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9 Attorneys for Plaintiff MALIBU MEDIA, LLC,  
10 a California limited liability company.

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 MALIBU MEDIA, LLC,  
14 a California limited liability company.

15 Plaintiff

16 v.

17 LIPSCOMB, EISENBERG & BAKER, PL, a  
18 Florida professional limited liability company;  
19 MICHAEL K. LIPSCOMB, an individual; and  
20 DOES 1 to 100, inclusive,

21 Defendants.

Case No.

**COMPLAINT**

- 1. Professional Negligence
- 2. Breach of Fiduciary Duty
- 3. Accounting
- 4. Violation of Business & Professions Code §§ 17200 et seq.

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23  
24 Plaintiff MALIBU MEDIA, LLC, a California limited liability company (hereinafter “MM”)   
25 sues Defendants LIPSCOMB, EISENBERG & BAKER, PL, a Florida professional limited liability   
26 company, MICHAEL K. LIPSCOMB, an individual; and DOES 1 to 100, inclusive (collectively   
27 “Defendants,” unless the context indicates otherwise) and alleges as follows:  
28

**PARTIES**

1  
2 1. Plaintiff is and was at all times mentioned herein, a California limited liability  
3 company with its principal place of business located in the county of Los Angeles, state of  
4 California.

5 2. Plaintiff is informed and believes that Defendant LIPSCOMB, EISENBERG &  
6 BAKER, PL, (hereinafter “LEB”) is a Florida professional limited liability company, organized in  
7 and existing pursuant to the laws of the state of Florida, with its principal place of business located  
8 at 2 South Biscayne Blvd., Ste. 3800 Miami, Florida 33131.

9 3. Plaintiff is informed and believes that Defendant MICHAEL K. LIPSCOMB, an  
10 individual, (hereinafter “Lipscomb”) is and was at all times mentioned herein a member of LEB and  
11 a resident of the city of Miami, state of Florida.

12 4. Agency Allegations: Defendants, and each of them, at all times mentioned herein,  
13 were the agents of every other Defendant, acting within the scope of said agency, such that each and  
14 every Defendant herein is liable and accountable for the acts of each other Defendant.

15 5. Alter Ego Allegations: Plaintiffs are informed and believe and thereon allege that  
16 Lipscomb used LEB as a mere shell, instrumentality, and/or conduit of each other, and commingled  
17 assets by and between himself and LEB to such an extent that any individuality or separateness of  
18 LEB ceased.

19 **JURISDICTION AND VENUE**

20 6. Pursuant to 28 U.S.C. § 1331(a)(2), “The district courts shall have original  
21 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000,  
22 exclusive of interest and costs, and is between ... citizens of a State and citizens or subjects of a  
23 foreign state.” Plaintiffs, and each of them, are organized and transact business under the laws of  
24 the state of California, and upon information and belief, Defendants, and each of them, are organized  
25 and/or transact business under the laws of the state of Florida and reside in the state of Florida. The  
26 matter is controversy exceeds, exclusive of interest and costs, the sum specified in 28 U.S.C. §1332.

27 7. Defendants are subject to personal jurisdiction in this District because they engaged  
28 in knowing and repeated telephone calls, text messages or emails with MM to enter into the initial

1 agreement and to give updates on pending matters. Defendants initially contacted MM by  
2 telephone, email and text messages in order to solicit MM to engage Lipscomb and LEB as its  
3 copyright enforcement counsel. On a number of occasions, Defendants wired funds to MM in this  
4 District. These wired funds purportedly represented MM's portion of the copyright damages  
5 collected by Defendants. On at least two occasions, Lipscomb travelled to this District in order to  
6 meet MM to discuss pending copyright matters and other business relating to pending cases. On  
7 numerous occasions, Lipscomb emailed what he considered to be accounting information regarding  
8 settlement proceeds to MM.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 8. MM is an adult film production company. In or around late 2011, LEB via its agents  
11 contacted MM in California to offer its services as general counsel and lead litigation counsel with  
12 respect to the enforcement of MM's copyrights.

