

1 **PILLAR LAW GROUP, APLC**  
Art Kalantar, Esq. (SBN 229626)  
2 Henrik Mosesi, Esq. (SBN 189672)  
Anthony H. Lupu, Esq. (SBN 226168)  
3 150 South Rodeo Drive, Suite 260  
Beverly Hills, California 90212  
4 Tel: (310) 999-0000  
Fax: (888) 667-5482

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

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 MALIBU MEDIA, LLC,  
a California limited liability company.

12 Plaintiff

13 v.

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

17 Defendants.

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

**PLAINTIFF’S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS’  
MOTION TO DISMISS or  
ALTERNATIVELY TO STAY ACTION;  
DECLARATION OF COLETTE  
PELISSIER; DECLARATION OF HENRIK  
MOSESI, ESQ.**

Date: September 6, 2016  
Time: 10 a.m.  
Courtroom: 8

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. STATEMENT OF FACTS..... 4

II. ARGUMENT ..... 4

    A. THIS COURT CAN EXERCISE PERSONAL JURISDICTION ON DEFENDANTS .... 4

        1. Personal Jurisdiction ..... 4

            a. Purposeful Availment..... 6

                i. Relationship to Defendants’ Forum-Related Activities ..... 6

                ii. Reasonableness..... 7

    B. VENUE IN THIS DISTRICT IS APPROPRIATE..... 9

        1. This Action Could Have Been Brought in Another District ..... 9

        2. Convenience and Interest of Justice ..... 9

            a. Convenience of the Parties ..... 10

            b. Convenience of the Witnesses and Availability of Compulsory Process ..... 10

            c. Plaintiff’s Choice of Forum..... 10

            d. Interest of Justice..... 10

    C. THERE ARE NO EXCEPTIONAL CIRCUMSTANCES HERE TO STAY THIS ACTION..... 11

        1. In Rem Jurisdiction ..... 12

        2. Substantial Similarity ..... 12

        3. Convenience ..... 12

        4. Avoidance of Piecemeal Litigation ..... 12

        5. Priority of Proceedings ..... 13

        6. Controlling Law ..... 13

        7. Adequacy of State Proceedings..... 14

III. CONCLUSION ..... 14

DECLARATION OF COLLETE PELISSIER-FIELD..... 15

DECLARATION OF HENRIK MOSESI, ESQ. .... 17

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Cases**

*AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9<sup>th</sup> Cir. 1996) ..... 5  
*Ballard v. Savage*, 65 F.3d 1495, 1498 (9<sup>th</sup> Cir. 1995) ..... 5  
*Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9<sup>th</sup> Cir. 2000)..... 5  
*Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257, 1258 (9<sup>th</sup> Cir. 1989) ..... 4  
*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479, 105 S. Ct. 2174, 2183, 2185, 85 L. Ed. 2d 528 (1985) ..... 6, 7  
*Colorado River Water Conservation Dist. V. United States*, (1976) 424 U.S. 800, 813, 96 S. Ct. 1236, 1244..... 11  
*Core-Vent Corp. v. Noveb. Industries A.B.*, 11 F.3d 1482, 1484 (9<sup>th</sup> Cir. 1993) ..... 4, 7  
*Data Disc. Inc. v. Sys. Tech. Assocs.. Inc.* 557 F.2d 1280, 1286 (9<sup>th</sup> Cir. 1977)..... 4, 5  
*Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9<sup>th</sup> Cir. 1986) ..... 9, 10, 11  
*E. & J. Gallo Winery v. F. & P.S.P.A.*, 899 F. Supp. 465 (E.D. Cal. 1994) ..... 10  
*Grav & Co. v. Firstenberg March. Co.* 913 F.2d 758, 761 (9<sup>th</sup> Cir. 1990)..... 8  
*Great American Ins. Co. v. Gross*, 468 F.3d 199, 208-209 (4<sup>th</sup> Cir. 2006) ..... 12  
*Harris Rutsky & Co. Ins. Servs, Inc., v. Bell & Clements Ltd.*, 328 F.3d 1122, 1133 (9<sup>th</sup> Cir. 2003)8  
*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16. 104 S. Ct. 1868, 1872-73, 80 L. Ed. 2d 404 (1984) ..... 5  
*Int’l Shoe Co. v. Washington*. 326. 326 U.S. 310, 316. 66 S. Ct. 154, 158. 90 L. Ed. (1945 ..... 4  
*Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F. 3d 908, 915 (9<sup>th</sup> Cir. 1993) ..... 14  
*Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1083 (Fed. Cir. 1989) ..... 9, 10  
*Kelly Investment, Inc. v. Continental Common Corp.*, 315 F.3d 494, 498 (5<sup>th</sup> Cir. 2002).. 11, 12, 13  
*Lerov v. Great W. United Corp.*, 443 U.S. 173, 180, 99 S. Ct. 2710, 2715, 61 L.Ed. 464 (1979) ... 4  
*Lou v. Belzberg*, 834 F.2d 730, 739 (9<sup>th</sup> Cir. 1987)..... 10  
*Milliken v. Mever*. 311 U.S. 457, 463. 61 S. Ct. 339, 343. 85 L. Ed. 278(1940) ..... 4  
*Moses H. Cone Mem. Hosp. v. Mercury Const. Corp.*, (1983) 460 U.S. 1, 16, 103 S. Ct. 927, 937 ..... 12, 13  
*Murphy v. Uncle Ben’s, Inc.*, 168 F. 3d 734, 738. (5<sup>th</sup> Cir. 1999)..... 12  
*Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9<sup>th</sup> Cir. 1995) ..... 5  
*Pac. Atlantic Trading Co. v. M/V Main Ex parte.*, 758 F.2d 1325, 1330 (9<sup>th</sup> Cir. 1985)..... 7  
*Raffaele v. Compagnie Generale Maritime*. 707 F.2d 395, 399 (9<sup>th</sup> Cir. 1983)..... 8  
*Romie v. Compuserve Corp.*, 160 F.3d 337, 341 (6<sup>th</sup> Cir. 1988)..... 12  
*Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005)..... 10  
*Shute v. Carnival Cruise Lines*, 897 F.2d 377, 381 (9<sup>th</sup> Cir. 1990)..... 6, 8  
*Sinatra v. Nat’l Enquirer. Inc.*, 854 F.2d 1191, 1195 (9<sup>th</sup> Cir. 1988)..... 6  
*Television Events & Mktg., Inc. v. Amcon Distrib. Co.*, 416 F. Supp. 2d 948, 971 (D. Haw. 2006) ..... 11  
*Terracom v. Vallev Nat’l Bank*. 49 F.3d 555, 561 (9<sup>th</sup> Cir. 1995)..... 7  
*Travelers Indemnity Co. v. Madonna*. 914 F. 2d 1364, 1370. (9<sup>th</sup> Cir. 1990)..... 14  
*United States v. Morros*. 268 F. 3d 695, 706-707 (9<sup>th</sup> Cir. 2001) ..... 12  
*Youell v. Exxon Corp.*, 74 F. 3d 373, 375 (2<sup>nd</sup> Cir. 1996)..... 13  
*Zeigler v. Indian River County*, 64 F.3d 470, 476 (9<sup>th</sup> Cir. 199 ..... 7

