

1 Steven C. Vondran, [SBN 232337]  
2 **THE LAW OFFICES OF STEVEN C. VONDRAN, PC**  
3 620 Newport Center Drive, Suite 1100  
4 Newport Beach, CA 92660  
5 Telephone: (877) 276-5084  
6 Facsimile: (888) 551-2252  
7 E-mail: [steve@vondranlegal.com](mailto:steve@vondranlegal.com)

8 *Attorney for Defendant Alejandro Galindo*

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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 COLUMBIA PICTURES INDUSTRIES,  
14 INC.; AMAZON CONTENT SERVICES,  
15 LLC; DISNEY ENTERPRISES, INC.;  
16 PARAMOUNT PICTURES  
17 CORPORATION; WARNER BROS.  
18 ENTERTAINMENT INC.; UNIVERSAL  
19 CITY STUDIOS PRODUCTIONS LLLP;  
20 UNIVERSAL TELEVISION LLC; AND  
21 UNIVERSAL CONTENT  
22 PRODUCTIONS,

23 Plaintiffs,

24 vs.

25 ALEJANDRO GALINDO, RICHARD  
26 HORSTEN ET AL,

27 Defendants.

Case No. 2:20-cv-03129-SVW-  
GJSx

**DEFENDANT’S OPPOSITION  
TO PLAINTIFF’S MOTION  
FOR LEAVE TO SERVICE  
MARTHA GALINDO**

*Honorable Judge Stephen Wilson*

Hearing:  
October 18, 2021  
Dept: 10A  
Time: 1:30 p.m.

28 TO THE COURT AND ALL ATTORNEYS, please take notice that Defendant  
29 Alex Galindo opposes Plaintiff’s motion to extend time to serve Martha Galindo on the  
30 grounds that this is a further delay in the case and constitutes an unreasonable failure to  
31 prosecute the action.

THE LAW OFFICES OF STEVEN C. VONDRAN, P.C.  
620 Newport Ctr., Suite 1100  
Newport Beach, California 92660

**I. INTRODUCTION / KEY FACTS**

This civil lawsuit was filed on 4/13/20 (over 17 months ago). Following that, there has been little activity in the case other than one deposition of Defendant, discovery against Alex Galindo, one settlement mediation, multiple subpoenas being served, a motion to compel evidence being filed, and now, after multiple defendants have been named as parties and served, Plaintiff now seeks to further prolong the case claiming it was not able to properly serve Defendant Martha Galindo and they want more time for that. This is causing an unreasonable delay and Defendant Alex Galindo objects to further unjustifiable delay. Plaintiff has multiple attorneys working on this case for over 17 months. It seems the whole purpose has now become to drag on this case, respectfully.

**II. LEGAL STANDARD OF REVIEW**

In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits. See *Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002).

Here, the factors weigh toward dismissal. The Court should dismiss this case with prejudice for failure to prosecute. The summons at issue is for named Defendant Martha Galindo. The previous summons for Ms. Galindo was first issued on 3/24/21. Plaintiff, although being a top law firm in the country, with multiple attorneys billing on the case

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1 (see prior motion to compel seeking \$88,000 in legal fees), they have not provided any  
2 valid reasons for their failure to serve Defendant Martha Galindo within a reasonable  
3 amount of time. Now, they want to extend the case even further to accomplish this many  
4 months later. It appears objectively obvious, that there is no real effort to prosecute this  
5 case within the parameters of what should be expected in case that has had had very little  
6 opposition and assertions of the 5<sup>th</sup> amendment.  
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8  
9 Moreover, the Court has previously addressed “*taking Defendants defaults.*” which  
10 Plaintiff does not appear to have any interest in doing. See **Docket #172 on 7/8/21.**  
11 Instead, Plaintiff wants to extend the case, likely serve more subpoenas, and unduly  
12 prolong the case without good reason. The factors weigh in favor of dismissal.  
13  
14 *In Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002) the Court discussed the  
15 five factor test.  
16

17 **1. PUBLIC'S INTEREST IN EXPEDITIOUS RESOLUTION OF LITIGATION**

18 "The public's interest in expeditious resolution of litigation always favors  
19 dismissal." See *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir.  
20 1990). Given Plaintiff's failure to pursue service of the summons on Martha Galindo  
21 since 3/24/21, or engage in meaningful discovery, this factor weighs in favor of  
22 dismissal.  
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1 **2. THE COURT'S NEED TO MANAGE ITS DOCKET**

