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10 Attorneys for Defendant JOHN DOE IP address 76.126.99.126
 11

12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 MALIBU MEDIA, LLC,

15)
 16) Plaintiff,

17) vs.

18)
 19) JOHN DOE subscriber assigned IP
 address 76.126.99.126,

20) Defendant.
 21)
 22)

) Case No.: 3:15-cv-04441-WHA

) **EXHIBITS IN SUPPORT OF MOTION**
) **TO COMPEL FURTHER RESPONSES**

) DOE IP address 76.126.99.126

) FRCP §37(a)

) Hon. William Alsup

) Hearing Date: Thursday, December 22, 2016

) Hearing Time: 8:00 AM
)
)
)
)
)

23

 AND ALL RELATED CROSS-
 24 ACTIONS
 25

1 Defendant JOHN DOE subscriber assigned IP address 76.126.99.126 (“Defendant”)
2 respectfully submits the following exhibits in support of the motion to compel further responses
3 to certain deposition questions:

- 4 1. Amended Notice of Deposition of Plaintiff
- 5 2. Selected Portions of the Transcript of the Deposition of Plaintiff’s FRCP Rule 30(b)(6)
- 6 3. 04441 – NCA70 – Chart – FOR PRODUCTION
- 7 4. Meet and Confer re: Deposition – Local Rules 37-1(a): Failure to Provide Written
- 8 Deposition Questions under Oath, August 13, 2016
- 9 5. November 2, 2016, Letter from Plaintiff’s Counsel Brenna E. Erlbaum
- 10 6. Declaration for Colette - NCA70
- 11 7. Statement in Support of Defendant’s Motion to Compel Further Responses to
- 12 Deposition Questions
- 13 8. July 28, 2016, Email from Defense Counsel to Plaintiff’s Counsel
- 14 9. August 6, 2016, Email from Defense Counsel to Plaintiff’s Counsel
- 15 10. August 13, 2016, Email from Defense Counsel to Plaintiff’s Counsel
- 16 11. August 30, 2016, Email from Defense Counsel to Plaintiff’s Counsel
- 17 12. October 24, 2016, Email from Defense Counsel to Plaintiff’s Counsel

18 Respectfully submitted,

19 Dated: November 15, 2016

20 /s/ J. Curtis Edmondson
21 J. Curtis Edmondson (CASB # 236105)
22 Law Offices of J. Curtis Edmondson
23 Venture Commerce Center
24 3699 NW John Olsen Place
25 Hillsboro, OR 97124
26 Phone: 503-336-3749
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EXHIBIT 1

Amended Notice of Deposition of Plaintiff

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1 J. Curtis Edmondson, CSB# 236105
 2 Keith Pitt, CSB #254901
 3 Darian Stanford, (Pro Hac Vice Pending)
 4 Slinde Nelson Stanford
 111 Southwest 5th Avenue, Suite 1940
 4 Portland, OR 97204
 Phone: 866-280-7562
 5 Email: jcedmondson@slindenelson.com
 Web: www.slindenelson.com

7 Attorneys for Defendant JOHN DOE subscriber assigned IP address 76.126.99.126

8
 9
 10 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 MALIBU MEDIA,LLC)	Case No.: 3:15- cv-04441-WHA
)	
12 Plaintiff,)	AMENDED
)	NOTICE OF DEPOSITION
13 vs.)	
)	FRCP 30(b)(6)
)	
15 JOHN DOE subscriber assigned IP)	[CHANGE OF LOCATION OF
16 address 76.126.99.126)	DEPOSITION ONLY]
)	
17 Defendant)	
)	
)	
19 .)	

20
 21
 22 To: Brenna E. Erlbaum
 23 **HEIT ERLBAUM, LLP**
 6320 Canoga Avenue, 15th Floor
 24 Woodland Hills, CA 91367
 25
 26

1 PLEASE TAKE NOTICE that Defendant JOHN DOE will take the oral depositions of
2 the person specified below, at the date, time, and place specified, for all purposes permitted by
3 federal rules and statutes.

4 Witness: Person Most Knowledgeable (PMK) of the following subjects under
5 FRCP Rule 30 (b)(6):

- 6 a. The parties who designed, created, implemented and monitors the data
7 collection system which recorded the infringing transactions;
- 8 b. Verification of the infringements;
- 9 c. Distribution of the subject movies, ownership of the
10 Copyright of the subject movies, authorship of the subject movies;
- 11 d. Settlements entered into regarding the subject movies;
- 12 e. Settlements entered into regarding all movies that Plaintiff owns and has
13 alleged infringement against third parties.

14 To the extent that these categories designations involve different individuals, Plaintiff
15 shall designate those parties that are available for deposition on the date specified.

16 **Date & time: July 12, 2016 at 9am**

17 **Place:**

18 **COTMAN IP LAW GROUP, PLC**

19 **35 Hugus Alley, Suite 210**

20 **Pasadena, CA 91103**

21 This deposition shall be conducted before an officer that is qualified to perform
22 depositions under the FRCP.

23 Dated: July 8, 2016

Signed: /x/ J. Curtis Edmondson

24 Attorney for Defendant John Doe

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2016, a copy of the foregoing was served by mail first class and by electronic mail to:

1. DEFENDANT’S NOTICE OF DEPOSITION

To:

Brenna E. Erlbaum , Heit Erlbaum
HEIT ERLBAUM, LLP
6320 Canoga Avenue, 15th Floor
Woodland Hills, CA 91367

Emails: brian.heit@helaw.attorney, brenna.erlbaum@helaw.attorney

Dated: 7/8/2016

/x/ J. Curtis Edmondson

EXHIBIT 2

Selected Portions of the Transcript of the Deposition of Plaintiff's
FRCP Rule 30(b)(6) designee

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,)
)
Plaintiff,)
)
vs.)
JOHN DOE subscriber)
assigned IP address)
76.126.99.126)
Defendant.)
_____)

Case No.
3:15-cv-04441-WHA

Deposition of COLETTE PELISSIER FIELD (PMK),
taken on behalf of Defendant at 35 Hugus Alley,
Suite 210, Pasadena, California, commencing
at 10:04 a.m., Wednesday, July 27, 2016, before
Laurie Beth Kay, CSR No. 8427, pursuant to
Notice.

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APPEARANCES OF COUNSEL:

FOR PLAINTIFF:

PILLAR LAW GROUP
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150 South Rodeo Drive, Suite 260
Beverly Hills, California 90212
(310) 999-0000
henry@pillar.law

FOR DEFENDANT:

SLINDE NELSON STANFORD
BY: J. CURTIS EDMONDSON, ESQ.
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curtis@slindenelson.com

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I N D E X

WITNESS:	PAGE
COLETTE PELISSIER FIELD (PMK)	
EXAMINATION BY MR. EDMONDSON:	6
EXHIBITS	PAGE
1 3-page document titled Notice of Deposition	28
2 11-page document titled Amended Complaint - Demand for Jury Trial	43
3 30-page document titled Ex Parte Motion for Leave to Serve a Third Party Subpoena Prior to a Rule 26(f) Conference	116
4 7-page letter from Comcast Legal Response Center	153
5 19-page document titled Civil Docket for Case #1:13-cv-06312	154
6 2-page document titled Declaration of Norbert Turbach	170
7 2-page email chain	178
8 125-page document referred to as Malibu Media lawsuits	180
9 Document titled State of California Bureau of Real Estate	183
10 2-page document titled Defendant's Offer of Judgment	184
11 12-page document titled Declaration of Colette Pelissier Field	186

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I N D E X (continued)

EXHIBITS	PAGE
12 3-page document titled Voluntary Petition	198
13 5-page document titled Plaintiff's 26(a) Disclosures	199
14 17-page document titled Complaint	204
15 22-page document titled X-Art	210

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

PAGE	LINE
209	18

1 Pasadena, California, Wednesday, July 27, 2016

2 10:04 a.m.

3

4 COLETTE PELISSIER FIELD (PMK),

5 called as a witness on behalf of Defendant, having
6 been first duly placed under oath, was examined and
7 testified as follows:

8

9

EXAMINATION

10 BY MR. EDMONDSON:

11 Q. Ms. Pelissier, please state and spell your
12 name for the record.

13 A. It's Colette Pelissier, C-o-l-e-t-t-e
14 P-e-l-i-s-s-i-e-r.

15 Q. Where do you live?

16 A. I live in my two different --

17 MR. MOSESI: Your present address.

18 THE WITNESS: My present address is 11802 Ellice
19 Street in Malibu, California.

20 BY MR. EDMONDSON:

21 Q. And where is this other address you
22 mentioned?

23 A. I prefer to keep that private.

24 MR. EDMONDSON: Are you --

25 MR. MOSESI: Is it important to know? I mean,

1 A. I need to ask him.

2 Well, I didn't know that this was going to
3 be so in depth. I need to ask him that.

4 Q. I believe the question was did you view
5 any. I'm not asking about your husband right now.

6 A. Okay. No, I did not.

7 Q. Okay. So you don't know if there were any
8 MP4 movies on that thumb drive?

9 A. I can find out. I don't know.

10 Q. And you don't know if any of the movies on
11 Exhibit A were on the thumb drive?

12 A. I believe there was. I don't know. I
13 believe there were.

14 Q. Okay. I am going to stick with Exhibit 2,
15 Exhibit A of Exhibit 2.

16 Please open up to Exhibit A of Exhibit 2.

17 A. Uh-huh.

18 Q. So I am going to go through each of these
19 films one by one, and I am going to ask you a series
20 of questions related to each film.

21 A. Okay.

22 Q. And if you know the answer, please tell me
23 the answer. If you don't know the answer, say I don't
24 know. If you know somebody at Malibu Media who would
25 know the answer, please tell me who that person is.

1 A. Okay.

2 Q. So on the first film, Dripping Pleasures,
3 who did the development on this film?

4 A. Brigham and I.

5 Q. Who did the preproduction?

6 A. Brigham and I.

7 Q. Who did the production on it?

8 A. Brigham and I.

9 Q. And who did the post-production?

10 A. Brigham and I.

11 Q. So to clarify the record, Brigham is
12 Brigham Field --

13 A. Field.

14 Q. -- your husband?

15 A. Yeah.

16 Q. Who did the distribution of Dripping
17 Pleasures?

18 A. Do you mean on the website?

19 Q. Is that where the film is distributed?

20 A. Yes.

21 Q. Okay. Is there any other place that it's
22 distributed?

23 A. We just started doing DVDs about a month
24 ago. Otherwise, it was just a subscription. We are
25 doing the DVDs through a third party.

1 Q. So it's distributed to third parties since
2 when?

3 A. Just a month ago. So they're in charge of
4 that.

5 Q. So it's not in distribution on DVDs?

6 A. This season are.

7 Q. Okay. Just one thing at a time.

8 So where was Dripping Pleasures distributed?

9 A. It was distributed on our website, a
10 subscription-based website, X-Art.com.

11 Q. Which licensees received copies of Dripping
12 Pleasures?

13 A. Which licensees?

14 Q. Licensees.

15 A. What do you mean by licensees?

16 Q. Do you have any licensees of the film
17 Dripping Pleasures?

18 A. What do you mean by licensees?

19 Q. Of the film.

20 A. As far as no one received a copy of the
21 film.

22 Q. Do you have any affiliates?

23 A. Affiliates can go to x-cash.com and they can
24 get previews of the films and/or pictures and then
25 links which gives them a code that they can build into

1 the film and then they use their traffic and then when
2 someone goes from their site to our site they get 50
3 percent of the joining fee of our affiliate marketing
4 right.

5 Q. Which gives them the right to use it?

6 A. No. It's not the whole film. I mean, they
7 actually only just put videos recently on the site to
8 see pictures. They can pick a gallery.

9 I can show you if you want to see.

10 Q. No.

11 Does anybody have a right --

12 A. No.

13 Q. -- to use any portion --

14 A. No.

15 Q. -- of Dripping Pleasures?

16 A. No.

17 Q. Nobody?

18 A. Not to my knowledge.

19 Q. Okay. And then I might paraphrase some of
20 these just for identification on the record.

21 We're still on Dripping Pleasures.

22 Who created the copyright application for
23 what was filed at the U.S. Copyright Office
24 for Pleasures? I will just call it Pleasures.

25 A. One of our attorneys, Emily Kennedy.

1 Q. Excuse me?

2 A. One of our attorneys, Emily Kennedy, did
3 that for us on behalf of Malibu Media.

4 Q. Is she licensed by the California State Bar?

5 MR. MOSESI: No, she is licensed by the Florida
6 State Bar.

7 THE WITNESS: Florida State Bar.

8 BY MR. EDMONDSON:

9 Q. Does she work for Lipscomb?

10 A. She used to.

11 She's an excellent attorney.

12 Q. Is she still filing your copyrights today?

13 A. Yes, she is.

14 Q. Okay. And how many copies of I will refer
15 to it as Pleasures was deposited at the copyright
16 office?

17 MR. MOSESI: If you know.

18 THE WITNESS: I don't know. Usually, probably,
19 one. Because they require a name and a picture, or
20 something like that.

21 MR. MOSESI: If you don't know --

22 THE WITNESS: Yeah. I mean --

23 BY MR. EDMONDSON:

24 Q. If you don't know --

25 A. Well, all you do is you go online to the

1 copyright office --

2 MR. MOSESI: The question is how many copies were
3 deposited with the copyright office.

4 THE WITNESS: Well, the question is kind of
5 tricky. They don't actually have copies.

6 MR. MOSESI: It's how many copies. If you don't
7 know, say you don't know. He's asking for your
8 knowledge. That's all.