**Statutes**

28 U.S.C. §1404(a)..... 9

**Rules**

Cal. Code Civ. Pro. §410.10..... 4

1 **I. STATEMENT OF FACTS**

2 Plaintiff filed its Complaint on June 28, 2016. *See* CM/ECF 1. Defendant Michael K.  
3 Lipscomb (“Lipscomb”) was personally served with the Summons and Complaint in this case on  
4 July 1, 2016. *See* CM/ECF 9. Lipscomb, Eisenberg & Baker, PL (“LEB”) was served via its  
5 registered agent, Michael K. Lipscomb, on July 1, 2016. *See* CM/ECF 8.

6 **II. ARGUMENT**

7 **A. THIS COURT CAN EXERCISE PERSONAL JURISDICTION ON**  
8 **DEFENDANTS**

9 Defendants assert that the Complaint against them should be dismissed because the Court  
10 lacks personal jurisdiction over them and because venue in this district would be inconvenient.  
11 Questions regarding personal jurisdiction are typically decided in advance of venue. Leroy v. Great  
12 W. United Corp., 443 U.S. 173, 180, 99 S. Ct. 2710, 2715, 61 L.Ed. 464 (1979).

13 1. Personal Jurisdiction

14 Where there is no applicable federal statute governing personal jurisdiction, the Court  
15 applies the law of the state in which it sits. Core-Vent Corp. v. Noveb. Industries A.B., 11 F.3d  
16 1482, 1484 (9<sup>th</sup> Cir. 1993). California’s long-arm statute allows the exercise of personal jurisdiction  
17 to the fullest extent permitted by the Due Process Clause of the United States Constitution. See Cal.  
18 Code Civ. Pro. §410.10 (“A court of this state may exercise jurisdiction on any basis not inconsistent  
19 with the Constitution of this state or of the United States.”); Data Disc, Inc. v. Sys. Tech. Assocs.,  
20 Inc., 557 F.2d 1280, 1286 (9<sup>th</sup> Cir. 1977). Accordingly, the Court “need only determine whether  
21 personal jurisdiction in this case would meet the requirements of due process.” Brainerd v.  
22 Governors of the Univ. of Alberta, 873 F.2d 1257, 1258 (9<sup>th</sup> Cir. 1989).

23 Due process requires “that in order to subject a defendant to a judgment in personam, if he  
24 be not present within the territory of the forum, he have certain minimum contacts with it such that  
25 the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”  
26 Int’l Shoe Co. v. Washington, 326, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. (1945) (quoting  
27 Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 278(1940)). If a defendant’s  
28 activities within the forum are “continuous and systematic” or “substantial,” such that they

1 approximate physical presence, the state has sufficient relationship with the defendant to assert  
2 jurisdiction in any action, even if the action is unrelated to those contacts. Helicopteros Nacionales  
3 de Colombia, S.A. v. Hall, 466 U.S. 408, 415-16. 104 S. Ct. 1868, 1872-73, 80 L. Ed. 2d 404 (1984);  
4 Bancroft & Masters, Inc. v. Augusta Nat'l Inc., 223 F.3d 1082, 1086 (9<sup>th</sup> Cir. 2000). Plaintiff  
5 submits that both Michael K. Lipscomb and his firm have systematically appeared in California  
6 courts (Decl. Mosesi ¶9,11) and have hired and supervised California attorneys and have received  
7 funds from hundreds of copyright infringement cases from California cases (Decl. Pelissier ¶12, 13)  
8 so as to be subject to general jurisdiction in this State.

