

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

LIPSCOMB, EISENBERG & BAKER, PL, a
Florida professional limited liability
company, and MICHAEL KEITH
LIPSCOMB, an individual,

Plaintiffs,

v.

MALIBU MEDIA, LLC, a California limited
liability company, PILLAR LAW GROUP,
PLLC, a California professional law
corporation, DIGITAL CONTENT, INC., an
administratively dissolved Wyoming
corporation, DATA ANALYTICS, INC., a
foreign corporation,

Defendants.

Case No.: 2016-014947-CA-01

**Defendant Malibu Media LLC's Special Appearance Motion
to Quash Service of Process**

The Defendant, MALIBU MEDIA, LLC, appearing, by and through the undersigned counsel, for the sole and limited purpose of challenging this Court's personal jurisdiction and service of process, and submits this Motion to Quash Service of Process, showing this Honorable Court as follows:

1. The status of this action is as follows:
 - a. On June 10, 2016, the Plaintiffs filed a Confidential Complaint against Malibu Media, LLC and three other defendants.
 - b. On July 1, 2016, Defendant Malibu Media, LLC was allegedly served with the Summons and Confidential Complaint in this action.



- c. On August 1, 2016, Plaintiffs filed with this Court a Return on Service executed by Carlos Abrego indicating that Malibu Media LLC was allegedly served with process by serving “Rebecca Smith as person in charge”.
 - d. On September 8, 2016 Plaintiffs filed a Motion for Default against Malibu Media, LLC. On September 9, 2016, the Motion for Default was rejected.
 2. The process server failed to indicate whether the registered agent was a “natural person” and “temporarily absent” from the office. The process server also failed to indicate whether he had made any prior attempts to serve either the registered agent or any members or managers of Malibu Media, LLC before serving Rebecca Smith, whom he determined was the “person in charge”. (A copy of the Return on Service is attached hereto as Exhibit A).
 3. Section 48.062, Florida Statutes (2016) provides in part that:
 - (1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605. **A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.**
 - (2) **If service cannot be made on a registered agent of the limited liability company** because of failure to comply with chapter 605 or because the limited liability company does not have a registered agent, **or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:**
 - (a) On a **member** of a member-managed limited liability company;
 - (b) On a **manager** of a manager-managed limited liability company; or



(c) If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. **After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.**

Fla. Stat. § 48.062 (emphasis supplied).

4. Rebecca Smith is a receptionist and employee of Premier Business Centers, an executive suites and office center located at 9701 Wilshire Boulevard, 10th Floor, Beverly Hills, California 90212. Malibu Media, LLC is a business tenant of Premier Business Centers at this location.
5. Rebecca Smith is not the registered agent of Malibu Media, LLC. Rebecca Smith is not a member or manager of Malibu Media, LLC.
6. To obtain jurisdiction over a defendant, the plaintiffs must strictly comply with statutory provisions governing service of process. *See, e.g., Electro Engineering Products Co., Inc. v. Lewis*, 352 So. 2d 862 (Fla. 1977). Furthermore, the party who is seeking to invoke the jurisdiction bears the burden of proof to sustain the validity of service of process. *BoatFloat, LLC v. Cent. Transp. Intern., Inc.*, 941 So. 2d 1271, 1273 (Fla. 4th DCA 2006) (citing *Henzel v. Noel*, 598 So.2d 220, 221 (Fla. 5th DCA 1992).
7. As stated above, Fla. Stat. § 48.062 requires that the person making service of process on a limited liability company note whether a registered agent was temporarily absent before an employee of the entity could be served. Furthermore, the process server failed to note whether he had attempted one prior service on a member or manager of Malibu Media, LLC before he served Rebecca Smith, even though Rebecca Smith is not an employee of Malibu Media, LLC.



8. Failure to provide this information exhibits a failure to strictly comply with this statute governing service of process and, therefore, renders the service defective and subject to a defendants' motion to quash.
9. This Court should, therefore, grant Malibu Media LLC's motion to quash service of process.