9 THE WITNESS: To my knowledge, there aren't
10 copies of product.

11 BY MR. EDMONDSON:

12 Q. Okay. So no copies were deposited --

13 A. I don't know, but to my knowledge there are
14 copies.

15 Q. So you don't know or you do know? If copies
16 were deposited --

17 A. It would have been one if the copy was --

18 MR. MOSESI: You are guessing at this point.

19 THE WITNESS: Right.

20 MR. MOSESI: The documents speak for themselves.

21 THE WITNESS: Yeah, exactly.

22 BY MR. EDMONDSON:

23 Q. Who would know if --

24 A. Emily.

25 Q. Emily. Okay. Thank you.

1 Who created the copyright application that
2 was filed at the U.S. Copyright Office for Pleasures?

3 A. Emily Kennedy.

4 Q. Who acted in Pleasures?

5 A. I can tell you in a minute. Can you show
6 me the --

7 MR. MOSESI: No.

8 THE WITNESS: I don't remember, there's so many.
9 I can try to guess, but --

10 MR. MOSESI: Don't guess.

11 THE WITNESS: Yeah.

12 We've made thousands of movies. So this was
13 from a year ago.

14 BY MR. EDMONDSON:

15 Q. And to your knowledge were the actors or
16 actresses in Pleasures employees or subcontractors?

17 A. They were subcontractors.

18 Q. How much did you pay the subcontractors
19 acting in Pleasures?

20 MR. MOSESI: If you remember. Don't guess.

21 And I would object as irrelevant.

22 But you can answer.

23 THE WITNESS: I would say 1,000 to 2,000 dollars
24 per person.

25 / / /

1 BY MR. EDMONDSON:

2 Q. Do you have records of those payments?

3 A. Yes.

4 Q. And do the actors or actresses get

5 residuals --

6 A. No.

7 Q. -- who acted in Pleasures?

8 A. No. They sign a release, a written single

9 release.

10 Q. So they don't get residuals?

11 A. No.

12 Q. Who wrote the script for Pleasures?

13 A. It was nonscripted, the movie's base script.

14 We do scripted, and then we do -- we do

15 scripted and then nonscripted. So anything that's

16 scripted I'll remember much better. Anything that's a

17 loose-based shorter film would be more filler, so I

18 won't remember it as well.

19 Q. Is Pleasures a morph of any other film?

20 A. Yeah, probably.

21 Q. What film?

22 A. If this was a solo girl, then it would be

23 similar to other solo girl films and --

24 MR. MOSESI: When you say similar, what do you

25 mean? Similar to a mainstream movie?

1 BY MR. EDMONDSON:

2 Q. Is it similar to any other films?

3 A. Well, I would need more data. Then I could
4 tell you.

5 Q. Well, if you don't know --

6 A. I could look at them and tell you if it's a
7 solo girl. I can search.

8 Q. No. We've got 23 films to go through.

9 A. I mean, I can search for them in two
10 seconds.

11 MR. MOSESI: No.

12 BY MR. EDMONDSON:

13 Q. Was there any music on Pleasures?

14 A. Most of the movies do have music to start
15 up.

16 Q. Okay. If Pleasures had music, who composed
17 it?

18 A. I would have chosen the music from --

19 MR. MOSESI: Who composed the music.

20 THE WITNESS: It was -- the music was licensed
21 from Gaby. I don't know who composed it. I don't
22 know offhand.

23 BY MR. EDMONDSON:

24 Q. Okay.

25 A. It was licensed.

1 BY MR. EDMONDSON:

2 Q. Did your affiliates or licensees receive
3 full copies or clips of the film?

4 A. I don't know. I know we don't offer them.

5 Q. Who created the copyright application for --

6 A. Emily Kennedy did.

7 MR. MOSESI: The movie; correct?

8 MR. EDMONDSON: Yeah.

9 MR. MOSESI: May I make a suggestion to move this
10 along?

11 MR. EDMONDSON: Sure.

12 MR. MOSESI: It's just a suggestion. For the
13 remainder of the movies, can we just leave a space in
14 the record, and she can go back and just fill them
15 out?

16 MR. EDMONDSON: Sure.

17 MR. MOSESI: For all of the questions that you
18 have?

19 MR. EDMONDSON: Yeah. I would be happy to do
20 that.

21 MR. MOSESI: That would save time.

22 THE WITNESS: I could do that.

23 MR. MOSESI: So if you could just state the
24 questions you want answered from Love all the way to
25 More.

1 MR. EDMONDSON: Well, so stipulated, for the
2 record. Counsel will -- I will provide Counsel with a
3 list of questions for each movie.

4 MR. MOSESI: Good.

5 MR. EDMONDSON: And then if Counsel will verify
6 the responses to those questions?

7 MR. MOSESI: Yes. Of course. So stipulated.

8 MR. EDMONDSON: Stipulated. Thank you.

9 MR. MOSESI: Yeah, that will move it along a
10 little bit.

11 MR. EDMONDSON: Most definitely.

12 (Defendant Exhibit 3 marked and attached.)

13 MR. EDMONDSON: One for Counsel, one for the
14 reporter, and one for the deponent.

15 Off the record.

16 (A discussion was held off the record.)

17 MR. EDMONDSON: Back on the record.

18 Q. Have you seen this document before?

19 A. Yes.

20 Q. Please turn to your declaration.

21 A. Okay.

22 Q. Looking at paragraph 8, when did you create
23 X-Art?

24 A. Around 2008.

25 Q. And when did you create X-Art.com?

1 We have stipulated that the deposition
2 transcript will be produced and then counsel will meet
3 and confer what portions of the transcript might be
4 subject to a protective order.

5 MR. MOSESI: That's agreed.

6 MR. EDMONDSON: Stipulated.

7 MR. MOSESI: So stipulated.

8 MR. EDMONDSON: So the original copy will go to
9 you?

10 MR. MOSESI: Let it go to my office in the
11 Beverly Hills address that you have on the card,
12 yeah.

13 MR. EDMONDSON: And then make corrections within
14 30 days?

15 MR. MOSESI: Per code I think it's 30 days.

16 MR. EDMONDSON: Okay.

17 MR. MOSESI: And then I will let you know of any
18 changes.

19 MR. EDMONDSON: And we relieve the court reporter
20 of her responsibilities under the Code.

21 MR. MOSESI: If the original is lost or stolen, a
22 certified copy can be used.

23 MR. EDMONDSON: All right.

24 (At 4:00 p.m. the deposition was concluded.)
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STATE OF _____)
) ss.
COUNTY OF _____)

I declare under penalty of perjury that I have read the foregoing transcript, I have made any corrections, additions or deletions that I was desirous of making in order to render the within transcript true and correct, and

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 20__.

COLETTE PELISSIER FIELD (PMK)

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

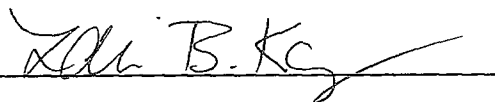
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of testimony in a Federal Case, before completion of the proceedings, review of the transcript was was not requested.

I further certify I am neither financially interested in the action, nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: AUG 11 2016



LAURIE B. KAY

CSR NO. 8427

EXHIBIT 3

04441 – NCA70 – Chart – FOR PRODUCTION

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EXHIBIT 4

Meet and Confer re: Deposition – Local Rules 37-1(a): Failure to
Provide Written Deposition Questions under Oath, August 13, 2016

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**Intellectual Property Law
Patent, Trademark, Copyright
and Related Matters
Litigation, Licensing and
Prosecution**

**J. Curtis Edmondson
Attorney at Law**

**Venture Commerce Center
3699 John Olsen Place
Hillsboro, OR 97124
Telephone (503) 336-3749
Facsimile (503) 482-7418**

Brenna Erlbaum
Heit Erlbaum, LLC
6320 Canoga Avenue, 15th Floor
Woodland Hills, CA 91367

August 13, 2016

Henrik Mosesi, Esq.
PILLAR LAW GROUP, APLC
150 S. Rodeo Dr. Suite 260
Beverly Hills, CA 90212

Case: *Malibu Media, LLC v DOE 1* (2015) ND CAL:15-cv-04441-WHA
Docket: ROW 1.002

Re: Meet and Confer re: Deposition – Local Rules 37-1(a)
Failure to Provide Written Deposition Questions under Oath

Dear Brenna and Henrik:

On July 28, 2016, I sent an email regarding the stipulation at the PMK deposition for written responses, under oath, to the following topics to each of the 28 movies at issue:

- a. Who did the Development on _____?
- b. Who did the Pre-production on _____?
- c. Who did the Production on _____?
- d. Who did the Post-production on _____?
- e. Who did the Distribution on _____?
- f. Where was _____ Distributed?
- g. Which licensees received copies of _____?
- h. Who created the copyright application that was filed at US Copyright Office for _____?
- i. How many copies of _____ were deposited at the US Copyright Office?
- j. Who acted in _____?
- k. Where the actors or actresses in _____ employees or subcontractors of Malibu Media?
- l. How much did you pay _____ for acting in _____?
- m. Do you have records of payments _____?
- n. Do _____ get residuals for acting in _____?
- o. Did you offer health insurance to _____?
- p. Who wrote the script for _____?
- q. Is _____ similar to any of your other films? What films?

I have not received a response to my email. On August 3, I sent a reminder email, with no response. On August 6, I brought this issue up again, with no response.

It is a week later. Please supplement these responses by Tuesday, August 16 or I will move to compel the written responses.

Sincerely,



J. Curtis Edmondson

EXHIBIT 5

November 2, 2016, Letter from Plaintiff's Counsel Brenna E. Erlbaum

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November 2, 2016

Via PDF E-mail

J. Curtis Edmondson
Venture Commerce Center 3
699 John Olsen Place
Hillsboro, OR 97124
Email: jcedmondson@edmolaw.com

Re: **Malibu Media, LLC v. John Doe subscriber assigned IP address 76.126.99.126; Case No.: 3:15-cv-04441-WHA; Northern District of California; Plaintiff's Responses to Deposition Questions Discovery Letter**

Dear Mr. Edmondson:

Plaintiff is in receipt of your meet and conferral discovery letter regarding Plaintiff responses to Defendant's written discovery. Below are Plaintiff's responses to same. I would like to discuss these issues via telephone as soon as possible. Please advise of a suitable date and time to hold a telephonic conference.

Plaintiff's Responses to Defendant's Deposition Question Responses

Deposition Question #9

Requested: Creation of Copyright Application

Response: Plaintiff's Attorney at the time or Brigham Field and Colette Pelissier

Reason for Further Response: The Copyright Application is usually "created" by a single person entering data into the electronic system at www.copyright.gov. Plaintiff's Attorney at the time is a non-response as it does not identify that attorney. Also "Brigham Field and Colette Pelissier" is a similar non-response as it is extremely unlikely that both of them sat side-by-side and entered the data together.

Plaintiff's Response: Plaintiff's Attorney, Emilie Kennedy; Brigham Field or Colette Pelissier.

Deposition Question #10

Request: [Names of] Performers on [Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant not likely to read to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Plaintiff further objects on the basis that this requests seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now. Further, in a deposition, the only reason to refuse to answer is based on attorney-client privilege or a similar privilege. The question is relevant as the actors and actresses would know the date of production of the film and may also be subject to contractual agreements that affect the ownership interests of the films. It is unlikely that an actor or actress would have an expectation of privacy nor are we aware of any case law that empowers and employer or hirer of independent contractors from revealing the name of its employees/contractors—especially when they witnesses. Such witnesses cannot be found and interviewed if their identities are withheld.

Plaintiff's Response: Plaintiff maintains all of its objections. Firstly, the privacy rights of the actors and actresses are not and were not Colette Pelissier's to waive. The actors and actresses in Plaintiff's movies perform under pseudonyms for a reason, one of the most compelling reasons for this decision is rooted in legitimate concerns for their safety. Plaintiff can think of few things more dangerous than making public the true names of actors and actresses starring in adult films. In as much as the Defendant in this case has expressed a desire to "[stalk] women, or worse" (see screenshot below), Plaintiff has deep concerns in making this information available to Defendant or his counsel. All information that Defendant seeks to obtain from the actresses and actors in Plaintiff's films, (i.e. dates and times of production and existence of contractual agreements) is available from other sources and indeed such information has already been supplied to Defendant.



Deposition Question #12

Request: Payment to Performers [on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's privacy rights.

Reasons for Further Response: [Suggest copying relevant portions of reasons in no. 12]

Plaintiff's Response: In as much as Defendant failed to provide reasons for further response, Plaintiff maintains all of its objections.

Deposition Question #14

Request: Residuals for Acting [on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now. Further, in a deposition, the only reason to refuse to answer is based on attorney-client privilege or a similar privilege. The question is relevant as it goes to offsetting costs under the copyright act. Also, the question may be used to verify the veracity of the deponent.

Plaintiff's Response: Plaintiff maintains all of its objections. Defendant has not alleged why the answer given to this question during the deposition of Colette Pelissier was insufficient. Notwithstanding any objections and without waiving same, Plaintiff answers that its actors' do not receive residuals for their appearances in Plaintiff's films.

Deposition Question #15

Request: Health Insurance [for actors/actresses on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: Presuming that the identifying information in request nos. 10 is provided, Defendant will withdraw this question.

Plaintiff's Response: Plaintiff maintains all of its objections. Inasmuch as Defendant admits that it is only seeking this information to obtain information requested in Deposition Question #10, Plaintiff asserts its objections and reasoning as set forth in "Plaintiff's Response" to Deposition Question #10 as though the same were set forth fully below.

Deposition Question #17

Request: Similarity [of Film]

Response: Plaintiff objects on the basis that this question is ambiguous. Plaintiff does not know what criteria Defendant is using to measure the similarities between various films.

Notwithstanding the foregoing objection and without waiving same, Plaintiff avers that this work is similar to Plaintiff's other works because they are all adult content.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now. Similarity goes to the veracity of Ms. Fields at her deposition and to the copyrightability of the works at issue. *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). See *id.* at 361 ("To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying constituent elements of the work that are original."); see also *Seven Arts Filmed Entm't Ltd. V. Content Media Corp.* 733 F.3d 1251, 1254 (9th Cir. 2013).