9 If, however, this Court finds that the defendant's contacts with the forum are more limited,  
10 the state may assert specific jurisdiction depending on the quality and nature of the defendant's  
11 contacts with the forum state in relation to the cause of action. Data Disc, 557 F.2d at 1287. In the  
12 Ninth Circuit, specific jurisdiction exists if:

- 13 (1) The defendant has performed some act or consummated some transaction within the  
14 forum or otherwise purposefully availed himself of the privileges of conducting activities  
15 in the forum, (2) the claim arises out of or results from defendant's forum-related  
16 activities, and (3) the exercise of jurisdiction is reasonable.

16 Bancroft & Masters, 223 F.3d at 1086. "If any of the three requirements is not satisfied, jurisdiction  
17 in the forum would deprive the defendant of due process of law." Omeluk v. Langsten Slip &  
18 Batbyggeri A/S, 52 F.3d 267, 270 (9<sup>th</sup> Cir. 1995). On a motion to dismiss where the Court has not  
19 held an evidentiary hearing, the plaintiff need only make a prima facie showing that jurisdiction  
20 exists by demonstrating "facts that if true would support jurisdiction over the defendant." Ballard  
21 v. Savage, 65 F.3d 1495, 1498 (9<sup>th</sup> Cir. 1995). The plaintiff's version of facts alleged in the  
22 complaint is taken as true unless directly contravened and any conflicts between the facts contained  
23 in the parties' affidavits are resolved in the plaintiff's favor for purposes of deciding whether a prima  
24 facie case for personal jurisdiction exists. AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d  
25 586, 588 (9<sup>th</sup> Cir. 1996).

26 Here, specific jurisdiction exists due to Defendants' contacts with California related to the  
27 legal representation of Plaintiff.

28

1 a. Purposeful Availment

2 Defendant Michael K. Lipscomb, while a partner at Lipscomb, Eisenberg & Baker, PL,  
3 reached into this forum via telephone calls, text messages and emails while soliciting Malibu  
4 Media's business. Defendants' contacted Malibu Media extensively in late-2011 trying to convince  
5 Malibu Media to engage defendants as its copyright enforcement counsel. Decl. Pelissier ¶3. These  
6 contacts with Malibu Media resulted in negotiations for the engagement of Defendants for their  
7 copyright enforcement services throughout the United States. Malibu Media eventually engaged  
8 the services of Defendants to represent it throughout the United States in copyright enforcement  
9 actions. Decl. Pelissier ¶4. See Shute v. Carnival Cruise Lines, 897 F.2d 377, 381 (9<sup>th</sup> Cir. 1990)  
10 ("a non-resident defendant's act of soliciting business in the forum state will generally be considered  
11 purposeful availment if that solicitation results in contract negotiations or the transaction of  
12 business"); Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1195 (9<sup>th</sup> Cir. 1988). This Court  
13 should also consider the negotiations leading up to the agreement between Malibu Media and  
14 Defendants for representation where they "contemplated future consequences, along with the terms  
15 of the contract and the parties' actual course of dealing," in determining that Defendants should  
16 have reasonably anticipated being hauled into court in California. See Burger King Corp. v.  
17 Rudzewicz, 471 U.S. 462, 479, 105 S. Ct. 2174, 2183, 2185, 85 L. Ed. 2d 528 (1985). Here,  
18 Defendants negotiated the terms of the agreement to represent Plaintiff while Plaintiff was a resident  
19 of California (Decl. Pelissier ¶1, 2), Defendants sent declarations and affidavits to Malibu Media  
20 and its principal to sign under penalty of perjury in California (Decl. Pelissier ¶9), Defendants sent  
21 payments from the copyright enforcement litigation to Plaintiff's bank accounts in California (Decl.  
22 Pelissier ¶8), Defendant, Michael K. Lipscomb, traveled to California to meet with Colette Pelissier  
23 on at least two occasions in order to give updates on pending copyright matters throughout the  
24 United States. (Decl. Pelissier ¶10).

