RESPONSIVE PLEADING
TO PLAINTIFF'S COMPLAINT;
DECLARATION OF ART KALANTAR**

**Date: TBD
Time: TBD**

I.

STATEMENT OF FACTS

Plaintiff filed its Complaint on June 28, 2016. *See* CM/ECF 1. Defendant Michael K. Lipscomb ("Lipscomb") was personally served with the Summons and Complaint in this case on July 1, 2016. *See* CM/ECF 9. Lipscomb, Eisenberg & Baker, PL ("LEB") was served via its registered agent, Michael K. Lipscomb, on July 1, 2016. *See* CM/ECF 8. The response deadline for both defendants is July 22, 2016. On June 28, 2016, Plaintiff's counsel, Art Kalantar, emailed Lipscomb and inquired whether he would waive service for both himself and LEB. Lipscomb ignored Plaintiff's counsel's request and offer. Decl. Kalantar ¶ 3,4,5. See a true and correct copy

1 of the email dated June 28, 2016 from Art Kalantar to Lipscomb attached herein as Exhibit A.

2 On July 13, 2016 counsel for Defendants, John Sheller, contacted Plaintiff's counsel
 3 inquiring whether Plaintiff was interested in going to early mediation. Decl. Kalantar ¶ 6,7.
 4 Plaintiff's counsel declined the premature offer to attend early mediation in the same phone
 5 conversation. Decl. Kalantar ¶ 8. Next, defense counsel called Plaintiff's counsel on July 15, 2016
 6 asking that Plaintiff agree to stay both this proceeding and the Florida state proceeding and attend
 7 mediation. Decl. Kalantar ¶ 9. Plaintiff's counsel again declined the offer as premature on July 18,
 8 2016. Decl. Kalantar ¶ 10, 11, 13. On July 20, 2016 defense counsel emailed Mr. Kalantar and
 9 asked for a stipulation for a 31-day extension for defendants to file their responsive pleading. Decl.
 10 Kalantar ¶ 14. On the same day, Art Kalantar emailed John Sheller and informed him that Plaintiff
 11 would oppose his clients' ex parte application. Decl. Kalantar ¶ 15.
 12

13 II.

14 ARGUMENT

15 **DEFENDANTS' DEMAND FOR A 31-DAY FURTHER EXTENSION IS**

16 **UNREASONABLE AND VIOLATES LOCAL RULE 8-3**

17 Defendants were served on July 1, 2016. Their response is due on July 22, 2016. Defense
 18 counsel was hired on or before July 13, 2016. Defendants had more than adequate time to prepare
 19 and file their responsive pleading. Furthermore, Defendants are seeking preferential treatment from
 20 every other federal defendant in that they want 52 days to respond to a complaint rather than the 21-
 21 days allowed under the FRCP. Had defendants accepted Plaintiff's reasonable offer to waive
 22 service, they would have had 60 days to respond under FRCP 12(a)(ii). Defendants ignored
 23 Plaintiffs' offer and forced Plaintiff to spend money to serve defendants. Defendants now seek
 24 relief from this Court.
 25

26 While it is true that counsel may stipulate to extend the time within which the defendant may
 27
 28

1 file his responsive pleading, the demand here by defendants is unreasonable.

2 Local Rule 8-3 states:

3 “L.R. 8-3 Response to Initial Complaint. A stipulation extending the time to respond
4 to the initial complaint shall be filed with the Clerk. If the stipulation, together with
5 any prior stipulations, does not extend the time for more than a cumulative total of
6 thirty (30) days from the date the response initially would have been due, the
7 stipulation need not be approved by the judge. Any such stipulation must have as its
8 title “Stipulation to Extend Time to Respond to Initial Complaint By Not More than
9 30 days (L.R. 8- 3)”. Directly beneath the title, the parties shall state when the
10 Complaint was served, when a response currently is due, and when it will be due
11 following the filing of the stipulation.”

12 Here, Defendants’ demand to extend their response deadline by 31 days violates Local Rule
13 8-3 in that it extends the deadline more than a cumulative total of thirty days. Had Defendants
14 requested a reasonable extension such as 7 or 10 days, Plaintiff would have stipulated. However,
15 here, Plaintiff could not stipulate to such an extension even if it wanted.
16

17 This is not a very complicated case. The complaint contains 57 paragraphs and four causes
18 of actions. The fact that there is another lawsuit filed by Lipscomb in Florida against Plaintiff’s
19 counsel and Plaintiff and other unrelated defendants, should play absolutely no role in this Court’s
20 decision to grant defendants an extension of 31 additional days within which to plead. Lipscomb
21 and LEB knew that they were going to be sued for their actions against Plaintiff. The fact that
22 Lipscomb filed a frivolous and pre-emptive lawsuit in Florida state court should be of no
23 consequence to this Court’s decision to grant this extension request.
24

25 ///

26 ///

27 ///

III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court deny Defendants' ex parte application for extension of time.