13 9. Essentially, the copyright enforcement program consisted of MM filing suit in  
14 federal court against individuals who illegally downloaded MM's films on the BitTorrent file  
15 distribution network. The amount of copyright infringement of MM's works was rampant; thus, the  
16 amount of suits filed in any given month numbered in the hundreds, and at any given time, there  
17 were hundreds of cases pending in federal courts throughout the United States.

18 10. LEB was the "general counsel" with respect to the entire copyright enforcement  
19 program, and in certain litigation cases LEB would sometimes act as "lead counsel" for individual  
20 cases filed.

21 11. Upon information and belief, at the inception of their representation, LEB never  
22 provided MM with a written and signed retainer agreement setting forth the standards upon which  
23 LEB would provide legal services to MM and bill for those services, including whether LEB's fee  
24 would be on a contingency, flat fee, or hourly basis, and which contained provisions for charges and  
25 apportionment of settlement amounts and costs.

26 12. Notwithstanding the lack of a written and signed retainer agreement, upon  
27 information and belief, MM would receive a fixed percentage of the total settlement amounts  
28 flowing from settlements. Upon information and belief, at some point the fixed percentage number

1 changed and LEB also began to charge MM for the filing costs for new cases.

2 13. Upon information and belief, on or around September 29, 2015, Lipscomb advised  
3 MM that because of the copyright program's operating costs, LEB wanted to get litigation financing  
4 and "encumber the trust account." Lipscomb also indicated that he wanted to "catch up and  
5 capitalize" the copyright enforcement program by encumbering the campaign's future income  
6 stream. Upon further information and belief, in or around Fall 2015, Lipscomb advised MM that  
7 LEB wanted to "accrue money" for the copyright enforcement program, which Lipscomb suggested  
8 would occur for a period of 4-6 months.

9 14. Upon information and belief, LEB never provided MM with any signed, written  
10 agreement explaining or specifying the terms of the "encumbering" of the future income stream, or  
11 "accrual" of money process, and the effect the "accrual" would have on MM's settlement payouts.

12 15. At some point thereafter, with the exception of approximately \$100,000, LEB ceased  
13 to tender funds to MM from the copyright enforcement program.

14 16. MM requested that LEB provide financial documents or financial statements  
15 evidencing the financial status of the copyright enforcement program, and amounts due to MM. In  
16 response, on or about February 19, 2016, LEB sent MM copies of the 2015 trust account bank  
17 statements. MM advised LEB that the bank statements were alone insufficient, as MM was unable  
18 to determine what the numbers represented.

19 17. On February 19, 2016, LEB provided via email an estimated breakdown of monthly  
20 costs and expenses, but promised "detailed cash flow statements." LEB advised that they were  
21 preparing cash flow statements for January 2016 and for "one month" for 2015, and would produce  
22 it to MM.

23 18. Thereafter, on or about February 23, 2016, MM authorized Pillar Law Group, APLC  
24 ("Pillar") to examine and investigate all matters concerning the federal copyright enforcement  
25 litigations.

26 19. LEB and Pillar exchanged multiple emails. In one email dated April 5, 2016,  
27 Lipscomb indicated that "Malibu is winding its copyright campaign down because it is no longer  
28 profitable." On April 12, 2016, Lipscomb indicated in order for LEB to "wind down" the campaign,

1 an “engagement agreement” would need to be signed. Lipscomb also indicated that if the  
2 engagement agreement was not signed, Pillar and Lipscomb would “need to formulate a plan  
3 through which LEB withdraws and new counsel stip[sic.] in.”

4 20. In another email dated April 12, 2016, Lipscomb indicated that the type of litigation  
5 involved in the campaign was “incredibly sophisticated and nuanced” and also warned that “if the  
6 cases (or the steps in a wind down process) are mismanaged... Malibu will lose cases or be  
7 sanctioned by courts or both.” He warned in another email dated April 12, 2016 that “[t]here is  
8 enormous potential liability to [MM] if this is not managed correctly.” Lipscomb also indicated in  
9 an email dated April 12, 2016 that, as far as accounting was concerned, it could provide Profit &  
10 Loss statements from “Sept forward” and that he “can represent and warrant in an engagement  
11 agreement in advance of an accounting or P&L’s that LEB has never paid itself anywhere close to  
12 a reasonable hourly rate for its services.”