25 i. Relationship to Defendants' Forum-Related Activities

26 Plaintiff's claim is also sufficiently related to Defendants' forum-related activities to support  
27 personal jurisdiction. The Ninth Circuit applies a "but for" test to determine whether the plaintiff's  
28 claims arise out of or result from the defendants' forum-related activities. Terracom v. Valley Nat'l

1 Bank, 49 F.3d 555, 561 (9<sup>th</sup> Cir. 1995). Plaintiff submits that this requirement is met. But for the  
2 contacts between the defendants and the forum state, the cause of action against defendants would  
3 not have arisen. Defendants reached into this state to solicit a resident of it for legal representation.  
4 Defendants gave misleading accounting (Decl. Pelissier ¶7) for the copyright enforcement actions  
5 they brought or supervised either through electronic communication, telephone communication or  
6 personal visits with plaintiff in the forum state. Lastly, Defendants sent money to Plaintiff in  
7 California supposedly for Plaintiff’s contingency portion according to agreement between the  
8 parties. But for these forum-related activities, Plaintiff would not have a cause of action against  
9 Defendants.

10 ii. Reasonableness

11 Lastly, the exercise of personal jurisdiction over Defendants is reasonable in this case.  
12 Courts consider seven factors in evaluating the reasonableness of personal jurisdiction:

- 13 (1) the extent of defendants’ purposeful interjection into the forum state’s affairs; (2) the  
14 burden on defendant of defending in the forum; (3) the extent of conflict with the sovereignty  
15 of defendants’ state; (4) the forum’s interest in adjudicating the dispute; (5) the most efficient  
16 judicial resolution of the controversy; (6) the importance of the forum to the plaintiff’s  
17 interest in convenient and effective relief; and (7) the existence of alternative forum.

18 Core-Vent, 11 F.3d 1482, 1487-88 (9<sup>th</sup> Cir. 1993). Where the defendant has been found to have  
19 purposefully availed itself of the privileges conducting activities in the forum state, the defendant  
20 must present a “compelling case” that these additional considerations render jurisdiction  
21 unreasonable. Burger King, 471 U.S. at 477, 105 S. Ct. at 2184-2185.

22 Here, Defendants’ interjection into California is sufficient to satisfy purposeful availment  
23 prong of the specific jurisdiction analysis. California has a strong interest in protecting Plaintiff, its  
24 resident, from injury and providing a forum to remedy its harm. Pac. Atlantic Trading Co. v. M/V  
25 Main Ex parte., 758 F.2d 1325, 1330 (9<sup>th</sup> Cir. 1985). Additionally, the importance of the forum to  
26 Plaintiff’s interest in convenient and effective relief should weigh in Plaintiff’s favor because it is  
27 located here. Zeigler v. Indian River County, 64 F.3d 470, 476 (9<sup>th</sup> Cir. 1995). While it may be a  
28



1 burden to defend a case here in California for Defendants, that burden will not be overwhelming “in  
2 light of modern advances in transportation and communications” and will not be so great as to  
3 constitute deprivation of due process. Shute, 897 F.2d at 386-387. Defendants emailed documents  
4 in digital format to Plaintiff while representing it in the copyright cases. Decl. Pelissier ¶9.  
5 Defendants either took depositions of defendants in the copyright actions or allowed Colette  
6 Pelissier’s deposition to be taken via telephone conference on numerous occasions. Decl. Pelissier  
7 ¶11. With videoconferencing being so commonplace either through Skype or Facetime, Defendants  
8 would not be burdened with multiple travels to California for depositions and such.

10 With Florida being within United States, “any conflicting sovereignty interest are best  
11 accommodated through choice-of-law rules rather than jurisdictional rules.” Gray & Co. v.  
12 Firstenberg March, Co., 913 F.2d 758, 761 (9<sup>th</sup> Cir. 1990). Defendants may argue that Florida rules  
13 should apply with regards to Plaintiff’s allegations for negligence, breach of fiduciary duty or  
14 accounting. However, Defendants cannot argue that it would be unreasonable for this Court to  
15 exercise personal jurisdiction over them because the state of Florida may also have an interest in the  
16 outcome of this matter. The interest of the state of Florida can be adequately protect through a  
17 choice-of-law finding by this Court at the appropriate time.

19 With regards to the last factor, courts usually consider the location of witnesses and evidence  
20 and which court is most competent to interpret the applicable law. Harris Rutsky & Co. Ins. Servs,  
21 Inc., v. Bell & Clements Ltd., 328 F.3d 1122, 1133 (9<sup>th</sup> Cir. 2003); Raffaele v. Compagnie Generale  
22 Maritime, 707 F.2d 395, 399 (9<sup>th</sup> Cir. 1983). Plaintiff’s principal and employees reside in the state  
23 of California. Decl. Pelissier ¶1, 2. Defendants reside in Florida. Undoubtedly, some California  
24 law and some Florida law will ultimately apply to this dispute. Therefore, neither California nor  
25 Florida has a clear advantage regarding this last factor. However, as stated before, the witnesses  
26 can testify at their depositions through telephone or video conference. Lastly, this Court is more  
27  
28



1 than capable in applying and interpreting both Florida and California law. So on balance, it would  
2 not be unreasonable for this Court to exercise jurisdiction here.

