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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

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

21 Plaintiffs,

22 v.

23 ALEJANDRO GALINDO, RICHARD
24 HORSTEN (a/k/a RIK DE GROOT),
ANNA GALINDO, MARTHA
25 GALINDO, OSVALDO GALINDO,
RAUL ORELLANA, FIRESTREAM
26 LLC, and DOES 8-10,

27 Defendants.
28

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

**PLAINTIFFS' REPLY IN SUPPORT
OF MOTION FOR LEAVE TO
SERVE PROCESS ON MARTHA
GALINDO BY ALTERNATIVE
MEANS**

Judge: Hon. Stephen V. Wilson
Ctrm: 10A
Date: October 18, 2021
Time: 1:30 p.m.

Trial Date: None Set

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1 **I. Introduction**

2 Defendant Alejandro Galindo (“Defendant”) has filed an untimely and
3 frivolous Opposition to Plaintiffs’ Motion for Leave to Serve Process on Martha
4 Galindo by Alternative Means (“Motion”) that (1) never once addresses a single
5 argument Plaintiffs made in their Motion; (2) improperly requests affirmative relief;
6 and (3) contains outright lies and mischaracterizations of the factual record. For all
7 of these reasons, the Court should ignore Defendant’s Opposition, and, for the
8 reasons set forth in the Motion, and given the importance of bringing in Martha
9 Galindo as a defendant in this case, grant Plaintiffs’ Motion and permit Plaintiffs to
10 serve Martha Galindo with the Second Amended Complaint and related Summons
11 in the following ways: (1) email to the address ma*****@****.com; (2)
12 service on Defendant Alejandro Galindo’s counsel, Steve Vondran; (3) mail to
13 Martha Galindo’s address in the United States in Galveston, Texas; and (4)
14 Facebook message.

15 **II. Argument**

16 **A. It Is Imperative That Martha Galindo Be Brought Into This Case.**

17 As described further in the Motion and the accompanying Declaration of Julie
18 A. Shepard and exhibits thereto, through third-party subpoenas, Plaintiffs uncovered
19 over \$7 million in sales of Nitro TV subscriptions and reseller credits made through
20 accounts held in Martha Galindo’s name. Mot. at 2. Such accounts were used to
21 pay for streaming servers and other infrastructure necessary to operate the Nitro TV
22 enterprise, and to pay Defendant Firestream LLC for Defendant Raul Orellana to
23 market and promote Nitro TV on his YouTube channel. *Id.* Martha Galindo also
24 signed numerous checks for amounts nearing \$10,000 to Firestream LLC. *Id.* at 2–
25 3.

26 It is, thus, clear that Martha Galindo is not only deeply involved with Nitro
27 TV but is also holding substantial amounts of revenues derived from the Nitro TV
28 infringing enterprise in her accounts. Accordingly, for Plaintiffs to obtain full relief,

1 they must be able to bring Martha Galindo into this case so that she is subject to the
2 ultimate judgment entered by this Court. There can be no doubt that Defendant is
3 opposing Plaintiff's Motion for this very reason so as to prevent Plaintiffs from
4 accessing the Nitro TV monies. It is for that same reason that Defendant has not
5 provided Martha Galindo's address in response to Plaintiffs' discovery requests. *See*
6 *id.* at 4.

7 **B. The Court Should Ignore Defendant's Opposition.**

8 The Court need not consider Defendant's Opposition for the following three
9 reasons.¹

10 1. Defendant Does Not Dispute the Substance of the Motion.

11 In their Motion, Plaintiffs argued that (1) alternative service is appropriate
12 here under Federal Rule of Civil Procedure 4(f)(3); (2) service by email, on U.S.-
13 based counsel, by mail in the U.S., and Facebook message are permitted methods of
14 alternative service; and (3) use of those methods of service on Martha Galindo
15 comports with due process in the circumstances of this case. Plaintiffs further argued
16 that they should have further time to service Martha Galindo for the following
17 reasons: (i) Federal Rule of Civil Procedure 4(m) expressly does not limit their time
18 to serve her because she is now located in Mexico; (ii) Plaintiffs understood that the
19 Court had already given them additional time to serve her; and (iii) even if the Court
20 had not yet done so, an extension is warranted given Martha Galindo's evasive
21 tactics and Plaintiffs' diligent efforts to serve her.

22 Defendant's Opposition does not address any of these arguments, thereby
23 conceding that Plaintiffs satisfy Rule 4(f)(3) and the due process requirements.
24 Further, despite Defendant's general position that this entire case should be

25
26 ¹ In addition, the Court should decline to consider Defendant's untimely Opposition
27 and deem the failure to timely file it as consent to granting Plaintiff's Motion. *See*
28 L.R. Civ. 7-12 ("The Court may decline to consider any memorandum or other
document not filed within the deadline set by order or local rule. The failure to file
any required document, or the failure to file it within the deadline, may be deemed
consent to the granting or denial of the motion").

1 dismissed because Plaintiffs have not been able to serve one of the seven named
2 defendants, Defendant never responds to any of Plaintiffs' arguments as to why
3 Plaintiffs should be given additional time to serve Martha Galindo—that is because
4 he has no legitimate opposition.