Plaintiff's Response: Plaintiff maintains all of its objections. Defendant has not provided reasoning as to why Plaintiff's response to this question was insufficient. Plaintiff further objects that this question calls for a legal conclusion. Notwithstanding any objections and without waiving same Plaintiff answers that its works are original within the meaning of the Copyright

Act: each of Plaintiff's films depicts different actors, different scenes, different directors, and different creative input. See *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). See *Id* at 358, "the originality requirement is not particularly stringent. A compiler may settle upon a selection or arrangement that others have used; novelty is not required. Originality requires only that the author make the selection or arrangement independently (*i.e.*, without copying that selection or arrangement from another work), and that it display some minimal level of creativity."

Sincerely,

/s/ Brenna Erlbaum

Brenna E. Erlbaum (SBN: 296390)

Attorney for Plaintiff, Malibu Media, LLC

EXHIBIT 6

Declaration for Colette - NCA70

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1 Brian Heit (SBN: 302474)
2 Brenna E. Erlbaum (SBN: 296390)
3 **HEIT ERLBAUM, LLP**
4 6320 Canoga Avenue
5 15th Floor
6 Woodland Hills, CA 91367
7 [phone]: (855) 231.9868
8 Brian.heit@HElaw.attorney
9 Brenna.Erlbaum@HElaw.attorney
10 *Attorneys for Plaintiff*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND**

11 MALIBU MEDIA, LLC,
12 Plaintiff,
13 vs.

Case Number: 3:15-cv-4441-WHA

14 JOHN DOE subscriber assigned IP address
15 76.126.99.126,
16 Defendant.

17 **DECLARATION OF COLETTE PELISSIER**

18 **I, COLETTE PELISSIER, DO HEREBY DECLARE:**

19 1. I am over the age of eighteen (18) and otherwise competent to make this
20 declaration.

21 2. The facts stated in this declaration are based upon my personal knowledge and, if
22 called upon to do so, I will testify that the facts stated herein and in all attached exhibits are true
23 and accurate.

24 3. I own Malibu Media d/b/a as X-Art.com.

25 4. In this matter, Defense counsel requested the following information:

26 a. Who did the Development for each of the works at issue?
27

- 1 b. Who did the Pre-production for each of the works at issue?
- 2 c. Who did the Production for each of the works at issue?
- 3 d. Who did the Post-production for each of the works at issue?
- 4 e. Who did the Distribution for each of the works at issue?
- 5 f. Where was each work Distributed?
- 6 g. Which licensees received copies of for each of the works at issue?
- 7 h. Who created the copyright application that was filed at US Copyright Office for
- 8 each of the works at issue?
- 9 i. How many copies of each of the works were deposited at the US Copyright
- 10 Office?
- 11 j. Who acted in each of the works at issue?
- 12 k. Where the actors or actresses in each work employees or subcontractors of
- 13 Malibu Media?
- 14 l. How much did you pay each actor for acting in each work?
- 15 m. Do you have records of payments to each actor?
- 16 n. Does each actor get residuals for acting in each work?
- 17 o. Did you offer health insurance to each actor?
- 18 p. Who wrote the script for each work at issue?
- 19 q. Is each of the works at issue similar to any of Malibu Media's other films? If so,
- 20 what films?

1 5. Attached as Exhibit "A" is a chart which sets forth any objections and responds
2 to each of the forgoing questions.

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4 **DECLARATION**

5 **PURSUANT TO 28 U.S.C. § 1746**, I hereby declare under penalty of perjury under the
6 laws of the United States of America that the foregoing is true and correct.

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9 By: _____

10 **COLETTE PELISSIER**
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EXHIBIT 7

Statement in Support of Defendant’s Motion to Compel
Further Responses to Deposition Questions

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3 Venture Commerce Center
4 3699 NW John Olsen Place
5 Hillsboro, OR 97124
6 Phone: 503-336-3749
7 Fax: 503-482-7418
8 Email: jcedmondson@edmolaw.com

9 Robert Robinson (CASB # 131461)
10 Law Office of Robert S. Robinson
11 2400 Camino Ramon Ste 185
12 San Ramon, CA 94583
13 Phone: 925-830-2702
14 Fax: 925-830-2104
15 Email: rob@robobinsonlaw.com

16 Attorneys for Defendant JOHN DOE IP address 76.126.99.126

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 MALIBU MEDIA, LLC,
20
21 Plaintiff,

22 vs.

23 JOHN DOE subscriber assigned IP
24 address 76.126.99.126,
25
26 Defendant.

27 AND ALL RELATED CROSS-
28 ACTIONS

) Case No.: 3:15-cv-04441-WHA
)
) **EXHIBIT 7 - STATEMENT IN SUPPORT**
) **OF DEFENDANT’S MOTION TO**
) **COMPEL FURTHER RESPONSES TO**
) **DEPOSITION QUESTIONS**
)
) DOE IP address 76.126.99.126
)
) FRCP §37(a)
)
) Hon. William Alsup
) Hearing Date: Thursday, December 15, 2016
) Hearing Time: 8:00 AM
)
) **ORAL ARGUMENT REQUESTED**

29 Defendant, JOHN DOE subscriber assigned IP address 76.126.99.126, (hereafter referred
30 to as “Defendant” or “John Doe”) hereby submits the following statement of the requests in full,

1 the objections and responses thereto, and the reasoning for further responses, as well as the
2 proportionality requirements. See Local Rule 37-2.

3 The numbering used below is based upon the columns in Plaintiff's document entitled
4 04441 – NCA70 – Chart – FOR PRODUCTION. [Edmondson Decl, Exhibit 3]. The questions
5 are based upon the letter dated August 13, 2016, Meet and Confer re: Deposition – Local Rules
6 37-1(a) - Failure to Provide Written Deposition Questions under Oath. [Edmondson Decl, Exhibit
7 4]. The responses by Plaintiff are based upon the information in Plaintiff's document entitled
8 04441 – NCA70 – Chart – FOR PRODUCTION. [Edmondson Decl, Exhibit 3]. The further
9 responses are based upon the letter dated November 2, 2016, from Plaintiff's counsel.
10 [Edmondson Decl, Exhibit 5].

11
12 **A. Romantic Memories.**

13 Question No. 9: Who created the copyright application?

14 Unverified Response to No. 9: Plaintiff's Attorney at the time or Brigham Field and
15 Colette Pelissier.

16 Unverified Further Response to No. 9: Plaintiff's Attorney, Emilie Kennedy; Brigham
17 Field or Colette Pelissier.

18 Reason for Further Response to No. 9: First, since we are dealing with copyrights, the
19 application for the copyright is 100% relevant to the claims of infringement. Here, the
20 name(s) of the person who created the copyright application would provide the names of
21 witnesses that could be deposed. We then have the issue with the specific response,
22 because we do not know who did it? Which of Plaintiff's attorney would it be at a
23 minimum, and in general Plaintiff should be able to determine who exactly created the
24 application. Again, if there was a defect in the application, this could defeat Plaintiff's
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1 claims, as one of Defendant's affirmative defenses regards inequitable conduct before the
2 Copyright Office.

3
4 Question No. 11: The names of the performers on the film?

5 Unverified Response to No. 11: Plaintiff objects on the basis that this request seeks
6 information that is neither relevant nor likely to lead to the discovery of admissible
7 evidence. Plaintiff objects on the basis that this request seeks confidential business
8 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
9 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
10 the actors' privacy rights.

11 Unverified Further Response to No. 11 (listed as 10 in Plaintiff's letter): Plaintiff
12 maintains all of its objections. Firstly, the privacy rights of the actors and actresses are not
13 and were not Colette Pelissier's to waive. The actors and actresses in Plaintiff's movies
14 perform under pseudonyms for a reason, one of the most compelling reasons for this
15 decision is rooted in legitimate concerns for their safety. Plaintiff can think of few things
16 more dangerous than making public the true names of actors and actresses starring in adult
17 films. In as much as the Defendant in this case has expressed a desire to "[stalk] women,
18 or worse" (see screenshot below [omitted]), Plaintiff has deep concerns in making this
19 information available to Defendant or his counsel. All information that Defendant seeks
20 to obtain from the actresses and actors in Plaintiff's films, (i.e. dates and times of
21 production and existence of contractual agreements) is available from other sources and
22 indeed such information has already been supplied to Defendant.

23 Reason for Further Response to No. 11: As to relevance, the names of the performers are
24 names of witnesses to the production. Defendant is entitled to be able to have the names
25 of all witnesses, or as FRCP 26(a)(A)(i) states, "the name ... of each individual likely to
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1 have discoverable information[.]” As some performers in the film industry receive an
2 ownership stake in their films, Defendant is entitled to discover this to be able to ensure
3 the proper transfer of any copyrights, and in general to ensure all copyright holders have
4 consented to this action.

5 Further, originality and similarity are key issues in this case, which alone could defeat the
6 claims of infringement if it is demonstrated these films lacked originality or were similar
7 to other works. Here, the performers would hold key details as witnesses to the production
8 of the work, such as what direction they were given, what the script said, if anything, and
9 how similar it was to other works they performed in. Given some of these films were
10 filmed in other countries, there may be conflict of laws issues related to who could own
11 the copyright.

12 In regards to the confidential business information, it is inconceivable that the names of
13 performers who make adult films intended for publication to the public could somehow
14 be confidential. Similar to a trade secret or attorney-client privilege, once the confidential
15 information goes to a third-party, there is no longer a trade secret or privilege. Then, even
16 were there some initial privilege, by this suit and Plaintiff’s claims, the privilege is waived
17 or is outweighed by the need for the defendant to obtain discovery.

18 Lastly, as to privacy, what privacy would this invade given these people performed in a
19 pornographic film destined to be published? If Plaintiff has a contract with these
20 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
21 provided the names for some of the performers in the deposition without any such
22 objection before Defendant agreed to truncate the deposition. It would be unfairly
23 prejudicial to Defendant to allow Plaintiff to now provide less detail than it would have at
24 the deposition.

1 Question No. 13: How much did you pay the performers?

2 Unverified Response to No. 13: Plaintiff objects on the basis that this request seeks
3 information that is neither relevant nor likely to lead to the discovery of admissible
4 evidence. Plaintiff objects on the basis that this request seeks confidential business
5 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
6 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
7 the actors' privacy rights.

8 Unverified Further Response to No. 13 (listed as 12 in Plaintiff's letter): In as much as
9 Defendant failed to provide reasons for further response, Plaintiff maintains all of its
10 objections.

11 Reason for Further Response to No. 13: As to relevance, some performers in the film
12 industry receive an ownership stake in their films, and as such Defendant is entitled to
13 discover this to be able to ensure the proper transfer of any copyrights, and in general to
14 ensure all copyright holders have consented to this action.

15 In regards to the confidential business information, such information is clearly
16 discoverable in an action on copyright. Plaintiff's response ignores a basic tenet of
17 copyright litigation: that a defendant is in fact allowed to discover the profits on the
18 allegedly infringed works. 17 U.S.C. 504(b). Any profit calculation would require a
19 deduction for expenses, and the payments to the performers would be an expense. Then,
20 even were there some initial privilege, by this suit and Plaintiff's claims, the privilege is
21 waived or is outweighed by the need for the defendant to obtain discovery.

22 Lastly, as to privacy, what privacy would this invade given these people performed in a
23 pornographic film destined to be published? If Plaintiff has a contract with these
24 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
25 provided the names for some of the performers in the deposition without any such
26

1 objection before Defendant agreed to truncate the deposition. It would be unfairly
2 prejudicial to Defendant to allow Plaintiff to now provide less detail than it would have at
3 the deposition.
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5 Question No. 15: Did any actors or actresses get residuals for acting in the film?

6 Unverified Response to No. 15: Plaintiff objects on the basis that this request seeks
7 information that is neither relevant nor likely to lead to the discovery of admissible
8 evidence. Plaintiff objects on the basis that this request seeks confidential business
9 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
10 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
11 the actors' privacy rights.

12 Unverified Further Response to No. 15 (listed as 14 in Plaintiff's letter): Plaintiff
13 maintains all of its objections. Defendant has not alleged why the answer given to this
14 question during the deposition of Colette Pelissier was insufficient. Notwithstanding any
15 objections and without waiving same, Plaintiff answers that its actors' do not receive
16 residuals for their appearances in Plaintiff's films.

17 Reason for Further Response to No. 15: As to relevance, some performers in the film
18 industry receive an ownership stake in their films, and as such Defendant is entitled to
19 discover this to be able to ensure the proper transfer of any copyrights, and in general to
20 ensure all copyright holders have consented to this action.

21 In regards to the confidential business information, such information is clearly
22 discoverable in an action on copyright. Plaintiff's response ignores a basic tenet of
23 copyright litigation: that a defendant is in fact allowed to discover the profits on the
24 allegedly infringed works. 17 U.S.C. 504(b). Any profit calculation would require a
25 deduction for expenses, and the payments to the performers would be an expense. Then,
26

1 even were there some initial privilege, by this suit and Plaintiff's claims, the privilege is
2 waived or is outweighed by the need for the defendant to obtain discovery.

3 Lastly, as to privacy, what privacy would this invade given these people performed in a
4 pornographic film destined to be published? If Plaintiff has a contract with these
5 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
6 responded during deposition without any such objection. It would be unfairly prejudicial
7 to Defendant to allow Plaintiff to now provide less detail than it would have at the
8 deposition.

9
10 Question No. 18: Is the film similar to any of your other films?

11 Unverified Response to No. 18: Plaintiff objects on the basis that this question is
12 ambiguous. Plaintiff does not know what criteria Defendant is using to measure the
13 similarities between various films. Notwithstanding the foregoing objection and without
14 waiving same, Plaintiff avers that this work is similar to Plaintiff's other works because
15 they are all adult content.