3 **B. VENUE IN THIS DISTRICT IS APPROPRIATE**

4 Under 28 U.S.C. §1404(a), a court may transfer an action “[f]or the convenience of the  
5 parties and witnesses, in interest of justice,...to any other district where it might have been brought.”  
6 However, “a transfer is inappropriate when it merely serves to shift inconveniences from one party  
7 to the other.” Kahn v. Gen. Motors Corp., 889 F.2d 1078, 1083 (Fed. Cir. 1989). Transfer under  
8 28 U.S.C. §1404(a) is only appropriate to a district in which the case “might have been brought”  
9 initially. Id. Thus, the “transferee court” must have subject matter jurisdiction, venue must be  
10 proper, and the defendant must be subject of personal jurisdiction. Therefore a transfer under §1404  
11 has two steps: (1) consideration of whether the district to which the moving party seeks to transfer  
12 meets the requirement of being one where the case “might have been brought”; and (2) if it does,  
13 consideration of whether transfer would be more convenient for the parties and witnesses, and serve  
14 the “interest of justice.”  
15  
16

17 1. This Action Could Have Been Brought in Another District

18 Plaintiff concedes that this action could have been brought in Florida. Plaintiff was harmed  
19 by a Florida attorney and law firm. It would be disingenuous for Plaintiff to argue that it could not  
20 sue Defendants in Florida. However, Plaintiff’s choice of forum is California and this District.

21 2. Convenience and Interest of Justice

22 In evaluating the second prong of the transfer analysis under §1404, this Court may consider  
23 several factors to determine whether the convenience and interest of justice elements of §1404(a)  
24 are met by the proposed transfer: (1) convenience of the parties and witnesses; (2) relative ease of  
25 access to evidence; (3) availability of compulsory process for attendance of unwilling witnesses; (4)  
26 plaintiff’s choice of forum; and (5) administrative considerations. See Decker Coal Co. v.  
27 Commonwealth Edison Co., 805 F.2d 834, 843 (9<sup>th</sup> Cir. 1986); E. & J. Gallo Winery v. F. &  
28

1 P.S.P.A., 899 F. Supp. 465 (E.D. Cal. 1994). These factors are each sub-categories of the three  
2 general factors listed in the text section 1404(a) itself: the convenience of parties, the convenience  
3 of witnesses, and the interest of justice. Courts interpret these factors broadly, and apply them to  
4 the particular facts of each individual case. See, e.g., E. & J. Gallo Winery, 899 F. Supp. At 466.

5  
6 **a. Convenience of the Parties**

7 Plaintiff is a resident of California and Defendants reside in Florida. Transfer to Florida  
8 would only shift the burden of litigation in a distant forum from Defendant to Plaintiff. Merely  
9 shifting the burden onto Plaintiff by transferring this case to Florida is inappropriate. Kahn v. Gen.  
10 Motors Corp., 889 F.2d at 1083.

11 **b. Convenience of the Witnesses and Availability of Compulsory Process**

12 Here, the witnesses will be the principals of the parties themselves. Michael K. Lipscomb  
13 and Colette Pelissier will be the star witnesses in this case. While courts consider the convenience  
14 of all witnesses, the convenience of non-party witnesses is more important than that of party  
15 witnesses. Saleh v. Titan Corp., 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005). This Court can  
16 compel the party witnesses to appear for any matter in this case. California would be a convenient  
17 forum under this element. No non-party witnesses have been identified as of yet and therefore it is  
18 premature for Defendants to argue the convenience to non-existent non-party witnesses.

19  
20 **c. Plaintiff's Choice of Forum**

21 This factor weighs greatly against transfer. On a motion for transfer, the plaintiff's choice  
22 of forum is generally given "great weight" and the defendant "must make a strong showing of  
23 inconvenience" to upset that choice. Lou v. Belzberg, 834 F.2d 730, 739 (9<sup>th</sup> Cir. 1987); Decker  
24 Coal, F.2d at 843. Since a significant number of events giving rise to this action occurred or were  
25 directed to Plaintiff in this district, this Court should give great weight on this factor.

26  
27 **d. Interest of Justice**

28 Under this factor, courts often consider such things as relative interest of the competing

1 venues in litigation. In this case, it is appropriate to consider which forum is most familiar with the  
2 governing law. See Decker Coal, 805 F.2d at 843; Television Events & Mktg., Inc. v. Amcon  
3 Distrib. Co., 416 F. Supp. 2d 948, 971 (D. Haw. 2006). Because both California and Florida law  
4 will apply in this case, this factor should not weigh heavily in favor of transfer or not.

5 In conclusion, Plaintiff's choice of forum should be entitled great weight and there must be  
6 a strong showing of inconvenience to upset that choice. Defendants have failed to meet their burden  
7 of showing such inconvenience.  
8

9 **C. THERE ARE NO EXCEPTIONAL CIRCUMSTANCES HERE TO STAY THIS**  
10 **ACTION**

11 Colorado River abstention is only appropriate under "exceptional circumstances." Colorado  
12 River Water Conservation Dist. V. United States, (1976) 424 U.S. 800, 813, 96 S. Ct. 1236, 1244.

