

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MALIBU MEDIA, LLC,

Plaintiff,

Civil Case No. 8:14-cv-02339-EAK-TBM

v.

JOHN DOE subscriber assigned IP address
72.91.207.117,

Defendant.

PLAINTIFF'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE

Malibu Media, LLC, ("Plaintiff"), by and through undersigned counsel, hereby responds to Your Honor's Order to Show Cause [CM/ECF 18], and states:

Undersigned appreciates Your Honor's desire to expeditiously move cases toward their final resolution and sincerely apologizes for Plaintiff's failure to file a Case Management Report within the time prescribed by Local Rule 3.05. To explain, on May 14, 2015 Plaintiff filed a waiver of service. As such, pursuant to Local Rule 3.05, the Case Management Report was due on July 13, 2015. However, the deadline was not calendared, and Plaintiff inadvertently missed this deadline. The paralegal tasked with calendaring this deadline failed to do so. This paralegal has since been fired. On August 6, 2015, You Honor issued the Order to Show Cause. Your Honor's Show Cause brought the matter to Plaintiff's attention. On August 17, 2015, opposing counsel filed a motion to appear telephonically for the conference. The parties have since conferred and agreed on a Case Management Report. This report is complete and will be filed immediately, should Your Honor grant the motion to appear telephonically.

Plaintiff apologizes for this mistake and respectfully requests that the Court not dismiss the case. Dismissal would not be in the interest of either party because dismissal would cause both parties to spend additional time and money. Indeed, Plaintiff would incur the time and expense of refiling the exact same case, and Defendant would incur the time and expense of refiling an answer. Further, the “extreme sanction” of dismissal with prejudice is not warranted because Plaintiff has not engaged in “a clear pattern of delay or willful contempt (contumacious conduct)[.]” *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1338 (11th Cir. 2005). Rather, here, the conduct involves the inadvertent miscalendaring of one deadline. And, Plaintiff has since conferred with opposing counsel and completed the Case Management Report, which will be filed immediately, should Your Honor grant the motion to appear telephonically. Accordingly, Plaintiff respectfully requests this Court not dismiss the complaint for failure to comply with Local Rule 3.05.

Dated: August 17, 2015

Respectfully submitted,

By: /s/ M. Keith Lipscomb
M. Keith Lipscomb (429554)
klipscomb@lebfirm.com
LIPSCOMB EISENBERG & BAKER, PL
2 South Biscayne Blvd.
Penthouse 3800
Miami, FL 33131
Telephone: (786) 431-2228
Facsimile: (786) 431-2229
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2015, 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/ M. Keith Lipscomb