WHEREFORE, Defendant Malibu Media, LLC respectfully prays for the following relief:

- a) That this Court conduct a hearing on Defendant's Verified Motion to Quash Service of Process;
- b) That this Court find service of process upon Defendant Malibu Media, LLC was defective;
- c) That this Court grant the Defendant's Verified Motion to Quash Service of Process;
- and, d) and That this Court grant such other and further relief as is just and proper.

Certificate of Service

I certify that on September 10, 2016, the foregoing document was electronically filed with the Clerk of Court's eFiling Portal, which will send notification of such filing to M. Keith Lipscomb, Esq., Lipscomb, Eisenberg & Baker, PL, 2 Biscayne Blvd., Penthouse 3800, Miami, FL 33131; klipscomb@lebfirm.com

/s/ Therese A. Felth

Therese A. Felth

Florida Bar No. 108042

J. Alistair McKenzie

Florida Bar No. 91849

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Attorneys for Defendant, Malibu Media, LLC



Exhibit A – Return of Service



MCKENZIE
LAW FIRM/PA

RETURN OF SERVICE

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 2016-014947-CA-01

Plaintiff:

LIPSCOMB, EISENBERG & BAKER, PL, A FLORIDA PROFESSIONAL LIMITED LIABILITY COMPANY, AND MICHAEL KEITH LIPSCOMB, AN INDIVIDUAL

vs.

Defendant:

MALIBU MEDIA, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, PILLAR LAW GROUP, PLLC, A CALIFORNIA PROFESSIONAL LAW CORPORATION, DIGITAL CONTENT, INC., AN ADMINISTRATIVELY DISSOLVED WYOMING CORPORATION, DATA ANALYTICS, INC., A FOREIGN CORPORATION

For: Angela M. Lipscomb

LIPSCOMB EISENBERG & BAKER, PL

FILED FOR RECORDED
2016 AUG - 1 AM 11:35
CLERK: GREGORY B. HILL, COURT 13
COURT: 6000 BUNKER HILL BLVD. #301

Received by DLE Process Servers on the 29th day of June, 2016 at 4:33 pm to be served on Malibu Media, LLC c/o Colette Pellissier, 9701 Wilshire Blvd., 10th Floor, Beverly Hills, CA 90212. I, Carlos Abrego do hereby affirm that on the 01 day of July, 2016 at 01 29P.m., executed service by delivering a true copy of the **SUMMONS; NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING; CONFIDENTIAL COMPLAINT AND DEMAND FOR JURY TRIAL** in accordance with state statutes in the manner marked below:

PUBLIC AGENCY: By serving _____ as _____ of the within-named agency.

SUBSTITUTE SERVICE: By serving _____ as _____

CORPORATE SERVICE: By serving Rebecca Smith as Person in Charge

OTHER SERVICE: As described in the Comments below by serving _____ as _____

NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: Description: female, caucasian, 33 years, 5'6, 150 lbs., brown hair

RETURN OF SERVICE for 2016-014947-CA-01

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



PROCESS SERVER # 0456
Appointed in accordance with State Statutes

DLE Process Servers
247 S.W. 8 Street
#261
Miami, FL 33130
(786) 220-9705
Our Job Serial Number: 2016011519

7/1/16
1:25 PM
REBECCA
SMITH
CA#
6456

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LIPSCOMB, EISENBERG & BAKER, PL, a
Florida professional limited liability company,
and MICHAEL KEITH LIPSCOMB, an
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Defendants.

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this Summons and a copy of the complaint or
petition in this action on defendant:

MALIBU MEDIA, LLC
c/o Colette Pelissier
9701 Wilshire Blvd., 10th Floor
Beverly Hills, CA 90212

Each defendant is required to serve written defense to the complaint or petition on
Plaintiff's Attorney: M. Keith Lipscomb, Esquire, Lipscomb, Eisenberg & Baker, PL, 2 South
Biscayne Boulevard, Penthouse 3800, Miami, Florida 33131.

JUN 29 2016

Dated on _____

HARVEY RUBIN
Clerk of Courts

By:

Deputy Clerk

MARIO RODRIGUEZ-GONZALEZ

309950