13 The following facts are relevant for this Court to determine whether it should stay this proceeding:

- 14 (1) whether the court has taken control of res or property that is the subject of the litigation; (2)  
15 whether the state and federal suits are substantially similar; (3) whether the inconvenience of the  
16 federal forum is "so great that abstention is warranted." Kelly Investment, Inc. v. Continental  
17 Common Corp. 315 F.3d 494, 498 (5<sup>th</sup> Cir. 2002); (4) the avoidance of piecemeal litigation; (5)  
18 priority of proceedings; (5) and controlling law.  
19

20 Defendants have not met their burden to show that exceptional circumstances warrant  
21 staying this action to allow the Florida state court action to proceed. First, Defendants filed their  
22 complaint in Florida under seal. This action has prevented this Court and Plaintiff from discussing  
23 and analyzing the contents of the Florida lawsuit allegations. As such, absent this Court being able  
24 to see and weigh the allegations of the Florida complaint, it should find that Defendants have not  
25 met their burden to lay an adequate foundation for this Court to decide this issue.  
26

27 In analyzing the factors outlined in Colorado River, this Court should carefully balance the  
28

1 factors “with the balance heavily weighted in favor of exercising jurisdiction.” Moses H. Cone  
2 Mem. Hosp. v. Mercury Const. Corp. (1983) 460 U.S. 1, 16, 103 S. Ct. 927, 937.

3  
4 1. In Rem Jurisdiction

5 There is no res or property that is the subject of this lawsuit. Absence of this factor weighs  
6 against abstention. Murphy v. Uncle Ben’s, Inc. 168 F. 3d 734, 738. (5<sup>th</sup> Cir. 1999).

7 2. Substantial Similarity

8 Abstention is improper when there are dissimilar claims and lack of identity of parties. Great  
9 American Ins. Co. v. Gross 468 F.3d 199, 208-209 (4<sup>th</sup> Cir. 2006). Defendants fail to inform this  
10 Court that Plaintiff’s law firm (Pillar Law Group) is also a party to the action. Decl. Mosesi ¶2.  
11 The parties are dissimilar and as such “abstention” is improper. Furthermore, the claims in the  
12 Florida case are not similar to the claims asserted here. Here, the Plaintiff has asserted a breach of  
13 fiduciary duty and a claim under California Business and Professions Code section 17200 for  
14 unlawful business practices. However, again, since this Court is not able to look at the allegations  
15 on the Florida complaint, it cannot determine the similarity of the claims.

16  
17 3. Convenience

18 The arguments above regarding convenience to the parties in litigating in California or  
19 Florida apply here. Since the only inconvenience will be to the party litigants and not to non-party  
20 witnesses, this element is not conclusive and should weigh against stay. The inconvenience of this  
21 federal forum is not so great to warrant abstention. Kelly Investment at 498.

22 4. Avoidance of Piecemeal Litigation

23 Courts may allow discretionary stay of proceedings if the state and federal proceedings  
24 involve different parties and issues that could expose one or more of the parties to risk of conflicting  
25 results. Romie v. Compuserve Corp. 160 F.3d 337, 341 (6<sup>th</sup> Cir. 1988). However, abstention is  
26 only proper where there is a strong federal policy that all claims should be tried in the state courts.  
27 United States v. Morros, 268 F. 3d 695, 706-707 (9<sup>th</sup> Cir. 2001). Defendants have put forth no  
28

1 evidence of strong federal policy that this action should be tried in Florida state court. On the other  
2 hand, Plaintiff has shown that as a resident of this state who has been injured by Defendants' actions,  
3 it has a great interest to have its dispute be heard and resolved in this Court. Furthermore, there is  
4 no possibility of inconsistent rulings on the issue of malpractice because the first judgment on this  
5 issue will be res judicata in the other proceeding. Kelly Investment at 498.

6  
7 **5. Priority of Proceedings**

8 While it is true that the Florida case was filed first, Defendant Lipscomb only moved to have  
9 Plaintiff served in the Florida case after he was served in this case on June 30, 2016. Decl. Mosesi  
10 ¶5. The proceeding in Florida is only about eighteen days older than this case and has not advanced  
11 at all. In fact, Malibu Media has not even been served in the Florida case as Defendant falsely  
12 declares. Decl. Mosesi ¶4. Defendants erroneously served Plaintiff's counsel instead of Malibu  
13 Media. Decl. Mosesi ¶4. The Florida case has absolutely no priority over this case. More work has  
14 been done in this case than in the Florida case. Defendant has filed an-ex parte application to extend  
15 time to respond to the Complaint and this motion to dismiss or stay action. Decl. Mosesi ¶7. This  
16 factor is not measured by which case was filed first, "but rather in terms of how much progress has  
17 been made in the two actions." Moses H. Cone Mem. Hosp v. Mercury Const. Corp., at 21. Since,  
18 the Florida case has not advanced at all except the filing of the under seal Complaint, this Court  
19 should find against staying this action.  
20

21  
22 **6. Controlling Law**

23 Whether state or federal law provides the rule of decision on the merits is another factor for  
24 this Court to consider. Youell v. Exxon Corp. 74 F. 3d 373, 375 (2<sup>nd</sup> Cir. 1996). In this case, the  
25 Court will not be applying federal law to the facts of the case. It will apply either California or  
26 Florida law, or both, to the issues in the case. Just because there may be a need to apply Florida law  
27 to this case does not by itself outweigh this Court's "obligation to provide a complete and prompt  
28

1 resolution of all claims, state and federal.” Intel Corp. v. Advanced Micro Devices, Inc., 12 F. 3d  
2 908, 915 (9<sup>th</sup> Cir. 1993). Federal Courts sitting in diversity have been applying state laws to disputes  
3 before them since the creation of the District courts pursuant to the Federal Judiciary Act of 1789.  
4 Plaintiff is not advancing a novel concept here.