13 21. On April 12, 2016, Lipscomb forwarded to MM a proposed agreement, which  
14 purported to govern the terms of the “wind down.” In the proposed agreement, LEB indicated that  
15 it would produce a monthly P&L statement for the campaign each month for the preceding month,”  
16 and “would provide P&L statements for September 2015 through April 2016 by the end of April  
17 2016.” The proposed agreement also contained provisions for fee charges and apportionment of  
18 settlement amounts and costs. The proposed agreement also contained a “Release” which stated  
19 that “Each party to this Agreement... hereby releases the other party ... from all claims, in law or  
20 in equity, the factual foundation for which occurred, in whole or in part, prior to the Effective Date  
21 of this Agreement.” MM did not sign the agreement.

22 22. On that same day, April 12, 2016, Pillar reiterated MM’s request for an accounting.

23 23. On April 13, 2016, Lipscomb again promised “monthly P&Ls which LEB’s office  
24 manager will send to you as she completes them...” On April 15, 2016, Lipscomb indicated that  
25 LEB would provide bank statements with backup invoices to show payments made for operational  
26 costs, and indicated that LEB’s office manager will begin sending financial information shortly.  
27 Lipscomb also indicated that “the current circumstances presented a conflict” which needed to be  
28 resolved or that LEB would withdraw as counsel for MM.

1           24.     On April 15, 2016, Pillar, as it had previously advised, indicated that it was “not  
2 substituting in any of the pending litigation matters and requested that [LEB] continue representing  
3 [MM] in good faith.” Pillar indicated that the only thing being requested is an accounting of all the  
4 funds received and spent on behalf of MM and advised that “there are hundreds of cases currently  
5 pending in various federal jurisdiction and [LEB’s] withdrawal will cause significant financial loss  
6 to MM.”

7           25.     From April 15, 2016 to April 17, 2016, LEB provided “supported” bank statements  
8 for November 2015 through to March 2016.

9           26.     On Sunday, April 17, 2016, Lipscomb sent Colette Pelissier Field an email, entitled  
10 “New Malibu Deal,” which indicated that it wanted MM to agree to a new deal regarding LEB’s  
11 services. Under the deal, LEB and Lipscomb would provide certain “transition” services, including  
12 training for 6 months. Included in the deal was a demand that “LEB be released from everything to  
13 date with the only exception being malpractice forward” and that Pillar’s “demands are dropped.”

14           27.     On April 18, 2016, Lipscomb sent an email to all local counsel, indicating that LEB  
15 had “terminated its representation” of MM effective April 18, 2016.

16           28.     On April 18, 2016, LEB and/or Lipscomb filed a motion to withdraw as counsel for  
17 MM in a case entitled *Malibu Media, LLC v. Jesse Raleigh*, which was pending in the U.S. District  
18 Court, Western District of Michigan. The court granted the motion on April 29, 2016, and ordered  
19 that MM procure new counsel in Michigan within twenty-one days.

20           29.     MM was not able to procure new counsel in the shortened time frame. The court, in  
21 an order dated May 24, 2016, dismissed the action. Defendant in the Michigan action thereafter  
22 filed on June 7, 2016 a Post-Judgment Motion for Costs and Attorneys’ Fees, and seeks a total of  
23 \$158,685.00. The motion is pending.

24           30.     On June 10, 2016, LEB and Lipscomb filed a lawsuit against MM and Pillar Law  
25 Group, APLC in Florida state court. In the lawsuit, LEB and Lipscomb revealed attorney-client  
26 privileged and confidential matters to the court and the public.

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**FIRST CAUSE OF ACTION**

**PROFESSIONAL NEGLIGENCE**

**(Against LEB and Lipscomb, and Does 1-100)**

31. Plaintiff incorporates by this reference all the other allegations set forth in ¶ 1 through 30, inclusive.

32. At all relevant times mentioned herein, Defendants, and each of them, owed a duty of care to act at all times in good faith and in MM’s best interest, and had a duty, amongst other things, to perform the services for which they were retained with reasonable care and skill, to act in MM’s highest and best interest at all times, and to not expose MM to any unnecessary risk or peril, all in accordance with relevant legal standards of care. Defendants, and each of them, breached the standard of care as follows:

