

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

MALIBU MEDIA, LLC

Plaintiff,

v.

KELLEY TASHIRO

Defendants

Case No. 1:13-cv-00205-WTL-MJD

Hon. Mark J. Dinsmore

**RESPONSE IN OPPOSITION TO:
PLAINTIFF'S SECOND MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S
MOTION TO BAR TESTIMONY OF IPP, MOTION FOR AN ORDER TO SHOW CAUSE, AND
MOTION TO COMPEL**

NOW COMES KELLEY TASHIRO ("Tashiro"), by and through counsel, Jonathan LA Phillips, who Responds, in opposition, to PLAINTIFF'S SECOND MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S MOTION TO BAR TESTIMONY OF IPP, MOTION FOR AN ORDER TO SHOW CAUSE, AND MOTION TO COMPEL as follows:

1. This is the second time that Malibu has sought an extension of time to respond the Motions as filed. (ECF Docs. 66, 67, 68). The first time, Tashiro did not oppose the same. (ECF Doc. 67, ¶ 1).
2. Again, Malibu has waited until the eleventh hour to file for an extension the day that its briefing was due. (ECF Doc. 66).
3. Again, Malibu only attempted to confer with counsel, by email only, after business hours, the night before the responses were due. Exh. A. In that email, Malibu provided no reason for the need for an extension of time. *Id.* Now, Malibu claims it has a great deal of work to do. (ECF Doc. 69, ¶¶ 3, 4). These are the same issues it raised in its first motion, and apparently, did not correct. (ECF Doc. 66, ¶ 2).

4. Again, Malibu has violated Local Rule 6-1(a)(4)(B). Further, Malibu is not automatically entitled to a second extension under that Local Rule.
5. Further, Malibu provided absolutely no legitimate reason for the need for an extension. Malibu essentially argues that because a different case, with a different defendant, and with different counsel handling the caseload, somehow Attorney Nicoletti has been unable to respond to this Motion, despite a previous extension. Malibu, also, conveniently fails to report to this Court that in the Northern District of Illinois, the Motion to Compel was resolved over two weeks ago. *Malibu Media LLC v. Doe*, Case No. 1:13-cv-06312-MJD-GSB (ECF Doc. 31, ORDER) (filed Jan. 22, 2014). The record in that case reflects that continuances were requested, and provided, in that case as well.
6. Overall, the very averments set forth in Malibu's Motion for Extension suggest that Attorney Nicoletti should have a head start, being able to rely upon the work of Attorney Schulz in the Northern District, and already having had an extension.
7. Granting further extensions of time greatly prejudices Tashiro. Discovery deadlines are fast approaching. Without the discovery, Tashiro is unable to file her expected counter-claims against Malibu and possibly IPP INT UG.¹ Further, this puts Tashiro at a distinct disadvantage in preparing additional discovery to be sent out, preparing for depositions, and otherwise handcuffs her in this litigation.
8. If Malibu was serious about litigating this case, rather than harassing Tashiro by scheduling and rescheduling depositions three times over, refusing to turn over discovery, and so on, then Malibu would have filed for its first extension, and this

¹ The actual name of IPP International UG, formerly known as IPP Limited in this, and other, cases. It is likely that Tashiro will be seeking leave to file counterclaims, and to extend discovery due to Malibu's recalcitrance.

extension, well before the day the Response was due. The record could not be more evident, Malibu has been dilatory, and is engaging in discovery gamesmanship.

9. If, however, this Court wishes to provide Malibu an opportunity to Respond, Malibu filed within hours of the deadline, it is respectfully submitted that Malibu be provided only until Friday, February 7, 2014 at 5:00 PM EST to do so. Accordingly, Malibu can still get a Response on file.

WHEREFORE, KELLEY TASHIRO respectfully requests that this Honorable Court order deny Plaintiff's Second Motion for Extension of Time to Respond to Defendant's Motion to Bar Testimony of IPP, Motion for an Order to Show Cause, and Motion to Compel, or in the alternative, provide a small extension to February 7, 2014 at 5:00 PM for Malibu to Respond.

Respectfully submitted,

/s/Jonathan LA Philips
Jonathan LA Phillips
One of Tashiro's Attorneys
456 Fulton St.
Ste. 255
Peoria, IL 61602
309.494.6155
jphillips@skplawyers.com

Certificate of Service

I certify that on February 5, 2014 a copy of the foregoing has been filed with the Clerk of the Court via the Court's ECF filing system, thereby serving it upon all counsel of record.

/s/ Jonathan LA Phillips