5  
6 7. Adequacy of State Proceedings

7 Plaintiff is not alleging that the Florida court is an inadequate forum.

8 In closing, Defendants have not met their burden to show that a stay of this proceeding is  
9 appropriate here. Actually, a stay is “improper where state and federal cases had been filed at  
10 roughly the same time and neither had progressed substantially.” Travelers Indemnity Co. v.  
11 Madonna, 914 F. 2d 1364, 1370, (9<sup>th</sup> Cir. 1990).

12 **III. CONCLUSION**

13 Based on the foregoing, Plaintiff respectfully submits that this Court has general and specific  
14 personal jurisdiction over Defendants and that this district is not an inconvenient forum for the  
15 resolution of this action. Lastly, this Court should not stay this proceeding as Defendants have not  
16 met their burden to show exceptional circumstances justifying such stay.

18 DATED: August 16, 2016

**PILLAR LAW GROUP**  
*A Professional Law Corporation*

21 

22  
23  
24 By: \_\_\_\_\_  
25 Henrik Mosesi, Esq.  
26 Art Kalantar, Esq.  
27 Anthony H. Lupu, Esq.  
28 Attorneys for Plaintiff MALIBU MEDIA, LLC,  
a California limited liability company

**DECLARATION OF COLLETE PELISSIER-FIELD**

I, Colette Pelissier-Field, declare as follows:

1. I am over the age of 18. I am a member and manager of Malibu Media, LLC, a California Limited Liability Company. I have personal knowledge of the facts stated herein, and could and would testify competently thereto if called upon to do so.

2. I reside in Ventura County, but Malibu Media’s business offices are located in Beverly hills, California. Malibu Media’s has several employees, who also reside in either Los Angeles or Ventura County.

3. In late 2011, Michael K. Lipscomb (“Lipscomb”), passing himself off as a partner of Lipscomb, Eisenberg and Baker, PL (“LEB”) contacted me in California to discuss and offer his and his firm’s legal services in enforcing Malibu Media’s copyrights in various movies. We spoke a number of times regarding how Lipscomb and LEB would enforce Malibu Media’s copyrights. Essentially, Lipscomb outlined how his firm would locate and identify the copyright violators, who downloaded Malibu Media’s works through BitTorrent websites, and sue them in federal courts throughout the United States for violations of the Copyright Act. In these phone conversations, Mr. Lipscomb made certain representations about the cost of such lawsuits and Malibu Media’s portion from the recovery of damages from copyright violators.

4. Eventually, sometime in late 2011 or early 2012, Malibu Media, after the initial negotiations with Lipscomb and LEB decided to hire them to represent it in filing copyright complaints against illegal BitTorrent downloaders of Malibu Media’s works.

5. Starting in late 2011, Lipscomb sent me hundreds of emails either as follow-ups to our initial negotiations or to give updates on cases after Malibu Media had agreed to hire both him and his firm to represent it.

6. Lipscomb also sent numerous text messages to me in California beginning in late-2011 either as follow-up to our initial negotiations or to give updates on pending copyright cases.

7. Beginning after early 2012, Lipscomb, through his firm’s email address, sent me here in California various documents which purportedly gave financial accounting on the hundreds of pending copyright cases throughout the United States. These documents were grossly incomplete



1 and misleading and did not give an accurate accounting of the gross and net proceeds from the cases.

2 8. On Multiple occasions beginning in 2012, Lipscomb sent to Malibu Media's bank  
3 accounts various wire transfers of money representing a portion of the proceeds of the copyright  
4 cases.

5 9. On multiple occasions, Lipscomb sent declarations and affidavits to me in California  
6 either by email or fax for me to review and sign under penalty of perjury. I then reviewed and signed  
7 numerous declarations and affidavits in California and sent them back to Lipscomb and LEB.

8 10. On two occasions between 2012 and 2015, Lipscomb travelled to California in order  
9 to visit me to give updates on the status of the copyright lawsuits and to give accounting for the  
10 damage awards and settlements he was holding in trust for Malibu Media.

11 11. At various times from 2012 to 2015, I attended depositions where I testified in the  
12 copyright cases. I gave my depositions by telephone conference from California, rather than travel  
13 to the state where the copyright case was filed. This was done for convenience sake.

14 12. Lipscomb and LEB directly supervised over 313 federal copyright cases filed on  
15 behalf of Malibu Media in California in the Southern, Eastern and Northern Districts. These 313  
16 cases were filed by one firm, but Lipscomb and LEB hired at least two other local counsel in  
17 California from 2012 to 2015 to file and prosecute copyright infringement cases on behalf of Malibu  
18 Media. The total number of cases filed by all three firms are well in excess of 313, but I do not have  
19 exact figures as of the time of this declaration.