16 Unverified Further Response to No. 18 (listed as 17 in Plaintiff's letter): Plaintiff
17 maintains all of its objections. Defendant has not provided reasoning as to why Plaintiff's
18 response to this question was insufficient. Plaintiff further objects that this question calls
19 for a legal conclusion. Notwithstanding any objections and without waiving same Plaintiff
20 answers that its works are original within the meaning of the Copyright Act: each of
21 Plaintiff's films depicts different actors, different scenes, different directors, and different
22 creative input. See *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
23 See *Id.* at 358, "the originality requirement is not particularly stringent. A compiler may
24 settle upon a selection or arrangement that others have used; novelty is not required.
25 Originality requires only that the author make the selection or arrangement independently
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1 (i.e., without copying that selection or arrangement from another work), and that it display
2 some minimal level of creativity.”

3 Reason for Further Response to No. 18: As noted above, originality and similarity are key
4 issues in this case, which alone could defeat the claims of infringement if it is
5 demonstrated these films lacked originality or were similar to other works. Similarity goes
6 to the veracity of Ms. Fields at her deposition and to the copyrightability of the works at
7 issue. *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). See *id.* at
8 361 ("To establish infringement, two elements must be proven: (1) ownership of a valid
9 copyright, and (2) copying of constituent elements of the work that are original."); see
10 also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th
11 Cir.2013). This makes the inquiry relevant.

12
13 **B. Ibiza Love.**

14 Question No. 9: Who created the copyright application?

15 Unverified Response to No. 9: Plaintiff's Attorney at the time or Brigham Field and
16 Colette Pelissier.

17 Unverified Further Response to No. 9: Plaintiff's Attorney, Emilie Kennedy; Brigham
18 Field or Colette Pelissier.

19 Reason for Further Response to No. 9: First, since we are dealing with copyrights, the
20 application for the copyright is 100% relevant to the claims of infringement. Here, the
21 name(s) of the person who created the copyright application would provide the names of
22 witnesses that could be deposed. We then have the issue with the specific response,
23 because we do not know who did it? Which of Plaintiff's attorney would it be at a
24 minimum, and in general Plaintiff should be able to determine who exactly created the
25 application. Again, if there was a defect in the application, this could defeat Plaintiff's
26

1 claims, as one of Defendant's affirmative defenses regards inequitable conduct before the
2 Copyright Office.

3
4 Question No. 11: The names of the performers on the film?

5 Unverified Response to No. 11: Plaintiff objects on the basis that this request seeks
6 information that is neither relevant nor likely to lead to the discovery of admissible
7 evidence. Plaintiff objects on the basis that this request seeks confidential business
8 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
9 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
10 the actors' privacy rights.

11 Unverified Further Response to No. 11 (listed as 10 in Plaintiff's letter): Plaintiff
12 maintains all of its objections. Firstly, the privacy rights of the actors and actresses are not
13 and were not Colette Pelissier's to waive. The actors and actresses in Plaintiff's movies
14 perform under pseudonyms for a reason, one of the most compelling reasons for this
15 decision is rooted in legitimate concerns for their safety. Plaintiff can think of few things
16 more dangerous than making public the true names of actors and actresses starring in adult
17 films. In as much as the Defendant in this case has expressed a desire to "[stalk] women,
18 or worse" (see screenshot below [omitted]), Plaintiff has deep concerns in making this
19 information available to Defendant or his counsel. All information that Defendant seeks
20 to obtain from the actresses and actors in Plaintiff's films, (i.e. dates and times of
21 production and existence of contractual agreements) is available from other sources and
22 indeed such information has already been supplied to Defendant.

23 Reason for Further Response to No. 11: As to relevance, the names of the performers are
24 names of witnesses to the production. Defendant is entitled to be able to have the names
25 of all witnesses, or as FRCP 26(a)(A)(i) states, "the name ... of each individual likely to
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1 have discoverable information[.]” As some performers in the film industry receive an
2 ownership stake in their films, Defendant is entitled to discover this to be able to ensure
3 the proper transfer of any copyrights, and in general to ensure all copyright holders have
4 consented to this action.

5 Further, originality and similarity are key issues in this case, which alone could defeat the
6 claims of infringement if it is demonstrated these films lacked originality or were similar
7 to other works. Here, the performers would hold key details as witnesses to the production
8 of the work, such as what direction they were given, what the script said, if anything, and
9 how similar it was to other works they performed in. Given some of these films were
10 filmed in other countries, there may be conflict of laws issues related to who could own
11 the copyright.

12 In regards to the confidential business information, it is inconceivable that the names of
13 performers who make adult films intended for publication to the public could somehow
14 be confidential. Similar to a trade secret or attorney-client privilege, once the confidential
15 information goes to a third-party, there is no longer a trade secret or privilege. Then, even
16 were there some initial privilege, by this suit and Plaintiff’s claims, the privilege is waived
17 or is outweighed by the need for the defendant to obtain discovery.

18 Lastly, as to privacy, what privacy would this invade given these people performed in a
19 pornographic film destined to be published? If Plaintiff has a contract with these
20 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
21 provided the names for some of the performers in the deposition without any such
22 objection before Defendant agreed to truncate the deposition. It would be unfairly
23 prejudicial to Defendant to allow Plaintiff to now provide less detail than it would have at
24 the deposition.

1 Question No. 13: How much did you pay the performers?

2 Unverified Response to No. 13: Plaintiff objects on the basis that this request seeks
3 information that is neither relevant nor likely to lead to the discovery of admissible
4 evidence. Plaintiff objects on the basis that this request seeks confidential business
5 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
6 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
7 the actors' privacy rights.

8 Unverified Further Response to No. 13 (listed as 12 in Plaintiff's letter): In as much as
9 Defendant failed to provide reasons for further response, Plaintiff maintains all of its
10 objections.

11 Reason for Further Response to No. 13: As to relevance, some performers in the film
12 industry receive an ownership stake in their films, and as such Defendant is entitled to
13 discover this to be able to ensure the proper transfer of any copyrights, and in general to
14 ensure all copyright holders have consented to this action.

15 In regards to the confidential business information, such information is clearly
16 discoverable in an action on copyright. Plaintiff's response ignores a basic tenet of
17 copyright litigation: that a defendant is in fact allowed to discover the profits on the
18 allegedly infringed works. 17 U.S.C. 504(b). Any profit calculation would require a
19 deduction for expenses, and the payments to the performers would be an expense. Then,
20 even were there some initial privilege, by this suit and Plaintiff's claims, the privilege is
21 waived or is outweighed by the need for the defendant to obtain discovery.

22 Lastly, as to privacy, what privacy would this invade given these people performed in a
23 pornographic film destined to be published? If Plaintiff has a contract with these
24 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
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5 Question No. 15: Did any actors or actresses get residuals for acting in the film?

6 Unverified Response to No. 15: Plaintiff objects on the basis that this request seeks
7 information that is neither relevant nor likely to lead to the discovery of admissible
8 evidence. Plaintiff objects on the basis that this request seeks confidential business
9 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
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6 also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th
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9 **C. Pretty Back Door Baby.**

10 Question No. 9: Who created the copyright application?

11 Unverified Response to No. 9: Plaintiff's Attorney at the time or Brigham Field and
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21 application. Again, if there was a defect in the application, this could defeat Plaintiff's
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25 Question No. 11: The names of the performers on the film?
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9 **D. Carmen Leila Christmas Vacation.**

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9 **E. Young Passion.**

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20 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
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1 Question No. 15: Did any actors or actresses get residuals for acting in the film?

2 Unverified Response to No. 15: Plaintiff objects on the basis that this request seeks
3 information that is neither relevant nor likely to lead to the discovery of admissible
4 evidence. Plaintiff objects on the basis that this request seeks confidential business
5 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
6 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
7 the actors' privacy rights.

8 Unverified Further Response to No. 15 (listed as 14 in Plaintiff's letter): Plaintiff
9 maintains all of its objections. Defendant has not alleged why the answer given to this
10 question during the deposition of Colette Pelissier was insufficient. Notwithstanding any
11 objections and without waiving same, Plaintiff answers that its actors' do not receive
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13 Reason for Further Response to No. 15: As to relevance, some performers in the film
14 industry receive an ownership stake in their films, and as such Defendant is entitled to
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6 also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th
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9 **I. Morning Tryst.**

10 Question No. 9: Who created the copyright application?

11 Unverified Response to No. 9: Plaintiff's Attorney at the time or Brigham Field and
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21 application. Again, if there was a defect in the application, this could defeat Plaintiff's
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25 Question No. 11: The names of the performers on the film?
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18 Lastly, as to privacy, what privacy would this invade given these people performed in a
19 pornographic film destined to be published? If Plaintiff has a contract with these
20 performers that guarantees privacy, then produce it *in camera* for review. As it is, Plaintiff
21 provided the names for some of the performers in the deposition without any such
22 objection before Defendant agreed to truncate the deposition. It would be unfairly
23 prejudicial to Defendant to allow Plaintiff to now provide less detail than it would have at
24 the deposition.

1 Question No. 15: Did any actors or actresses get residuals for acting in the film?

2 Unverified Response to No. 15: Plaintiff objects on the basis that this request seeks
3 information that is neither relevant nor likely to lead to the discovery of admissible
4 evidence. Plaintiff objects on the basis that this request seeks confidential business
5 information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that
6 this request seeks information the disclosure of which would invade Plaintiff's (sic) and
7 the actors' privacy rights.

8 Unverified Further Response to No. 15 (listed as 14 in Plaintiff's letter): Plaintiff
9 maintains all of its objections. Defendant has not alleged why the answer given to this
10 question during the deposition of Colette Pelissier was insufficient. Notwithstanding any
11 objections and without waiving same, Plaintiff answers that its actors' do not receive
12 residuals for their appearances in Plaintiff's films.

13 Reason for Further Response to No. 15: As to relevance, some performers in the film
14 industry receive an ownership stake in their films, and as such Defendant is entitled to
15 discover this to be able to ensure the proper transfer of any copyrights, and in general to
16 ensure all copyright holders have consented to this action.

17 In regards to the confidential business information, such information is clearly
18 discoverable in an action on copyright. Plaintiff's response ignores a basic tenet of
19 copyright litigation: that a defendant is in fact allowed to discover the profits on the
20 allegedly infringed works. 17 U.S.C. 504(b). Any profit calculation would require a
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4 deposition.

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6 Question No. 18: Is the film similar to any of your other films?

7 Unverified Response to No. 18: Plaintiff objects on the basis that this question is
8 ambiguous. Plaintiff does not know what criteria Defendant is using to measure the
9 similarities between various films. Notwithstanding the foregoing objection and without
10 waiving same, Plaintiff avers that this work is similar to Plaintiff's other works because
11 they are all adult content.

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15 for a legal conclusion. Notwithstanding any objections and without waiving same Plaintiff
16 answers that its works are original within the meaning of the Copyright Act: each of
17 Plaintiff's films depicts different actors, different scenes, different directors, and different
18 creative input. See *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
19 See *Id.* at 358, "the originality requirement is not particularly stringent. A compiler may
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5 copyright, and (2) copying of constituent elements of the work that are original."); see
6 also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th
7 Cir.2013). This makes the inquiry relevant.

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9 **L. Summertime Lunch.**

10 Question No. 9: Who created the copyright application?

11 Unverified Response to No. 9: Plaintiff's Attorney at the time or Brigham Field and
12 Colette Pelissier.

13 Unverified Further Response to No. 9: Plaintiff's Attorney, Emilie Kennedy; Brigham
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16 application for the copyright is 100% relevant to the claims of infringement. Here, the
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18 witnesses that could be deposed. We then have the issue with the specific response,
19 because we do not know who did it? Which of Plaintiff's attorney would it be at a
20 minimum, and in general Plaintiff should be able to determine who exactly created the
21 application. Again, if there was a defect in the application, this could defeat Plaintiff's
22 claims, as one of Defendant's affirmative defenses regards inequitable conduct before the
23 Copyright Office.

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25 Question No. 11: The names of the performers on the film?
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1 Unverified Response to No. 11: Plaintiff objects on the basis that this request seeks
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23 ownership stake in their films, Defendant is entitled to discover this to be able to ensure
24 the proper transfer of any copyrights, and in general to ensure all copyright holders have
25 consented to this action.

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22 Question No. 13: How much did you pay the performers?

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8
9 **M. Starting Over.**

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25 Question No. 11: The names of the performers on the film?
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8
9
10 Respectfully submitted,

11 Dated: November 15, 2016

/s/ J. Curtis Edmondson
12 J. Curtis Edmondson (CASB #236105)
13 LAW OFFICES OF J. CURTIS EDMONDSON
3699 NW John Olsen Place
14 Hillsboro, OR 97124
Phone: 503-336-3749
15 Fax: 503-482-7418

16 Email: jcedmondson @edmolaw.com
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EXHIBIT 8

July 28, 2016, Email from Defense Counsel to Plaintiff's Counsel

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----- Forwarded Message -----

Subject:ROW 1.002 - Supplement to Deposition / Settlement

Date:Thu, 28 Jul 2016 21:43:46 -0400 (EDT)

From:J. Curtis Edmondson <jcedmondson@edmolaw.com>

To:Henrik Mosesi <hmosesi@gmail.com>, J. Curtis Edmondson <jcedmondson@edmolaw.com>, brenna.erlbaum@helaw.attorney, Brian Heit <brian.heit@helaw.attorney>, Curtis Edmondson <curtis@slindenelson.com>

Henrik,

Pleasure to meet you yesterday. Here are the questions (below) we stippled to at the deposition for each film on the exhibit I think 10 days is enough time for Malibu Media to respond, under oath.

