

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

CIRCUIT CIVIL DIVISION

CASE NO. 16-14947 CA 01

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.

**DEFENDANT'S, DATA ANALYTIC, INC., MOTION TO STAY DISCOVERY
PENDING RULING ON ITS MOTION TO DISMISS**

Defendant, DATA ANALYTICS, INC. ("DAI"), hereby moves for an order staying discovery until such time as the Court determines the merits of the DAI's Motion to Dismiss, filed on July 28, 2016, and in support thereof states as follows:

1. According to the allegations in the Complaint as it relates to DAI, this matter is a contractual dispute between Plaintiffs and Defendant DIGITAL CONTENT, INC. ("DCI"). Plaintiffs and DCI entered into an agreement as defendants in an unrelated matter to joint and severally pay a settlement. Plaintiffs allege in their complaint that DCI has failed to contribute to the settlement payments. At the time of the settlement agreement, DAI was already in existence. Plaintiffs specifically excluded DAI from being included in the settlement agreement while

having full knowledge that DCI was a dissolved company by the time of the execution of the settlement, and DAI was active and separate corporation. Furthermore, the Complaint contains no factual allegations that DAI was a successor to DCI. *See DAI's Motion to Dismiss.*

2. Should the Court grant DAI'S Motion to Dismiss, then DAI will rightfully be dismissed from this action and will no longer have to incur attorney's fees and costs to partake in discovery in a matter that does not relate to DAI.

3. Before the parties incur the expense of discovery, the Court should determine the merits of the Motion to Dismiss. As explained more fully in the Motion to Dismiss, Plaintiffs cannot maintain an action against DAI as DAI was not a party to the agreement in which Plaintiffs are seeking suit under. There is a strong possibility that this action will be dismissed against DAI and no discovery will be required in this action.

4. The Court has discretion to stay discovery for good cause shown. Fla. R. Civ. P. 1.280(c). A party shows good cause where disposition of a party's motion could eliminate the need for such discovery. *See McCabe v. Foley*, 233 F.R.D. 683 (M.D. Fla. 2006); *Feigin v. Hospital Staffing Services, Inc.*, 569 So. 2d 941, 942 (Fla. 4th DCA 1990) (holding that trial court did not abuse its discretion by staying discovery pending motion to dismiss hearing).

5. The rationale of *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997), applies here. "Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should... be resolved **before** discovery begins. Such a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in the pleadings are presumed to be true. Therefore, neither the parties nor the court have any need for discovery before the court rules on a motion." *Chudasama*, 123 F.3d at 1367. The Eleventh Circuit has encouraged courts to exercise their

discretion to resolve facial attacks to a complaint before discovery begins. *Id.* at 1368. Doing so serves to reduce costs to the parties and the Court while increasing judicial efficiency. *Id.*

6. Here, DAI has challenged the legal sufficiency of the claims contained in the complaint. No discovery is required for the Court to make an informed determination of the merits of the motion to dismiss. An order staying discovery until such time as the Court rules on the motion is appropriate.

7. A brief stay of discovery during the pendency of the DAI's Motion to Dismiss will not cause any prejudice to Plaintiffs. Rather, a stay of discovery will mutually benefit all parties, who will possibly avoid altogether unnecessary costs and effort associated with discovery.

8. For the reasons discussed herein, the Court should stay discovery pending resolution of the DAI's Motion to Dismiss.

WHEREFORE, DAI respectfully requests that the Court enter an order staying all discovery until such time as the Court determines the merits of their Motion to Dismiss, and awarding such further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Heloiza Correa
HELOIZA A. CORREA
Florida Bar No. 78124
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served by e-mail upon those listed below
on September 21, 2016.

M. Keith Lipscomb, Esq. LIPSCOMB, EISENBERG & BAKER, PL <i>Attorney for Plaintiffs</i>	<u>klipscomb@lebfirm.com</u>
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/s/ Heloiza Correa
HELOIZA A. CORREA