

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT INDIANA

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	Civil Case No. <u>1:13-cv-00205-WTL-MJD</u>
	)	
v.	)	
	)	
KELLEY TASHIRO, and	)	
N. CHARLES TASHIRO	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF’S RESPONSE TO DEFENDANT, N. CHARLES TASHIRO’S MOTION FOR EXTENSION OF TIME TO ANSWER THE SECOND AMENDED COMPLAINT**

Plaintiff, Malibu Media, LLC (“Plaintiff”), respectfully requests this Court deny the subject Motion. To wit: Plaintiff’s Second Amended Complaint against Defendants was filed on May 15, 2014. CM/ECF 124. On June 10, 2014, undersigned sent defense counsel a waiver of service form and a copy of the Second Amended Complaint. The waiver of summons was signed and returned to undersigned on June 11, 2014. The form specifically states that Defendant N. Charles Tashiro “must file and serve an answer or a motion under Rule 12 within 60 days from June 9, 2014 . . . If [Defendant] fail[s] to do so, a default judgment will be entered against [him] . . . .” Defendant’s answer to Plaintiff’s Second Amended Complaint was due on or before Friday, August 8, 2014. To date, no answer or motion has been filed on his behalf. And, Defendant’s Motion for Extension of Time is untimely since it was filed a week after his Answer was due without even attempting to argue good cause for the delay.

Defendant’s Motion for Extension claims that “[c]ounsel for Charles was under the impression that Malibu was agreeable to wait for Charles’ answer until the Motion to Strike was resolved.” Motion, ¶ 4. However, undersigned *never* made any representation to that effect and

there is no basis for such impression. The only argument Defendant asserts in support of his motion is that Plaintiff's Motion to Strike affirmative defenses aimed at Defendant Kelley Tashiro's answer should be decided before Defendant N. Charles Tashiro answers the complaint. There is no basis in law or fact to postpone answering the complaint until Plaintiff's Motion is decided. Each Motion in this case must be decided on its own merits and is not a reason to ignore pleading requirements under the Federal Rules of Civil Procedure. Defendant's answer is now twenty-one (21) days overdue and Plaintiff's insistence on Defendant's compliance with the Federal Rules is neither unreasonable nor unduly burdensome.

WHEREFORE, Plaintiff respectfully requests this Court deny Defendant's untimely Motion and enter an order requiring Defendant N. Charles Tashiro to answer Plaintiff's Second Amended Complaint forthwith, or alternatively, enter default against Defendant for his failure to respond to the operative complaint.

Dated: August 29, 2014

Respectfully submitted,

NICOLETTI LAW, PLC

By: /s/ Paul J. Nicoletti  
Paul J. Nicoletti, Esq. (P-44419)  
33717 Woodward Ave, #433  
Birmingham, MI 48009  
Tel: (248) 203-7800  
E-Fax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By:     /s/ Paul J. Nicoletti