I was surprised your client had not seen the Rule 68 offer. That offer is based on our expert report (attached). If your client has something, then there is no value in holding back that information. I know that Mr and Mrs Fields are not qualified experts, but if they can point to these "deleted files" (or other evidence) on the forensic copy, I will have my expert look at them. I was also a little surprised that counsel handed off the evidence to the client rather than providing it directly to an expert as was promised.

On this issue of WiFi transmission strength. I have made actual ad-hoc measurements of the defendant's signal. It transmits a good block or more. So the statement of Ms. Field regarding signal strength is inaccurate.

From your client's testimony, I estimate that Malibu Media has a profit margin of at least 10%. At a gross revenue rate of approx 12M per year (50K subscribers @ 20/mo*12mo), there is enough money to settle actions that prior counsel improperly filed. It is appropriate for defendant to ask for reasonable attorney fees and costs to date. If this goes to trial, I will ask the Court for the same and a lodestar multiplier.

The last case I worked on where the other side drew a line in the sand saying "I will not pay", ended up having a judgment of close to 5M against him personally. (appellate decision attached). Coincidentally, Mr. Galam, who I got the judgment against, was also in the adult entertainment business.

Darian Stanford at Slidin Nelson Stanford will be trial counsel for this case with over 100 completed trials.

You have a big challenge suing Lipscomb. I am giving you an opportunity to have one less distraction by settling with my client. If that is of interest, lets talk 503-701-9719.

Sincerely,

Curt Edmondson

[To answer within 10 days under oath for each of the 23 films]

- a. Who did the Development on _____?
- b. Who did the Pre-production on _____?
- c. Who did the Production on _____?
- d. Who did the Post-production on _____?
- e. Who did the Distribution on _____?
- f. Where was _____ Distributed?
- g. Which licensees received copies of _____?
- h. Who created the copyright application that was filed at US Copyright Office for _____?
- i. How many copies of _____ were deposited at the US Copyright Office?
- j. Who acted in _____?
- k. Where the actors or actresses in _____ employees or subcontractors of Malibu Media?
- l. How much did you pay _____ for acting in _____?
- m. Do you have records of payments _____?
- n. Do _____ get residuals for acting in _____?
- o. Did you offer health insurance to _____?
- p. Who wrote the script for _____?
- q. Is _____ similar to any of your other films? What films?

On July 26, 2016 at 5:14 PM Henrik Mosesi <hmosesi@gmail.com> wrote:

Thank you.

I'll see you tomorrow.

On Tue, Jul 26, 2016 at 2:13 PM, J. Curtis Edmondson <jcedmondson@edmolaw.com> wrote:

Hi Henrick,

I saw your association of counsel notice. Attached is the depo notice for tomorrow which was served and agreed to by your co-counsel. Also the Rule 68 offer that was served and has since expired.

If you have any questions, please call my cell at 503-701-9719.

Sincerely,

J. Curtis Edmondson, P.E.
Law Offices of J. Curtis Edmondson
Venture Commerce Center
3699 NW John Olsen Place
Hillsboro OR 97124
(503) 336-3749
(503) 482-7418 fax
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Henrik Mosesi, Esq.
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150 S. Rodeo Dr. Suite 260
Beverly Hills, CA 90212
Tel: 310-999-0000
Fax: 888-667-5482
pillar.law

EXHIBIT 9

August 6, 2016, Email from Defense Counsel to Plaintiff's Counsel

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Subject: ROW 1.002 - PMK Deposition - Meet and Confer
From: "J. Curtis Edmondson" <jcedmondson@edmolaw.com>
Date: 8/6/2016 12:16 PM
To: <brenna.erlbaum@helaw.attorney>, Brian Heit <brian.heit@helaw.attorney>, Curtis Edmondson <curtis@slindenelson.com>

Brenna,

When we spoke on Thursday you mentioned that portions of Colette's testimony were erroneous. If the corrections are material, I will expect that the deposition will have be retaken at Malibu's expense.

Further although Colette was produced as the PMK on all topics, she was clearly not the most knowledgeable person.

Third, your client agreed to supplement the deposition with written responses. I still do not have those verified responses. I am inclined to ask the magistrate for an order compelling those written responses.

A significant portion of the depo time was spent with Colette attending to her cell phone. In addition she was over an hour late to the depo.

Sincerely,

J. Curtis Edmondson, P.E.
Law Offices of J. Curtis Edmondson
Venture Commerce Center
3699 NW John Olsen Place
Hillsboro OR 97124
(503) 336-3749
(503) 482-7418 fax
jcedmondson@edmolaw.com
www.edmolaw.com

EXHIBIT 10

August 13, 2016, Email from Defense Counsel to Plaintiff's Counsel

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----- Forwarded Message -----

Subject:Re: ROW 1.002 - PMK Deposition - Meet and Confer
Resent-From:curtis@slindenelson.com
Date:Sat, 13 Aug 2016 19:23:51 -0400
From:J. Curtis Edmondson <jcedmondson@edmolaw.com>
To:Brian Heit <brian.heit@helaw.attorney>, Curtis Edmondson <curtis@slindenelson.com>, brenna.erlbaum@helaw.attorney, hmosesi@gmail.com

Brenna, Brian, and Henrik

Please see attached meet and confer letter re: local rules 37-1.

Sincerely,

Curt Edmondson 503-701-9719

On August 6, 2016 at 3:16 PM "J. Curtis Edmondson" <jcedmondson@edmolaw.com> wrote:

Brenna,

When we spoke on Thursday you mentioned that portions of Colette's testimony were erroneous. If the corrections are material, I will expect that the deposition will have be retaken at Malibu's expense.

Further although Colette was produced as the PMK on all topics, she was clearly not the most knowledgeable person.

Third, your client agreed to supplement the deposition with written responses. I still do not have those verified responses. I am inclined to ask the magistrate for an order compelling those written responses.

A significant portion of the depo time was spent with Colette attending to her cell phone. In addition she was over an hour late to the depo.

Sincerely,

J. Curtis Edmondson, P.E.
Law Offices of J. Curtis Edmondson
Venture Commerce Center
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(503) 336-3749
(503) 482-7418 fax
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**Intellectual Property Law
Patent, Trademark, Copyright
and Related Matters
Litigation, Licensing and
Prosecution**

**J. Curtis Edmondson
Attorney at Law**

**Venture Commerce Center
3699 John Olsen Place
Hillsboro, OR 97124
Telephone (503) 336-3749
Facsimile (503) 482-7418**

Brenna Erlbaum
Heit Erlbaum, LLC
6320 Canoga Avenue, 15th Floor
Woodland Hills, CA 91367

August 13, 2016

Henrik Mosesi, Esq.
PILLAR LAW GROUP, APLC
150 S. Rodeo Dr. Suite 260
Beverly Hills, CA 90212

Case: *Malibu Media, LLC v DOE 1* (2015) ND CAL:15-cv-04441-WHA
Docket: ROW 1.002

Re: Meet and Confer re: Deposition – Local Rules 37-1(a)
Failure to Provide Written Deposition Questions under Oath

Dear Brenna and Henrik:

On July 28, 2016, I sent an email regarding the stipulation at the PMK deposition for written responses, under oath, to the following topics to each of the 28 movies at issue:

- a. Who did the Development on _____?
- b. Who did the Pre-production on _____?
- c. Who did the Production on _____?
- d. Who did the Post-production on _____?
- e. Who did the Distribution on _____?
- f. Where was _____ Distributed?
- g. Which licensees received copies of _____?
- h. Who created the copyright application that was filed at US Copyright Office for _____?
- i. How many copies of _____ were deposited at the US Copyright Office?
- j. Who acted in _____?
- k. Where the actors or actresses in _____ employees or subcontractors of Malibu Media?
- l. How much did you pay _____ for acting in _____?
- m. Do you have records of payments _____?
- n. Do _____ get residuals for acting in _____?
- o. Did you offer health insurance to _____?
- p. Who wrote the script for _____?
- q. Is _____ similar to any of your other films? What films?

I have not received a response to my email. On August 3, I sent a reminder email, with no response. On August 6, I brought this issue up again, with no response.

It is a week later. Please supplement these responses by Tuesday, August 16 or I will move to compel the written responses.

Sincerely,



J. Curtis Edmondson

EXHIBIT 11

August 30, 2016, Email from Defense Counsel to Plaintiff's Counsel

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----- Forwarded Message -----

Subject:Re: ISP Motion | NCA70 | 3:15-cv-04441

Date:Tue, 30 Aug 2016 19:35:44 -0400 (EDT)

From:J. Curtis Edmondson <jcedmondson@edmolaw.com>

To:Brian Heit <brian.heit@helaw.attorney>, Brenna Erlbaum <brenna.erlbaum@helaw.attorney>, J. Curtis Edmondson <jcedmondson@edmolaw.com>, Jessica Hake <jessica@slindenelson.com>, darian@slindenelson.com

Brenna and Brian,

I have had a chance to review this "pro forma" motion. I will not stip and will oppose it.

You have not established a "prima facie" case that John Doe 4441 has infringed the works which would be the basis for this discovery under new rule 26.

You have been given the hard drives and have found nothing, my forensic expert found nothing. Ms. Fields found nothing and testified at her deposition to that fact. I asked for artifacts that your expert may have found indicating infringement that my expert can review, and you gave me no response.

It is irrelevant what Comcast says about other DMCA notices, policies, procedures, etc. if there has been no infringement of your works by 4441.

Further, you have not had the courtesy to provide written deposition responses from Ms. Fields as agreed at the depo.

Sincerely,

Curt Edmondson

503-701-9719.

On August 30, 2016 at 4:41 PM Brenna Erlbaum <brenna.erlbaum@helaw.attorney> wrote:

EXHIBIT 12

October 24, 2016, Email from Defense Counsel to Plaintiff's Counsel

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Curt,

Plaintiff intends on filings a motion for leave to serve a third party subpoena on Comcast. As you know an order permitting the ISP to disclose subscriber information is necessary under the Cable Act. Plaintiff's subpoena will seek the production of documents regarding: (a) DMCA notices and any other copyright infringement notice sent from Comcast to the subscriber; (b) the subscriber notification letter Comcast sent to the subscriber regarding this lawsuit; (c) the ISP's lease of any electronic devices (if any) to Defendant, including rental of a modem or router; (d) the ISP's policy and procedures regarding password installation for a subscriber's modem and router; (e) the correlation of IP address to subscriber; and (f) the reliability of the ISP's correlation process. Please advise if Defendant will oppose this motion.

Thanks,

Brenna



6320 Canoga Avenue
15th Floor
Woodland Hills, CA 91367
[t] 855.231.9868

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----- Forwarded Message -----

Subject: Meet and Confer | 3:16-cv-04441-WHA

Date: Mon, 24 Oct 2016 16:22:37 -0400 (EDT)

From: J. Curtis Edmondson <jcedmondson@edmolaw.com>

To: Brenna Erlbaum <Brenna.E@pillar.law>, Henrik Mosei <henry@pillar.law>

CC: J. Curtis Edmondson <jcedmondson@edmolaw.com>

Brenna and Henrik,

Please find the attached meet and confer letter regarding discovery.

Sincerely,

J. Curtis Edmondson, P.E. | Patent Attorney | Law Offices of J. Curtis Edmondson, PLLC
USPTO 57027 | CA SBN 236105 | WA SBN 43795 | ND SBN 06826 | DC BAR NO 998407
Heritage Bldg, 601 Main Street, Suite 210, Vancouver, WA 98660 | ph: (360)539-5090
Venture Commerce Center, 3699 John Olsen Pl, Hillsboro, OR 97124 | ph: (503) 336-3749

jcedmondson@edmolaw.com | www.edmolaw.com

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J. Curtis Edmondson
Attorney at Law

**Intellectual Property Law Patent, Trademark, Copyright
and Related Matters Litigation, Licensing and Prosecution**

Henrik Mosesian Mosesi, Esq.
Brenna Erlbaum, Esq.
Pillar Law Group APLC
150 S. Rodeo Drive, Suite 260
Beverly Hills, CA 90212

RE: *Malibu Media, LLC v. John Doe subscriber assigned IP address 76.126.99.126*
Court Case No.: 3:15-cv-04441-WHA

Defendant's Meet and Confer, Request for Production of Documents (Set One);
Defendant's Interrogatories (Set One);
Defendant's Responses to Written Deposition Questions

Discovery Meet and Confer

Dear Mr. Mosesi and Ms. Erlbaum:

I again am contacting you because of the Plaintiff's refusal to provide adequate responses to Defendant's basic discovery or to produce requested documents even though Plaintiff promised to do. As I discussed in part during several emails to you, and again with Ms. Erlbaum at court last Friday, I have concerns about your client's Responses to Defendant's First Set of Interrogatories, and Responses to Defendant's First Set of Requests for Production, both dated September 20, 2016. **Furthermore, you have failed to provide full responses by Ms. Fields to written deposition questions that you requested, and Defendant stipulated to, at her PMK deposition on July 27, 2016.**

Please consider this as another formal attempt to confer over your client's responses. *See* Civil L.R. 37-1. On the following pages, I have listed the specific areas of concern with your client's responses. (See Attached Exhibits 1, 2, and 3).

I would like to avoid needlessly wasting the court's time on law and motion practice, and request that your client supplement its responses as outlined on the attached pages. Please provide the supplemental responses by Friday, October 28, 2016. In the interim, should you wish to discuss these myriad deficiencies, please feel free to call me.

Sincerely,

/ J. Curtis Edmondson/
J. Curtis Edmondson
Defendant's Counsel

Exhibit 1 – Meet and Confer
Request for Production of Documents

Requests for Production

Request No. 1

Request: All communications that support the allegations in the FAC that the Defendant is liable for Copyright Infringement.

Response: Plaintiff objects on the basis that this request is overly broad. Indeed, as written it encompasses every communication from every single party and third party. This also includes communications between Plaintiff, Plaintiff's attorneys, and Plaintiff's experts. Accordingly, Plaintiff further objects on the basis that this request seeks attorney client communications and attorney work product pursuant to Fed. R. Civ. P. (b)(3)-(5).