DATED: July 21, 2016

PILLAR LAW GROUP
A Professional Law Corporation



By: _____

Henrik Mosesi, Esq.
Art Kalantar, Esq.
Anthony H. Lupu, Esq.
Attorneys for Plaintiff MALIBU MEDIA, LLC,
a California limited liability company

DECLARATION OF ART KALANTAR

I, ART KALANTAR, declare and state as follows:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California as well as U.S. District Court for Central District of California. I am a principal of Pillar Law Group, the attorney for Plaintiff, Malibu Media, LLC (“Malibu”) in this matter. I have reviewed the file and familiar with its contents, and if called as a witness I could testify competently to the matters set forth herein of my own personal knowledge.
2. On June 28, 2016, Malibu filed the complaint in the present action with the court.
3. On the same day, June 28, 2016, I sent an email to Defendant Keith Lipscomb and the other two named partners of Defendant Lipscomb, Eisenberg and Baker, PL, Steven E. Eisenberg and Deborah Baker advising them that this action had been filed with the Court.
4. In my email to them I had attached a copy of the filed Complaint and asked if Mr. Lipscomb would agree to accept service of the complaint. Attached as “**Exhibit A**” is a true and correct copy of said email.
5. I have not received any response to my email.
6. On Wednesday, July 13, 2016 I received a call from Mr. John Sheller. On the same day I called him back and we discussed this matter.
7. Mr. Sheller suggested to have a mediation before Defendants’ file their responsive pleadings and stipulate to a 60-day extension of Defendants’ response time.
8. I informed Mr. Sheller that Plaintiff was not prepared for a mediation this early in the litigation. We have not reached any agreement during July 13, 2016 call.

1 9. On Friday, July 15, 2016 Mr. Sheller called me again and we further discussed the option
2 of going to a mediation. I advised Mr. Sheller that I would need to consult with the client
3 and suggested to discuss the matter further on Monday, July 18, 2016.

4
5 10. On Monday, July 18, 2016 Mr. Sheller called again and inquired about Plaintiff's
6 decision to mediate. I informed Mr. Sheller that Plaintiff rejected his proposal to
7 mediate, because Plaintiff would need to conduct discovery to ascertain the extent of
8 damages.

9
10 11. Then Mr. Sheller asked if we would agree to a mutual extension of time to respond. The
11 Defendants' would give Pillar Law Group, APLC ("Pillar") additional time to respond to
12 the complaint filed against Pillar in Florida state court and in exchange Defendants'
13 would be granted additional time to file their response in the present matter.

14
15 12. I informed Mr. Sheller that Pillar's response had been ready and would be filed timely
16 with the Florida state court.

17
18 13. On the same day, Monday, July 18, 2016 I advised Mr. Sheller that Plaintiff would not
19 stipulate to extend Defendant's time to file their responsive pleadings.

20
21 14. On July 20, 2016, Mr. Sheller emailed me asking for an additional 31-days extension
22 beyond July 22. He further stated that he would seek an ex parte order if I did not
23 reconsider my previous decision.

24
25 15. On July 20th I emailed Mr. Sheller in responsive to his email and stated that Plaintiff
26 would oppose his ex parte application to extend time.

27
28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

1 DATED: July 21, 2016



2
3
4 ART KALANTAR

EXHIBIT A

Art Kalantar

From: Art Kalantar
Sent: Tuesday, June 28, 2016 2:51 PM
To: 'Keith Lipscomb'; 'Deborah Baker'; 'Steven Eisenberg'
Cc: Henrik Mosesi; Anthony Lupu; Edgar Sargsyan
Subject: Malibu Media v. Lipscomb
Attachments: Malibu Media v. Lipscomb - Fed Complaint.pdf

Mr. Lipscomb,

Attached please find a courtesy copy of the complaint filed today in US District Court for the Central District of California by Malibu Media, LLC against you and LIPSCOMB, EISENBERG & BAKER, PL.

Please advise if you will agree to accept service on behalf of all defendants.

Thank you,
Art



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