

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT INDIANA

MALIBU MEDIA, LLC,

Plaintiff,

v.

KELLEY TASHIRO, and
N. CHARLES TASHIRO

Defendant.

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



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENT TO ITS MOTION FOR
SANCTIONS AGAINST DEFENDANTS FOR SPOILIATION OF EVIDENCE AND
PERJURY [CM/ECF 130]**

No response to this motion has been filed; accordingly, Plaintiff's motion is unopposed. The motion will be **GRANTED** and Plaintiff's Supplement to its Motion for Sanctions Against Defendants for Spoliation of Evidence and Perjury [CM/ECF 130] [Dkt. 152-1] is deemed filed as of the date of this order. Defendants shall file any response to Dkt. 152-1 on or before **October 17, 2014**.

Dated: October 1, 2014

1. On June 20, 2014, Plaintiff filed its Motion for Sanctions Against Defendants for Spoliation of Evidence and Perjury. CM/ECF 130.

2. Since filing the Motion, additional evidence of perjury and improper litigation tactics have come to light.

3. This new evidence should be considered by the Court prior to ruling on Plaintiff's Motion for Sanctions because it demonstrates that the Defendants persist in their attempts to evade liability for copyright infringement by whatever means possible, including outright falsehoods.

4. Specifically, Plaintiff's proposed Supplement, attached hereto as Exhibit A, addresses: (a) Plaintiff subpoenaed Comcast for a deposition *duces tecum* and Comcast provided Plaintiff with seven (7) different DMCA copyright infringement notices that were sent to the

Defendants in 2011 and 2012 despite Defendant Kelley Tashiro's representations that no such notices were ever sent; (b) Defendant N. Charles Tashiro lied in his deposition regarding the extent of his BitTorrent use claiming that he only used BitTorrent to download music when in fact he also used it to download adult content films; (c) Defendant N. Charles Tashiro used the Western Digital hard drive which Plaintiff was repeatedly told did not exist on December 22, 2013, and then failed to turn it over to Q-Discovery for forensic imaging and inspection on December 23, 2013 with the other four hard drives. He further failed to disclose the hard drive to Plaintiff until May 31, 2014; and (d) Defendants secretly shipped the Western Digital hard drive across the country to their purported expert in Oregon for imaging and inspection prior to disclosing the drive to Plaintiff risking its loss or complete destruction and despite knowing that Plaintiff was waiting for the drive and trying to get ahold of it.

5. In light of the foregoing evidence, which was not available to Plaintiff at the time its Motion for Sanctions was filed, Plaintiff respectfully requests this Court grant the subject Motion.

6. Prior to filing the instant Motion counsel for Plaintiff conferred with counsel for Defendant. Defense counsel did not agree to the relief requested herein.

WHEREFORE, Plaintiff respectfully requests this Court grant the subject Motion for Leave to File Supplement to Plaintiff's Motion for Sanctions Against Defendants for Spoliation of Evidence and Perjury.

DATED: September 2, 2014.

Respectfully submitted,

NICOLETTI LAW, PLC

By: /s/ Paul J. Nicoletti
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 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