Reason for Further Response: This request is not overly broad. We do not see how attorney-client communications would be something that would evidence or reference the facts upon which Plaintiff bases its allegations. And to be clear, we are willing to modify this request, for purposes of the meet and confer, to those documents that evidence, reference, or support the facts upon which Plaintiff bases its allegations. Furthermore, for the very reason that we cannot assess the propriety of any privilege claim, Plaintiff was required, inter alia, to serve a privilege log. FRCP 26(b)(5)(A)(ii). As such, there was no proper claim for any privilege, and thus any privilege is waived (not to mention it is unclear which FRCP you are even citing to). Thus, please produce all such documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 2

Request: All communications that you will use at trial supporting your allegations in the FAC that the Defendant is liable for Copyright Infringement.

Response: Plaintiff will produce all documents it intends on using at trial supporting Plaintiff's allegations in the FAC that the Defendant is liable for Copyright Infringement.

Reason for Further Response: Given Plaintiff's response, we presume all such documents have now been produced. The documents Plaintiff has produced to date fail to support a claim of any actual infringement of the works or any good faith basis for Plaintiff to maintain this lawsuit. (Please revisit our concerns regarding certificates of registration.) Thus, this is your last chance to produce any further documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 3

Request: All communications from any member of IPP International UG that support the allegations in the FAC that the Defendant is liable for Copyright Infringement.

Response: Plaintiff objects on the basis that responsive documents are protected by the privilege against disclosure of work product and contain communications protected from disclosure by the federal rules. See Fed. R. Civ. P. 26(b)(4)(C). Further, the applicable BitTorrent tracking firm was hired in anticipation of litigation. Notwithstanding the foregoing objection and without waiving same, Plaintiff will produce all responsive documents which it intends on using at any hearing or trial in this matter.

Reason for Further Response: In order to actually claim a proper withholding due to privilege, it requires two parts, the second of which is the inclusion of a privilege log. FRCP 26(b)(5)(A)(ii). As such, there was no proper claim for any privilege, and thus any privilege is waived. IPP International UG is an independent “BitTorrent Monitoring Firm” and is licensed as a California Private Investigator. Its activities are not derivative of any attorney work product; rather, IPP’s work seeks out potential defendants and forms the very factual foundation of Plaintiff’s claims. Relevant documents would include: contracts with IPP International, communications with staff at IPP International requesting that the allegedly infringed works be monitored, invoices for the works being monitored, comments made by IPP International, etc. All of these documents are relevant and are not privileged. Thus, please produce all such documents, or face exclusion at trial and adverse inferences. FRCP 37.

Request No. 4

Request: All communications from any member of IPP International UG regarding the cost of providing any goods or services to MM.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Plaintiff further objects on the basis that this request is overly broad and unduly burdensome. Indeed, Defendant’s all-encompassing language seeks communication which falls outside the relevant time frame and does not limit the scope to any relevant information regarding Defendant’s infringement or the tracking thereof. Plaintiff further objects on the basis that responsive documents are protected by the privilege against disclosure of work product and contain communications protected from disclosure by the federal rules. See Fed. R. Civ. P. 26(b)(4)(C). Further, IPP International UG (“IPP”) was hired in anticipation of litigation. Notwithstanding the foregoing objection and without waiving same, Plaintiff will produce its flat fee agreement with IPP after entry of a suitable protective order.

Reason for Further Response: Please see the above discussion, in “Reason” concerning Request No. 4, concerning the true role of IPP. Furthermore, Plaintiff’s response ignores a basic tenet of copyright litigation: that a defendant is in fact allowed to discover the profits on the allegedly infringed works. 17 U.S.C. 504(b). Even were there some initial privilege, by this suit and Plaintiff’s claims, the privilege is waived or is outweighed by the need for the defendant to obtain discovery. This is similar, for example, to a personal injury action where

the treating doctor-patient privilege becomes waived, or in a suit by a client against his attorney where the attorney-client privilege is waived. Your client can elect up-to the time of trial as to seek statutory or actual damages, and as such, the actual damages information is clearly relevant and discoverable. See also the above discussions as to any claims of privilege also being waived due to Plaintiff's failure to produce a privilege log.

Request No. 5

Request: Any communications regarding any marketing or sales materials from IPP International UG and/or ExCipio.

Response: None exist.

Reason for Further Response: A simple check of ExCipio's website discloses a plethora of advertising materials. Given your client used their services, it would seem odd they did not receive or peruse some marketing materials. If I locate such materials at a later time, sanctions will be sought.

Request No. 6

Request: All invoices from IPP International UG for services that were billed for the collecting evidence of alleged infringement of the Infringed Works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Plaintiff objects on the basis that this request is overly broad; indeed, IPP's detection of the infringed works at issue in this case constitutes less than one-millionth of the work they have performed for Malibu. Further, over 80,000 people infringe Malibu's work each month in the United States alone and approximately 300,000 globally. The invoices to Malibu reflect its services for collecting and recording all of that data. Notwithstanding the foregoing objections and without waiving same, after entry of a suitable protective order Plaintiff will produce its agreement with IPP International UG which contains the amount Plaintiff pays for their anti-piracy services per month. Considering the less than 1-1,000,000 relationship of the invoices being relevant to this case, it is unduly burdensome to require Malibu to cull years of invoices.

Reason for Further Response:

Please see the above discussion, in "Reason" concerning Request No. 4, concerning the true role of IPP. Furthermore, Plaintiff's response ignores a basic tenet of copyright litigation: that a defendant is in fact allowed to discover the profits on the allegedly infringed works. 17 U.S.C. 504(b). Even were there some initial privilege, by this suit and Plaintiff's claims, the privilege is waived or is outweighed by the need for the defendant to obtain discovery. This is similar, for example, to a personal injury action where the treating doctor-patient privilege becomes waived, or in a suit by a client against his attorney where the attorney-client privilege is waived. Your client can elect up-to the time of trial as to seek statutory or actual damages, and as such, the actual damages information is clearly relevant and discoverable.

See also the above discussions as to any claims of privilege also being waived due to Plaintiff's failure to produce a privilege log.

. As to the breadth of this Request, since this is limited to the infringed works only, it should only be 60 invoices. That is hardly a burdensome request and it is one that concerns eminently relevant material. Moreover, you failed to seek a protective order *prior* to the time the responses were due.

Request No. 7

Request: All documents that support the allegation in paragraph 22 of the FAC that the cryptographic file hashes as set forth in Exhibit A correlates to a copyrighted movie owned by Plaintiff as identified on Exhibit B.

Response: Plaintiff will produce control copies of each work at issue along with the .tar file associated with the cryptographic file hashes as set forth in Exhibit A.

Reason for Further Response: Plaintiff's response is inadequate in that it fails to state whether Plaintiff will produce all the documents requested. Please clarify. Given Plaintiff's response, we presume all such documents have now been produced. The documents Plaintiff has produced to date fail to support a claim of any actual infringement of the works or any good faith basis for Plaintiff to maintain this lawsuit. Thus, this is your last chance to produce any further documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 8

Request: All documents from IPP International UG that support the allegations in the FAC that the Defendant is liable for Copyright Infringement.

Response: Plaintiff will produce: (1) the MySQL log file in excel form which contains a list of all transactions between Defendant's IP address and Excipio's server; (2) one PCAP per work infringed; (3) the .torrent file; (4) the .tar files; (5) any technical reports pertaining to the PCAPs produced; and (6) an excel consisting of the Additional Evidence.

Reason for Further Response: Plaintiff's response is inadequate in that it fails to state whether Plaintiff will produce all the documents requested. Please clarify. Given Plaintiff's response, we presume all such documents have now been produced. The documents Plaintiff has produced to date fail to support a claim of any actual infringement of the works or any good faith basis for Plaintiff to maintain this lawsuit. It is noted that there did not appear to be any IPP International UG documents produced. Thus, this is your last chance to produce any further documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

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Request No. 9

Request: All documents and/or “pieces of each of the digital movie files identified by the file hashes on Exhibit A” provided by IPP International UG that were downloaded as alleged in paragraph 20 of the FAC.

Response: Plaintiff will produce: (1) the MySQL log file in excel form which contains a list of all transactions between Defendant’s IP address and Excipio’s server; (2) one PCAP per work infringed; (3) the .torrent file; (4) the .tar files; (5) any technical reports pertaining to the PCAPs produced; and (6) an excel consisting of the Additional Evidence.

Reason for Further Response: Plaintiff’s response is inadequate in that it fails to state whether Plaintiff will produce all the documents requested. Please clarify. Given Plaintiff’s response, we presume all such documents have now been produced. The documents Plaintiff has produced to date fail to support a claim of any actual infringement of the works or any good faith basis for Plaintiff to maintain this lawsuit. It is noted that there did not appear to be any IPP International UG documents produced. Thus, this is your last chance to produce any further documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff’s claims and prepare a defense to them.

Request No. 10

Request: All communications that support your allegation that “Defendant downloaded, copied, and distributed a complete copy of Plaintiff’s movies without authorization as enumerated on Exhibit A.” as alleged in the paragraph 21 of the FAC.

Response: Plaintiff objects on the basis that this request is overly broad. Indeed, as written it encompasses every communication from every single party and third party including communications between Plaintiff, Plaintiff’s attorneys, and Plaintiff’s experts. Plaintiff further objects on the basis that this request seeks attorney client communications and work product. See Fed. R. Civ. P. (b)(3)-(5). Notwithstanding the foregoing objection and without waiving same, Plaintiff will produce all documents which it intends on using at any trial or hearing in this matter to support the allegation that “Defendant downloaded, copied, and distributed a complete copy of Plaintiff’s movies without authorization as enumerated on Exhibit A.”

Reason for Further Response: Plaintiff’s response is inadequate in that it fails to state whether Plaintiff will produce all the documents requested. Also, this request is not overly broad. We do not see how attorney-client communications would be something that would evidence or reference the facts upon which Plaintiff bases this allegation. And to be clear, we are willing to modify this request, for purposes of the meet and confer, to those documents that evidence, reference, or support the facts upon which Plaintiff bases its allegation.

Furthermore, for the very reason that we cannot assess the propriety of any privilege claim, Plaintiff was required, inter alia, to serve a privilege log. FRCP 26(b)(5)(A)(ii). As such, there was no proper claim for any privilege, and thus any privilege is waived (not to mention it is unclear which FRCP you are even citing to). Thus, please produce all such documents, or face exclusion at trial and adverse inferences. FRCP 37. We note that Plaintiff still has not produced the documents it promised to provide. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 11

Request: All documents sent to ExCipio regarding the ND CAL Cases.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. To explain, this request seeks documents exchanged between Plaintiff and ExCipio which are related to different cases with different defendants, an entirely different set of infringements, and different facts. None of the foregoing could possibly relate to Defendant's liability in the instant matter. Plaintiff objects on the basis that this request is overly broad because it is not limited to the instant matter or any relevant time period. Plaintiff objects on the basis that this request is unduly burdensome because it requires Plaintiff to produce documents for hundreds of irrelevant cases filed in Northern District of California. Plaintiff further objects on the basis that this request seeks attorney work product. See Fed. R. Civ. P. 26(b)(3)-(5). Indeed, ExCipio was hired in anticipation of litigation.

Reason for Further Response: We respectfully disagree as to the relevance of this critical information. If the different hash files are different amongst the same work, this could show errors in the software monitoring program upon which the claims against my client are based. Further, this information as to other alleged infringers is discoverable as to the allocation amongst the infringers of the same works. See 17 U.S.C. 504(c)(1). Once again, we note that Plaintiff failed to produce a privilege log. Notwithstanding the above, we are willing to limit the request to those documents, sent in any of the Northern District of California cases, that have been filed since 2013.

Request No. 12

Request: All document sent to Ex Cipro regarding this Case.

Response: Plaintiff objects on the basis that this request seeks attorney work product and attorney-client communication. See Fed. R. Civ. P. 26(b)(3)-(5). And, ExCipio was retained in anticipation of litigation. Notwithstanding the foregoing objection and without waiving same, Plaintiff will produce all responsive documents it intends on using any hearing or trial in this matter.

Reason for Further Response: This request is not overly broad. We do not see how attorney-client communications or attorney work product would be something that would evidence or

reference the documents sent back and forth to an independent entity that is producing the factual basis for the allegations against the Defendant. Furthermore, for the very reason that we cannot assess the propriety of any privilege claim, Plaintiff was required, inter alia, to serve a privilege log. FRCP 26(b)(5)(A)(ii). As such, there was no proper claim for any privilege, and thus any privilege is waived (not to mention it is unclear which FRCP you are even citing to). Thus, please produce all such documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 13

Request: All settlement agreements between Plaintiff and any Defendant accused of infringing Plaintiff's works executed since 2011 (to maintain confidentiality, MM may redact the name of the Defendant).