2 The trial judge is in the best position to determine whether the delay in a particular  
3 case interferes with docket management and the public interest. Plaintiff's 11<sup>th</sup> hour  
4 request for more time to serve Martha Galindo creates further delay for the Court as  
5 well and has consumed some of the court's time that could have been devoted to other  
6 cases on the docket. It is incumbent upon the Court to manage its docket without being  
7 subject to unnecessary delays. Accordingly, this factor also weighs in favor of dismissal.  
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10 **3. RISK OF PREJUDICE TO DEFENDANTS/RESPONDENTS**

11 To prove prejudice, a defendant must establish that plaintiff's actions impaired  
12 defendant's ability to proceed to trial or threatened to interfere with the rightful decision  
13 of the case. *Malone v. United States Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987).  
14  
15

16 "Limited delays and the prejudice to a defendant from the pendency of a lawsuit are  
17 realities of the system that have to be accepted, **provided the prejudice is not**  
18 **compounded by 'unreasonable' delays."** *Id.* (quoting *Ash v. Cvetkov*, 739 F.2d 493,  
19 496 (9th Cir. 1984). This ongoing multi-month delay by Plaintiff, who was unable to  
20 perform a rather simple task of serving process with a team of attorneys and unlimited  
21 resources available to them is not justified. This factor also weighs in favor of dismissal  
22 of the action. This has prejudiced Defendant Alex Galindo, as well as the other  
23 Defendants. Courts have noted that "Unnecessary delay inherently increases the risk  
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1 that witnesses' memories will fade and evidence will become stale.” *See Sibron v. New*  
2 *York*, 392 U.S. 40, 57, 20 L. Ed. 2d 917, 88 S. Ct. 1889, 44 Ohio Op. 2d 402 (1968).

3  
4 Thus, Plaintiff’s delay was unreasonable, and this factor weighs in favor of dismissal.

5 **4. AVAILABILITY OF LESS DRASTIC ALTERNATIVES**

6 Consideration of less drastic alternatives is also a factor to weigh and consider. In  
7 this case, Defendant Alex Galindo has agree to stipulate to withdraw his Answer (as the  
8 main issue was the number of movies at issue), but Plaintiff has not agreed to take  
9 Defendant’s default after many months of litigation, and despite Defendant’s assertion  
10 of the 5<sup>th</sup> amendment. This factor also favors dismissal.

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13 **5. PUBLIC POLICY FAVORING DISPOSITION OF CASES ON THEIR**  
14 **MERITS**

15 Finally, while Public policy favors disposition of cases on the merits. Thus, factor  
16 also weighs in favor of dismissal in that Plaintiff has conducted minimal discovery and  
17 does not appear to be striving to legitimately move the case forward. *See Hernandez v.*  
18 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998).

19  
20  
21 **CONCLUSION**

22 Applying the five-factor test favors dismissal of this action. Plaintiff has an  
23 unlimited budget and supply of legal team members and is not faithfully prosecuting this  
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620 Newport Ctr., Suite 1100  
Newport Beach, California 92660

1 action, and instead seeks to unreasonably extend and delay the case. The Court should  
2 dismiss the lawsuit with prejudice and deny the motion to extend time to serve summons.  
3

4 RESPECTFULLY SUBMITTED

5  
6 DATED: September 28, 2021 THE LAW OFFICES OF STEVEN C. VONDRAN

7  
8 By: /s/ Steven C. Vondran

9 Steven C. Vondran, Attorney for

10 Defendant Alejandro Galindo

11 [steve@vondranlegal.com](mailto:steve@vondranlegal.com)

12 Phone: (877) 276-5084

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**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On **September 28, 2021**, I served the following documents in the manner described below:

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR LEAVE TO SERVICE MARTHA GALINDO**

BY ELECTRONIC SERVICE PURSUANT TO AGREEMENT: By electronically mailing a true and correct copy through Vondran Legal electronic mail system from [lisa@vondranlegal.com](mailto:lisa@vondranlegal.com) and/or [steve@vondranlegal.com](mailto:steve@vondranlegal.com) to the email addresses set forth below **AND FILING THROUGH THE COURTS ECF electronic filing service to all registered users.**

On the following parties in this action:

**JENNER & BLOCK**

Julie A. Shepard, Esq. [JShepard@jenner.com](mailto:JShepard@jenner.com)  
Gianni P. Servodidio, Esq. [GServodidio@jenner.com](mailto:GServodidio@jenner.com)  
Alonso Ponce, Esq. [APonce@jenner.com](mailto:APonce@jenner.com)>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **September 28th, 2020** at **Phoenix, Arizona**

**THE LAW OFFICES OF STEVEN VONDRAN, P.C.  
("VONDRAN LEGAL")**

By /s/ Lisa Vondran

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620 Newport Ctr., Suite 1100  
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