20 13. Local copyright attorneys hired by Defendants in California had an agreement with  
21 Lipscomb and his law firm to send the proceeds of the settlements from the copyright cases from  
22 California to Defendants' trust account.

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

25 Executed this 15<sup>th</sup> day of July, 2016, at Beverly Hills, California.

26 

27 \_\_\_\_\_  
28 Colette Pelissier-Field

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF HENRIK MOSESI, ESQ.**

I, Henrik Mosesi, declare as follows:

1. I am over the age of 18. I am an attorney duly licensed to practice law in the State of California and a member in good standing with the State Bar of California. I am also an attorney admitted to practice before this Court. I am a partner at Pillar Law Group, APLC. I have personal knowledge of the facts stated herein, and could and would testify competently thereto if called upon to do so.

2. Pillar Law Group, APLC is a named defendant in the Florida lawsuit filed by Michael K. Lipscomb (“Lipscomb”) on June 10, 2016. Defendant Lipscomb fails to mention this fact in his declaration.

3. Another defendant, Data Analytics, Inc. is also defendant in the Florida case.

4. Pillar Law Group was served with the Florida complaint on or about July 1, 2016 in the morning. Sometime in the afternoon, Pillar was served a second copy of the same summons and complaint. Lipscomb erroneously “served” Malibu Media’s summons and complaint on Pillar. Pillar had not agreed to accept service of process on behalf of Malibu Media. As far as I know, Malibu Media has not been served with process in the Florida case.

5. Lipscomb served Pillar with the Florida complaint after it had been served with the summons and complaint in this case, even though the Florida case was filed on June 10<sup>th</sup>.

6. The Florida case has not advanced in litigation. Pillar Law Group filed a motion to dismiss based on lack of personal jurisdiction on July 20, 2016. No hearing on the motion has been set.

7. In this case, Defendants have moved for an ex-parte order extending time to respond to Plaintiff’s complaint and have also filed their motion to dismiss or stay.

8. On August 16, 2016, I checked pacer.gov for cases filed in California where either Lipscomb and/or his law firm, Lipscomb Eisenberg & Baker, PL (“LEB”) appeared.

9. Defendant LEB has represented clients in twenty actions in California courts. Specifically, LEB has represented clients in every California federal court and also in the Superior Court of California, County of Los Angeles. The cases are:

1	Hawk Technology Systems, LLC (pla)	caedce	1:2015-cv-00927
2	Hawk Technology Systems, LLC (pla)	casdce	3:2014-cv-03033
3	Hawk Technology Systems, LLC (dft)	candce	4:2015-cv-02504
4	Hawk Technology Systems, LLC (pla)	cacdce	5:2014-cv-02217
5	Hawk Technology Systems, LLC (pla)	cacdce	8:2015-cv-00589
6	Hawk Technology Systems, LLC (pla)	cacdce	2:2014-cv-08443
7	Hawk Technology Systems, LLC (pla)	cacdce	2:2014-cv-03879
8	Hawk Technology Systems, LLC (pla)	cacdce	2:2015-cv-03580
9	Hawk Technology Systems, LLC (pla)	candce	3:2015-cv-03187
10	Hawk Technology Systems, LLC (pla)	candce	3:2015-cv-03644
11	Mybusinessloan.com, LLC (pla)	casdce	3:2015-cv-02843
12	Mybusinessloan.com, LLC (pla)	casdce	3:2016-cv-01085
13	Mybusinessloan.com, LLC (pla)	casdce	3:2015-cv-01802
14	Mybusinessloan.com, LLC (pla)	casdce	3:2016-cv-00011
15	MyBusinessLoan.com, LLC (pla)	casdce	3:2015-cv-02016
16	Mybusinessloan.com, LLC (pla)	casdce	3:2016-cv-00043
17	MyBusinessLoan.com, LLC (pla)	casdce	3:2015-cv-02254
18	MyBusinessLoan.com, LLC (pla)	casdce	3:2015-cv-02298
19	MyBusinessLoan.com, LLC (pla)	casdce	3:2015-cv-02296

20

21           10. The clients of LEB include Hawk Technology Systems, LLC,  
 22 MyBusinessLoan.com, LLC, and O'Rourke Holdings, LLC. MyBusinessLoan.com, LLC is a  
 23 limited liability company organized and existing under the laws of the state of California and is  
 24 located at 1901 Camino Vida Roble, Suite 120, Carlsbad, California 92008. O'Rourke Holdings,  
 25 LLC is a limited liability company organized and existing under the laws of the State of California,  
 26 with its principal place of business in Topanga, California

27           11. In *Amber Coyle, et. al. v. Michael O'Rourke, et. al.* 2:14-cv-07121-JAK-FFM (C.D.  
 28 Cal.) Mr. Lipscomb appeared in this Court on behalf of the Defendant and argued against a Motion

1 to Dismiss in person.

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

4 Executed this 15<sup>th</sup> day of July, 2016, at Beverly Hills, California.

5

6

7

8



9

---

Henrik Mosesi

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28