Response: Plaintiff objects on the basis that this request is overly broad because it is not limited in scope to this matter, any relevant time period, the Defendant, and the works infringed in this matter. Plaintiff objects to this request on the basis that it seeks documents that are neither relevant nor likely to lead to the discovery of admissible information. Plaintiff has elected to recover statutory damages pursuant to the Copyright Act, which provides for per-work maximum statutory damages on a case by case basis. See 17 U.S.C. § 504(c) (“[T]he copyright owner may elect ... an award of statutory damages for all infringements involved in the action, with respect to any one work....”). This action has not yet gone to trial and Plaintiff has not yet been awarded any statutory damages in this action. Any suggestion that Plaintiff's recovery against Defendant must be offset or otherwise affected by Plaintiff's settlements and recoveries in other cases “severely misreads the statute.” *Malibu Media, LLC v. Batz*, No. 12-cv-01953, 2013 WL 2120412, at *2 (D. Colo. April 5, 2013); see also *Malibu Media, LLC v. Long*, No. 8:14-cv-01582, CM/ECF 27 (M.D. Fla. April 4, 2015) (deeming Plaintiff's settlements in other lawsuits irrelevant and striking an “offset” affirmative defense). In addition to being irrelevant, this request is objectionable because it is unduly burdensome. Plaintiff has alleged Defendant infringed twenty-three separate works. It would be unreasonably time-consuming and unduly burdensome for Plaintiff to produce every settlement agreement for every settled case across the country. Moreover, Plaintiff further objects to this production request because the responsive documents it seeks would require the disclosure of information protected by confidentiality orders and agreements. In order for Plaintiff to even provide information responsive to this request, Plaintiff would first have to notify all of the defendants with whom Plaintiff has previously entered into settlement agreements, and give each defendant an opportunity to contest disclosure. Indeed, the entire settlement agreement is confidential. This would needlessly spawn an avalanche of irrelevant litigation and ancillary proceedings.

Reason for Further Response: Plaintiff Malibu Media has engaged in an improper sue and settle *modus operandi*, the details of which are integral to Defendant's copyright misuse defense. Such a scheme would clearly support an affirmative defense of copyright misuse under Ninth Circuit law. See *Omega SA v. Costco Wholesale* (9th Cir 2015) 776 F.3d 692.

Further, Plaintiff must have easily obtainable information about the cases it has filed and the outcome of them, including any settlement or other recoveries. Indeed, Plaintiff has sued its former counsel claiming damages for withheld settlement fees. How could Plaintiff makes such a claim in that case without accumulating the very data sought here? Perhaps this explains why Plaintiff failed to explain, in any detail, the burden of providing this evidence. And we reiterate that plaintiff failed to provide a privilege log that would help the court determine whether the privileges apply and whether production of the documents would be burdensome.

Request No. 14

Request: All communications with any party who have responded that they have not infringed Plaintiff's works since 2011.

Response: Plaintiff objects on the basis that this request seeks documents which are neither relevant nor likely to lead to the discovery of admissible information. Indeed, this request seeks documents related to different cases with different defendants, an entirely different set of infringements, and different facts. Plaintiff objects on the basis that this request is overly broad and unduly burdensome. Plaintiff further objects on the basis that this request is intended to harass Plaintiff.

Reason for Further Response: Plaintiff Malibu Media has engaged in an improper sue and settle *modus operandi*, the details of which are integral to Defendant's copyright misuse defense. Such a scheme would clearly support an affirmative defense of copyright misuse under Ninth Circuit law. See *Omega SA v. Costco Wholesale* (9th Cir 2015) 776 F.3d 692. Further, Plaintiff must have easily obtainable information about the cases it has filed and which defendants have denied infringing the copyrights. That information could constitute or lead to discoverable evidence to support Defendant's defenses. And we reiterate that plaintiff failed to provide a privilege log that would help the court determine whether the privileges apply and whether production of the documents would be burdensome.

Request No. 15

Request: All documents that support your contention in paragraph 23 of the FAC.

Response: Plaintiff will produce: (1) the MySQL log file in excel form which contains a list of all transactions between Defendant's IP address and Excipio's server; (2) one PCAP per work infringed; (3) the .torrent file; (4) the .tar files; (5) any technical reports pertaining to the PCAPs produced; (6) a control copy of Plaintiff's works; and (7) Declaration of Michael Patzer.

Reason for Further Response: Plaintiff's response is inadequate in that it fails to state whether Plaintiff will produce all the documents requested. Please clarify. The documents Plaintiff has produced to date fail to support a claim of any actual infringement of the works

or any good faith basis for Plaintiff to maintain this lawsuit. Thus, this is your last chance to produce any further documents, or face exclusion at trial and adverse inferences. FRCP 37. Your delay in producing the documents has prejudiced our ability to fully investigate Plaintiff's claims and prepare a defense to them.

Request No. 16

Request: 16. All documents of Plaintiff's financial documents, including, but not limited to: income and balance sheets, accounts payable, accounts receivable, asset lists, etc, but not including any federal or state tax returns, for the time periods:

- a) FY 2011
- b) FY 2012
- c) FY 2013
- d) FY 2014
- e) FY 2015
- f) FY 2016 (records to date)

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Plaintiff has elected to recover statutory damages, and its financial documents including income and balance sheets, accounts payable, accounts receivable, and asset lists for every year of X-Art's existence has nothing to do with copyright enforcement and has no bearing on any material fact in this case. Plaintiff further objects on the basis that this request is overly broad because it seeks documents which fall well outside of any relevant time period. Plaintiff objects to this request on the basis that it seeks information that is confidential business information pursuant to Fed. R. Civ. P. 26(c). Indeed, the documents requested contain information which is not publically known, and if disclosed could harm Plaintiff's business. Plaintiff additionally objects on the basis that this request is intended to harass Plaintiff.

Reason for Further Response: Plaintiff's response ignores a basic tenet of copyright litigation: that a defendant is in fact allowed to discover the profits on the allegedly infringed works. 17 U.S.C. 504(b). Even were there some initial privilege, by this suit and Plaintiff's claims, the privilege is waived or is outweighed by the need for the defendant to obtain discovery. This is similar, for example, to a personal injury action where the treating doctor-patient privilege becomes waived, or in a suit by a client against his attorney where the attorney-client privilege is waived. Your client can elect up-to the time of trial as to seek statutory or actual damages, and as such, the actual damages information is clearly relevant and discoverable. See also the above discussions as to any claims of privilege also being waived due to Plaintiff's failure to produce a privilege log.

Additionally, Plaintiff has represented that it has spent large sums of money enforcing its copyrights. If that is false – and these documents would lead to the discovery of admissible evidence on that -- then that false representation would be another incident of copyright misuse would be impeachment evidence. Either way, the documents sought are not only discoverable, but relevant and admissible.

Request No. 17

Request: Any agreements, contracts, and/or licenses with third party content providers and/or affiliates for the use of Plaintiff's Copyright Portfolio for the time period of 2006-2016.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Any agreements concerning Malibu's affiliate programs have nothing to do with copyright enforcement or Defendant's liability. Plaintiff objects on the basis that this request is overly broad because it is not limited to any relevant time period. Plaintiff further objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: Again, no protective order was sought prior to the date these responses were due, nor was a privilege log produced. Further, the documents are relevant due to the potential existence of sub-licensees of the allegedly infringed works. Based on your client's testimony [explain the testimony], the existence of sublicensees would translate into a valid license for my client, thus constitute a defense to this case.

Request No. 18

Request: All copyright assignments for any and all copyright assignments in Plaintiff's Copyright Portfolio.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is overly broad. Indeed, it seeks documents related to works not at issue in this case. Notwithstanding the foregoing objections and without waiving same, Plaintiff avers that it is the only entity that has owned and currently owns the works at issue in this case.

Reason for Further Response: This would be an odd proposition given the matrimonial position the owner(s) of Malibu Media were in at the time of the creation of some of the works owned by Malibu Media and that California is a community property state. Please produce the documents, as they are relevant to the ownership of the allegedly infringed works. We also do not understand the statement that Plaintiff "avers" there has been no other owners of the works. Isn't the point of discovery to test what Plaintiff avers? And if there no assignments, explicit or implicit, why does Plaintiff fail to state that? How can Plaintiff object to producing a document that does not exist?

Request No. 19

Request: All mortgages, liens, or encumbrances on Plaintiff's Copyright Portfolio.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Indeed, it seeks documents related to works not at issue in this case. Plaintiff objects on the basis that this request is overly broad. Plaintiff further objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Notwithstanding the foregoing objections and without waiving same, Plaintiff avers that there are no mortgages, liens, or encumbrances on the works at issue in this case.

Reason for Further Response: This would be an odd proposition given the matrimonial position the owner(s) of Malibu Media were in at the time of the creation of some of the works owned by Malibu Media and that California is a community property state. Please produce the documents, as they are relevant to the ownership of the allegedly infringed works. We also do not understand the statement that Plaintiff “avers” there have been no encumbrances on these works. Isn’t the point of discovery to test what Plaintiff avers? If there are encumbrances on the portfolio, it is possible that they affect the entirety of it, or works from certain dates. Defendant may dispute the date of copyright, thus bringing the works at issue in this case into the ambit of any such encumbrance.

Request No. 20

Request: All documents filed with the United States Copyright Office on the Plaintiff’s Copyright Portfolio.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Indeed, it seeks documents related to works not at issue in this case. Plaintiff objects on the basis that this request is overly broad. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce the online copyright registration and the control copy of each work for each work at issue in this case.

Reason for Further Response: Registration of a copyright imbues several rights upon a copyright holder. Part of the information your client would have provided includes information relevant to my client’s defense under the doctrine of substantial similarity, thus clearly relevant. What you have produced to-date would be inadequate, as it does not include all documents, unless of course your client admits to failing to abide by the depository requirement. Please produce the complete set of documents.

Request No. 21

Request: All correspondence from the United States Copyright Office on the Plaintiff’s Copyright Portfolio.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Indeed, it seeks documents related to works not at issue in this case. Plaintiff objects on the basis that this

request is overly broad. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce the online copyright registration and the control copy of each work for each work at issue in this case.

Reason for Further Response: Registration of a copyright imbues several rights upon a copyright holder. Part of the information your client would have provided includes information relevant to my client's defense under the doctrine of substantial similarity, thus clearly relevant. What you have produced to-date would be inadequate, as it does not include all documents, unless of course your client admits to failing to abide by the depository requirement. Given the deposition of Ms. Fields on this issue, there is substantial evidence that Malibu Media has misled the Copyright Office in the applications and they are void for inequitable conduct before the Copyright Office. See *Raquel v. Edu. Mgmt. Corporation*, 196 F.3d 171 (3rd Cir., 1999) Produce the complete set of documents.

Request No. 22

Request: All documents filed with the United States Copyright Office on the Infringed Works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce the online copyright registration and the control copy of each work for each work at issue in this case.

Reason for Further Response: Relevance is not an appropriate objection. Defendant seeks all of the documents filed with copyright office, not just those that Plaintiff decides to produce. Registration of a copyright imbues several rights upon a copyright holder. Part of the information your client would have provided includes information relevant to my client's defense under the doctrine of substantial similarity, thus clearly relevant. What you have produced to-date would be inadequate, as it does not include all documents, unless of course your client admits to failing to abide by the depository requirement. Given the deposition of Ms. Fields on this issue, there is substantial evidence that Malibu Media has misled the Copyright Office in the applications and they are void for inequitable conduct before the Copyright Office. See *Raquel v. Edu. Mgmt. Corporation*, 196 F.3d 171 (3rd Cir., 1999) Produce the complete set of documents.

Request No. 23

Request: All correspondence from the United States Copyright Office on the Infringed Works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce the online copyright registration and the control copy of each work for each work at issue in this case.

Reason for Further Response: Registration of a copyright imbues several rights upon a copyright holder. Part of the information your client would have provided includes information relevant to my client's defense under the doctrine of substantial similarity, thus clearly relevant. What you have produced to-date would be inadequate, as it does not include all documents, unless of course your client admits to failing to abide by the depository requirement. Given the deposition of Ms. Fields on this issue, there is substantial evidence that Malibu Media has misled the Copyright Office in the applications and they are void for inequitable conduct before the Copyright Office. See *Raquel v. Edu. Mgmt. Corporation*, 196 F.3d 171 (3rd Cir., 1999) Produce the complete set of documents.

Request No. 24

Request: Any and all expert reports that have been created by an expert hired by the Plaintiff or Plaintiff's counsel since 2011 based on the allegations that a Defendant infringed Plaintiff's works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is overly broad. Indeed, this request seeks documents: (a) created years prior to the commencement of this suit; (b) unrelated to Defendant's infringements; and (c) unrelated cases in other districts across the country with an entirely different set of facts. None of these documents are remotely relevant to Defendant's liability in the instant matter. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce its final expert reports which it intends on using at any trial or hearing in this matter.

Reason for Further Response: The requested reports may produce relevant evidence, or lead to the discovery of admissible evidence, such as inconsistencies in the architecture of the bittorrent detection system. You have asserted through correspondence, through production responses, and even to the court that Defendant's online activities dating back as far as 2011 are relevant. It is disingenuous at best to now argue that your client or its agents' activities dating back that far are also then not relevant. Please produce *all* reports, not just any final reports.

Request No. 25

Request: Any and all expert reports that have been created by an expert hired by the Plaintiff or Plaintiff's counsel since 2011 based on the allegations that a Defendant infringed Plaintiff's works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is overly broad. Indeed, this request seeks documents: (a) created years prior to the commencement of this suit; (b) unrelated to Defendant's infringements; and (c) unrelated cases in other districts across the country with an entirely different set of facts.

None of these documents are remotely relevant to Defendant's liability in the instant matter. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce its final expert reports which it intends on using at any trial or hearing in this matter.

Reason for Further Response: The requested reports may produce relevant evidence, or lead to the discovery of admissible evidence, such as responses made by Malibu Media to the examiners . You have asserted through correspondence, through production responses, and even to the court that Defendant's online activities dating back as far as 2011 are relevant. It is disingenuous at best to now argue that your client or its agents' activities dating back that far are also then not relevant. Please produce *all* reports, not just any final reports.

Request No. 26

Request: Any and all communications with the actors and actresses who performed on the Infringed works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Indeed, any discussions where one party is the actor or actress who performed in the Infringed Work would not be relevant to any material fact in this case. Plaintiff objects on the basis that this request is overly broad. Indeed, the request is not specifically limited to communications between specific parties. Additionally, the request does not specify a relevant topic or any relevant time period.