- a. LEB and/or Lipscomb were professionally negligent in the case *Malibu Media, LLC v. Jesse Raleigh* because LEB and Lipscomb had a duty to ensure that MM had successor counsel prior to filing its withdrawal motion (especially given the history of the case, as noted by the court), and were aware or should have been aware, that MM would be unable to secure new counsel during the shortened time frame after withdrawal. As a result, MM is now subject to a pending Motion for Costs and Attorneys’ Fees in the amount of \$158,685.00.
- b. LEB and/or Lipscomb were also professionally negligent in that they represented MM in a mediation with various third-parties in the summer of 2015. When LEB and/or Lipscomb represented MM in the mediation (and prior to that mediation), Defendants, knew or should have known that MM’s interests were adverse to LEB and/or Lipscomb’s interest, and should have advised MM to seek independent counsel. As a result of LEB and/or Lipscomb’s representation, advice and failure to advise MM to seek independent counsel, MM was improperly named as a settling party, and became obligated to pay settlement funds to a third-party.

- 1 c. LEB and/or Lipscomb were also professionally negligent in their  
2 representation of MM in a case entitled *Malibu Media LLC v. John Doe*,  
3 filed in a United States District Court. In that case, LEB and/or Lipscomb  
4 failed to properly disclose two of MM’s experts as providing expert  
5 testimony under Federal Rule 26(a)(2)(A). Based thereon, the court struck  
6 the expert testimony, granted a dispositive motion, and entered judgment in  
7 favor of the defendant. MM was liable for attorney’s fees, and settled  
8 defendant’s attorney’s fees and costs claim for a sum that is the subject of a  
9 confidential settlement agreement.
- 10 d. LEB and/or Lipscomb were also professionally negligent in their  
11 representation of MM in that they failed to provide a written, signed retainer  
12 and other documents at the inception of their legal representation, as  
13 required under Florida bar rules, as detailed herein, including but not  
14 limited to, Rule 4-1.5(f); Rule 4-1.5(f)(4)(C) and Rule 4-1.5(f)(5), and  
15 failed to secure a written and signed retainer agreement outlining the  
16 method by which Defendants’ fee were to be determined; what percentage  
17 or percentages were to accrue to Defendants in event of settlement, trial or  
18 appeal; and reflecting other expenses to be deducted from any recovery.
- 19 e. At the time LEB and/or Lipscomb withdrew from representing MM, LEB  
20 and Lipscomb were aware that the copyright enforcement program was  
21 “incredibly sophisticated and nuanced”; that “if the cases (or the steps in a  
22 wind down process) are mismanaged...Malibu will lose cases or be  
23 sanctioned by courts or both”; and that there would be “enormous potential  
24 liability to [MM] if this is not managed correctly.” As a result of LEB and/or  
25 Lipscomb’s sudden withdrawal, MM has been, and will be, foreseeably  
26 damaged in that new cases were unable to be filed for a period of time, which  
27 caused MM to be unable to protect its copyrights.
- 28



1 f. Upon further information and belief, LEB and/or Lipscomb also improperly  
2 charged MM for filing fees reflecting the cost of cases filed.

3 33. As a direct and proximate result of the aforesaid negligence, MM has suffered, and  
4 will continue to suffer, harm in an amount according to proof at trial, but not less than the minimum  
5 jurisdictional amount of the court.

6 **SECOND CAUSE OF ACTION**

7 **BREACH OF FIDUCIARY DUTY**

8 **(Against LEB and Lipscomb, and Does 1-100)**

9 34. Plaintiff incorporates by this reference all the other allegations set forth in ¶ 1 through  
10 30, inclusive.

11 35. At all relevant times mentioned herein, Defendants, and each of them, owed a  
12 fiduciary duty to act at all times in good faith and in MM's best interest, and had a duty, amongst  
13 other things, to perform the services for which they were retained with reasonable care and skill, to  
14 act in MM's highest and best interest at all times, and to not expose MM to any unnecessary risk or  
15 peril, all in accordance with relevant legal standards of care. Defendants, and each of them, breached  
16 their fiduciary duty to MM as follow:

17 a. Further, LEB and/or Lipscomb breached its fiduciary duty to MM in the case  
18 *Malibu Media, LLC v. Jesse Raleigh* because LEB and/or Lipscomb had a  
19 duty to ensure that MM had successor counsel prior to filing its withdrawal  
20 motion (especially given the history of the case), and were aware or should  
21 have been aware, that MM would be unable to secure new counsel during a  
22 shortened time frame after withdrawal. As a result, MM is now subject to a  
23 pending Motion for Costs and Attorneys' Fees in the amount of \$158,685.00.