5 2. The Opposition Is Procedurally Improper.²

6 Defendant's Opposition can also be ignored because it is procedurally
7 improper. First, instead of opposing any of the arguments or relief sought by
8 Plaintiffs in their Motion, Defendant uses his Opposition to request his own relief.
9 This is not permitted. *See, e.g., Smith v. Premiere Valet Servs., Inc.*, 2020 WL
10 7034346, at *14 (C.D. Cal. Aug. 4, 2020) (“[A] request for affirmative relief is not
11 proper when raised for the first time in an opposition.”); *Interworks Unlimited, Inc*
12 *v. Digital Gadgets, LLC*, 2019 WL 4570013, at *1 (C.D. Cal. June 11, 2019)
13 (holding that a party “cannot seek affirmative relief by way of an opposition brief”);
14 *Thomasson v. GC Servs. Ltd. P’ship*, 2007 WL 9770702, at *6 (S.D. Cal. July 16,
15 2007), *aff’d in part, rev’d in part*, 321 Fed. App’x 557 (9th Cir. 2008) (“[T]he court
16 rejects any discovery-related or other requests for affirmative relief Plaintiffs attempt
17 to piggy-back on their Opposition as inappropriate, untimely, and obfuscating.”).³

18 Second, contrary to Defendant's position that Plaintiffs “seek[] to further
19 prolong the case,” Opp. at 2, Plaintiffs are, in fact, proceeding consistently with the
20 one deadline thus far set in this case. Although the clerk has already entered default
21 as to five defendants in this case, in Plaintiffs' Response to the Order to Show Cause,
22 Plaintiffs requested that the deadline for moving for default judgment be set after
23 Magistrate Judge Standish has ruled on Plaintiffs' Motion for Sanctions and

24 _____
25 ² Defendant's request to dismiss the case is utterly meritless. Given the obvious
26 procedural deficiencies of the brief and its factual mischaracterizations, Plaintiffs
27 have not addressed the merits here to avoid wasting the Court's time.

28 ³ *See also* L.R. Civ. 7-9 (Opposing papers may contain “either (a) the evidence upon
which the opposing party will rely in opposition to the motion and a brief but
complete memorandum which shall contain a statement of all the reasons in
opposition thereto and the points and authorities upon which the opposing party will
rely, or (b) a written statement that that party will not oppose the motion”).

1 Plaintiffs have obtained any resulting discovery . Doc. 169 at 4–5.⁴ In response,
2 this Court ordered that Plaintiffs have until 30 days after the Motion for Sanctions is
3 decided to move for default judgment as to those defendants. Doc. 172. Magistrate
4 Judge Standish has not yet ruled on the Motion for Sanctions, so Plaintiffs remain in
5 compliance with this deadline.

6 3. Defendant’s Assertions Are Contrary to the Facts.

7 Finally, Plaintiffs address Defendant’s outright lies and mischaracterizations
8 to correct the factual record.

9 Defendant seems to be taking the position throughout his Opposition that
10 Plaintiffs’ request for leave to serve Martha Galindo by alternative means is “causing
11 an unreasonable delay.” Opp. at 2; *see also id.* at 6 (claiming that Plaintiffs are
12 “seek[ing] to unreasonably [sic] extend and delay the case”). That is incorrect and
13 frankly laughable given the record. Defendant conveniently fails to acknowledge
14 that Plaintiffs have sought Martha Galindo’s address from him through
15 interrogatories in order to serve her, but he has refused to provide that information.
16 Mot. at 3–4. As such, he also cannot in good faith contend that Plaintiffs “have not
17 provided any valid reasons for their failure to serve Defendant Martha Galindo
18 within a reasonable amount of time,” or that he has been prejudiced by the fact that
19 Plaintiffs have not yet been able to serve her. Opp. at 3–5. Additionally, Plaintiffs
20 have requested that his counsel accept service for Martha Galindo, but his counsel
21 has declined to do so.

22 Moreover, if anything, it is Defendant’s complete failure to comply with his
23 discovery obligations and Magistrate Judge Standish’s orders that has delayed this
24 case. It is, thus, absurd for him to claim that Plaintiffs have “conducted minimal
25 discovery and do[] not appear to be striving to legitimately move the case forward.”
26 *Id.* at 5; *see also id.* at 3 (claiming that Plaintiffs have failed to “engage in meaningful
27

28 ⁴ Given Defendant’s conduct in this case, in the Motion for Sanctions, Plaintiff requested default judgment as to Defendant as the primary form of relief.

1 discovery”). As set forth in Plaintiffs’ Discovery Motion (Doc. 57) and Motion for
2 Sanctions (Doc. 164, 176), among other places, Defendant destroyed evidence, has
3 not produced a single document in response to document requests, has not provided
4 interrogatory responses, and belatedly and repeatedly asserted the Fifth Amendment
5 to discovery requests and to avoid providing answers to Plaintiffs’ questions at his
6 Court-ordered deposition. If Defendant wants this case to move faster, he may
7 provide all of the discovery Plaintiffs have requested.

8 Relatedly, Defendant seems to be suggesting that he is trying to end the case,
9 but Plaintiffs are dragging it out. *See* Opp. at 5 (“Plaintiff[s] ha[ve] not agreed to
10 take Defendant’s default after many months of litigation [sic] . . .”). Yet Defendant
11 chose to file an answer to Plaintiffs’ SAC and is choosing to challenge the number
12 of works whose copyrights Plaintiffs allege he infringed. *See* Doc. 165 at 7–8. At
13 any time Defendant may concede liability and damages, but he has elected not to do
14 so.

15 In sum, Defendant’s wild assertions are entirely inconsistent with his conduct
16 in this case so far and should be rejected by the Court.

17 **III. Conclusion**

18 For the reasons set forth in their Motion and this Reply, Plaintiffs respectfully
19 request that the Court grant the Motion and permit Plaintiffs to serve Martha Galindo
20 with the Second Amended Complaint and related Summons in the following ways:
21 (1) email to the address ma*****@****.com; (2) service on Defendant
22 Alejandro Galindo’s counsel, Steve Vondran; (3) mail to Martha Galindo’s address
23 in the United States in Galveston, Texas; and (4) Facebook message.

24
25 Dated: October 4, 2021

JENNER & BLOCK LLP

26
27 Bv:


Julie A. Shepard

Attorneys for Plaintiffs