Reason for Further Response: To the extent that this is limited to only the allegedly infringed works. In addition to the allegedly infringed works being rather relevant in a copyright infringement lawsuit, the documents could provide dates of production, potential assignments of rights, the locations of the productions, as well as any scripts. Further these documents would provide information that will lead to other discoverable documents.

Request No. 27

Request: Any and all communications regarding the production of the Infringed Works.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is overly broad and unduly burdensome. Indeed, the request is not specifically limited to communications between specific parties. Further, Plaintiff objects on the basis that this request seeks attorney work product. Plaintiff also objects on the basis that this request seeks attorney-client communications. Plaintiff further objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: This is limited to only the allegedly infringed works. In addition to the allegedly infringed works being rather relevant in a copyright infringement

lawsuit, the documents could provide dates of production, potential assignments of rights, the locations of the productions, as well as any scripts.

Request No. 28

Request: Any and all contracts with CCBILL.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is not relevant to any material fact or to Defendant's liability. Further, this request does not even relate to copyright enforcement generally. Plaintiff further objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: This is relevant, as it would be needed to show my client did not purchase a subscription. Your contracts with CCBILL are also relevant as an item of offsetting costs under the Copyright Act (See earlier sections). Further, your contracts may involve licenses of the works at issue. Thus, please produce all such documents, or face exclusion at trial and any adverse inferences. FRCP 37.

Request No. 29

Request: Any and all contracts with EPOCH.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request is not relevant to any material fact and to Defendant's liability. Further, this request does not even relate to copyright enforcement generally. Plaintiff further objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: This is relevant, as it would be needed to show my client did not purchase a subscription. Your contracts with CCBILL are also relevant as an item of offsetting costs under the Copyright Act (See earlier sections). Further, your contracts may involve licenses of the works at issue. Thus, please produce all such documents, or face exclusion at trial and any adverse inferences. FRCP 37.

Request No. 30

Request: All communications, including but not limited to, court pleadings filed either by Malibu Media and/or against Malibu Media by former counsel since 2015.

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the

basis that this request is overly broad and unduly burdensome. First, the request is not specifically limited to communications between specific parties. Additionally, the request does not specify the topic of discussion in each communication sought. Indeed, as written the request simply seeks “all communications[.]” Plaintiff objects on the basis that this request seeks attorney work product and attorney-client communications which are protected from disclosure. Further, production of every court pleading filed by Malibu since 2015 is unduly burdensome. Specifically since these court filing serve no purpose in the instant litigation since they do not remotely relate to Defendant’s liability. Plaintiff objects on the basis that this request was set forth solely to harass Plaintiff.

Reason for Further Response: In order to claim a proper withholding due to privilege, it requires two parts, the second of which is the inclusion of a privilege log. FRCP 26(b)(5)(A)(ii). As such, there was no proper claim for any privilege, and thus any privilege is waived. Further, privilege is waived once a client files suit against a former attorney, as your client has done. As to relevance, this again addresses the claims of copyright misuse. The complaint against former counsel implies some serious allegations that could include barratry as well as the lack of authorization to have even filed the instant action. I opine that such documentation is quite relevant.

Exhibit 2 – Meet and Confer Interrogatories

Interrogatories

Interrogatory No. 1

Requested: In the answer to any Request for Admission, Set One, was not an unqualified admission, please provide:

- a) Detailed facts that supporting your denial.
- b) Witnesses of these facts would support your denial.
- c) Description of documents in support of the facts supporting your denial.
- d) Location of the documents in support of the facts supporting your denial.

Response:

Request to Admit number 1: Admit that Defendant has not infringed the Infringed Works.

Response to Request No. 1: Denied.

1. Detailed facts that supporting your denial.

Response to Interrogatory No. 1: Defendant infringed Plaintiff's works and Plaintiff has electronic evidence demonstrating same.

2. Witnesses of these facts would support your denial.

Response to Interrogatory No. 2: Defendant and Michael Patzer.

3. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 3: Defendant infringed Plaintiff's works and Plaintiff has electronic evidence demonstrating same. This evidence is in the form of: PCAPs, .tar files, .torrent files, technical reports, Defendant's hard drives, and printouts of online forum postings. A PCAP is a packet capture which is a recording of the infringing transaction between Defendant's IP address and Excipio's servers. A .tar file is the digital media file which is a infringed copy of Plaintiff's works. The .torrent file is the file Defendant used to obtain and distribute an infringing copy of Plaintiff's works. A technical report contains the contents of a PCAP in a PDF readable form.

4. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 4: Defendant's, Plaintiff's, and Excipio's possession.

Reason for Further Response: The evidence demonstrating the alleged infringement has been requested, and to-date no evidence has been produced by your client showing my client infringed on any of the works at issue in this suit. This is yet further evidence that Plaintiff's claim was brought and is being maintained in bad faith and will be the basis for Defendant to seek, inter alia, reasonable expenses under FRCP 37(c)(2).

Request to Admit number 2: Admit that Plaintiff has no evidence that Defendant infringed the Infringed Works.

Response to Request No. 2: Denied.

5. Detailed facts that supporting your denial.

Response to Interrogatory No. 5: Excipio recorded the infringement and has evidence of same in the form of PCAPs, .tar files, .torrent files, and technical reports. Plaintiff also possess evidence such as Defendant's hard drives and and printouts of from online forum postings.

6. Witnesses of these facts would support your denial.

Response to Interrogatory No. 6: Defendant, Patrick Paige, and Michael Patzer.

7. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 7: PCAPs, .tar files, .torrent files, technical reports, Defendant's hard drives, and printouts of online forum postings. A PCAP is a packet capture which is a recording of the infringing transaction between Defendant's IP address and Excipio's servers. A .tar file is the digital media file which is a infringed copy of Plaintiff's works. The .torrent file is the file Defendant used to obtain and distribute an infringing copy of Plaintiff's works. A technical report contains the contents of a PCAP in a PDF readable form.

8. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 8: Defendant's, Plaintiff's, and Excipio's possession.

Reason for Further Response: Again, the evidence demonstrating the alleged infringement has been requested, and to-date no evidence has been produced by your client showing my client infringed on any of the works at issue in this suit. This is yet further evidence that Plaintiff's claim was brought and is being maintained in bad faith and will be the basis for Defendant to seek, inter alia, reasonable expenses under FRCP 37(c)(2).

Request to Admit number 5: Admit that Plaintiff's method for detecting infringements is not 100% accurate.

Response to Request No. 5: Denied.

9. Detailed facts that supporting your denial.

Response to Interrogatory No. 9: Excipio's infringement detection system is 100% accurate.

10. Witnesses of these facts would support your denial.

Response to Interrogatory No. 10: Patrick Paige and Michael Patzer.

11. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 11: Patrick Paige's declaration regarding his test of Excipio's infringement detection system.

12. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 12: Plaintiff possesses Patrick Paige's declaration regarding his test of Excipio's infringement detection system.

Reason for Further Response: The FAC itself notes the technology used by Plaintiff is not 100% accurate (FAC, page 2:11-12). The RFA itself did not qualify this to only "Excipio's

infringement detection system” and you cannot skirt around this issue by re-phrasing the request in a way that works for your client. Please amend to remove the qualification and respond to the actual request. [Suggested change: This Response appears to conflict with the Amended Complaint where Plaintiff says “the geolocation technology . . . [is] accurate . . . in over 99% of the cases.” Plaintiff’s effort to rephrase the request so that it answers only with respect to Excipio is not permissible. Plaintiff must respond and answer the interrogatory and request as they were presented.]

Request to Admit number 7: Admit that Plaintiff’s agent, Excipio, did not download an entire copy of Infringed Works.

Response to Request No. 7: Denied.

13. Detailed facts that supporting your denial.

Response to Interrogatory No. 13: To verify that the distributed file on BitTorrent was a copy of Plaintiff’s works, Excipio downloaded the entire files which correlate to the relevant hash values.

14. Witnesses of these facts would support your denial.

Response to Interrogatory No. 14: Michael Patzer and Daniel Susac.

15. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 15: Plaintiff is producing the .tar files which are the digital computer files of Plaintiff’s works which were distributed via BitTorrent.

16. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 16: The .tar file is in Excipio’s possession, custody, or control.

Reason for Further Response: None of the evidence provided to-date shows my client downloaded an entire version of any of the allegedly infringed works. Thus, again, the evidence demonstrating the alleged infringement has been requested, and to-date no evidence has been produced by your client showing my client infringed on any of the works at issue in this suit. If you continue to maintain this denial, reasonable expenses will be sought under FRCP 37(c)(2).

Request to Admit number 9: Admit that third parties have permission to stream content from any movie in the Copyright Portfolio to computer users at no charge.

Response to Request No. 9: Denied.

17. Detailed facts that supporting your denial.

Response to Interrogatory No. 17: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection and without waiving same, all subscribers must purchase an X-Art subscription to view Plaintiff’s works on X-Art.com.

18. Witnesses of these facts would support your denial.

Response to Interrogatory No. 18: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection and without waiving same, Colette Pelissier and Erin Sinclair can support Plaintiff’s response.

19. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 19: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this interrogatory is overly broad and unduly burdensome.

20. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 20: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this interrogatory is overly broad and unduly burdensome. Plaintiff further objects on the basis that this interrogatory seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: Your client admitted this at her deposition and thus the objections are nonsense. If the work is provided free of charge, then Plaintiff has granted a license to the Defendant to use the work and no action can be maintained. It makes no sense to continue to deny this. Should you continue to maintain this denial, reasonable expenses will be sought under FRCP 37(c)(2).

Request to Admit number 9: Admit that actors and actresses hired by the Plaintiff are employees.

Response to Request No. 10: Denied.

21. Detailed facts that supporting your denial.

Response to Interrogatory No. 21: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. The status of the actors and actresses are not relevant to any material fact or Defendant's liability. Notwithstanding the foregoing objection and without waiving same, the performers in Plaintiff's works are all subcontractors, not employees.

22. Witnesses of these facts would support your denial.

Response to Interrogatory No. 22: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. The status of the actors and actresses are not relevant to any material fact or Defendant's liability. Notwithstanding the foregoing objection and without waiving same, the witnesses who could testify as to the status of the actors and actresses are Colette Pelissier and Erin Sinclair.

23. Description of documents in support of the facts supporting your denial.

Response to Interrogatory No. 23: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of admissible evidence. The status of the actors and actresses are not relevant to any material fact or Defendant's liability. Plaintiff further objects on the basis that this interrogatory seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

24. Location of the documents in support of the facts supporting your denial.

Response to Interrogatory No. 24: Plaintiff objects on the basis that this interrogatory seeks information that is neither relevant or likely to lead to the discovery of

admissible evidence. The status of the actors and actresses are not relevant to any material fact or Defendant's liability. Plaintiff further objects on the basis that this interrogatory seeks confidential business information pursuant to Fed. R. Civ. P. 26(c).

Reason for Further Response: Your client's principal, Ms. Fields, testified that each of the actors contribute creatively to the scripts of their movies and are "script authors." Thus, if they are independent contractors, then assignments of the copyright or contracts showing these were works for hire would exist. It would affect the ability of Plaintiff to claim exclusive copyright ownership and to prosecute this complaint. Thus, the status of employee vs. independent contractor could not be more relevant. Further, any objection on confidentiality grounds, even if it had any merit, could be handled via protective order.

Exhibit 3– Meet and Confer
Written Deposition Questions

Deposition Questions

Verification

Defendant's counsel has yet to receive a signed verification of the Deposition Question responses. Please provide this immediately.

Deposition Question # 9

Request: Creation of Copyright Application [of Film]

Response: Plaintiff's Attorney at the time or Brigham Field and Colette Pelissier

Reason for Further Response: The Copyright Application is usually "created" by a single person entering data into the electronic system at www.copyright.gov. Plaintiff's Attorney at the time is a non-response as it does not identify that attorney. Also "Brigham Field and Colette Pelissier" is a similar non-response as it is extremely unlikely that both of them sat side-by-side and entered the data together.

Deposition Question # 10

Request: [Names of] Performers on [Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now. Further, in a deposition, the only reason to refuse to answer is based on attorney-client privilege or a similar privilege. The question is relevant as the actors and actresses would know the date of production of the film and may also be subject to contractual agreements that affect the ownership interests of the films. It is unlikely that an actor or actress would have an expectation of privacy nor are we aware of any case law that empowers an employer or hirer of independent contractors from revealing the name of its employees/contractors – especially when they witness. Such witnesses cannot be found and interviewed if their identities are withheld.

Deposition Question # 12

Request: Payment to Performers [on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P.

26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: [Suggest copying relevant portions of reasons in no. 12]

Deposition Question # 14

Request: Residuals for Acting [on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now. Further, in a deposition, the only reason to refuse to answer is based on attorney-client privilege or a similar privilege. The question is relevant as it goes to offsetting costs under the copyright act. Also, the question may be used to verify the veracity of the deponent.

Deposition Question # 15

Request: Health Insurance [for actors/actresses on Film]

Response: Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff objects on the basis that this request seeks confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff further objects on the basis that this request seeks information the disclosure of which would invade Plaintiff's and the actors' privacy rights.

Reason for Further Response: Presuming that the identifying information in request nos. 10 is provided, Defendant will withdraw this question.

Deposition Question # 17

Request: Similarity [of Film]

Response: Plaintiff objects on the basis that this question is ambiguous. Plaintiff does not know what criteria Defendant is using to measure the similarities between various films. Notwithstanding the foregoing objection and without waiving same, Plaintiff avers that this work is similar to Plaintiff's other works because they are all adult content.

Reason for Further Response: There were no objections made on the record when this question was asked on the first two films, so there is no reason to lodge this objection now.

Similarity goes to the veracity of Ms. Fields at her deposition and to the copyrightability of the works at issue. *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). See *id.* at 361 ("To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original."); see also *Seven Arts Filmed Entm't Ltd. v. Content Media Corp.*, 733 F.3d 1251, 1254 (9th Cir.2013).