24 b. LEB and/or Lipscomb also breached their fiduciary duty to MM in that they  
25 represented MM in a mediation with various third-parties in the summer of  
26 2015. When LEB and/or Lipscomb represented MM in the mediation (and  
27 prior to that mediation), Defendants, knew or should have known that MM's  
28 interests were adverse to LEB and/or Lipscomb's interest, and should have

1 advised MM to seek independent counsel. As a result of LEB and/or  
2 Lipscomb's representation, advice and failure to advise MM to seek  
3 independent counsel, MM was improperly named as a settling party, and  
4 became obligated to pay settlement funds to a third-party.

5 c. LEB and/or Lipscomb also breached their fiduciary duty to MM in their  
6 representation of MM in a case entitled *Malibu Media LLC v. John Doe*,  
7 filed in a United States District Court. In that case, LEB and/or Lipscomb  
8 failed to properly disclose two of MM's experts as providing expert  
9 testimony under Federal Rule 26(a)(2)(A). Based thereon, the court struck  
10 the expert testimony, granted a dispositive motion, and entered judgment in  
11 favor of the defendant. MM was liable for attorney's fees, and settled  
12 defendant's attorney's fees and costs claim for a sum that is the subject of a  
13 confidential settlement agreement.

14 d. At the time LEB and/or Lipscomb withdrew from representing MM, LEB  
15 and/or Lipscomb were aware that the copyright enforcement program was  
16 "incredibly sophisticated and nuanced"; that "if the cases (or the steps in a  
17 wind down process) are mismanaged... Malibu will lose cases or be  
18 sanctioned by courts or both"; and that there would be "enormous potential  
19 liability to [MM] if this is not managed correctly." As a result of LEB and/or  
20 Lipscomb's sudden withdrawal, MM has been, and will be, foreseeably  
21 damaged in that new cases were unable to be filed for a period of time, which  
22 caused MM to be unable to protect its copyrights.

23 36. In addition, under Florida bar Rule 4-1.5(f), contingent fee agreements are required  
24 to be in writing; shall state the method by which the fee is to be determined; and set forth other  
25 requirements.<sup>1</sup> Further, Rule 4-1.5(f)(4)(C) sets forth additional duties required of a lawyer as to

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27 <sup>1</sup> Rule 4-1.5(f) states: "Contingent Fees. As to contingent fees: (1) A fee may be contingent on the outcome  
28 of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by  
subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by  
which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in

1 contingency agreements, including providing the client with a copy of the statement of client's  
2 rights.<sup>2</sup> Further, Rule 4-1.5(f)(5) requires that a lawyer prepare a closing statement upon the  
3 conclusion of the representation, and that such statement shall be retained and available for  
4 inspection by the client.<sup>3</sup>

5 37. LEB and/or Lipscomb breached its fiduciary duty, including the duties and  
6 requirements reflected in Rule 4-1.5(f)(5), and any other applicable rule or law, by i) failing to  
7 provide MM with a written and signed retainer agreement, setting forth the contingency agreement  
8 or any other fee agreement by and between LEB and MM; ii) failing to provide MM with a statement  
9 of client's rights; and iii) failing to provide a closing statement reflecting an itemization of all costs  
10 and expenses at the conclusion of each case.

11 38. LEB and/or Lipscomb breached their fiduciary duty in their representation of MM in  
12 that they failed to secure a written and signed retainer agreement outlining the method by which  
13 Defendants' fee were to be determined; what percentage or percentages were to accrue to  
14 Defendants in event of settlement, trial or appeal; and reflecting other expenses to be deducted from

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16 the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and  
17 whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion  
18 of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome  
19 of the matter and, if there is a recovery, showing the remittance to the client and the method of its  
20 determination."

21 <sup>2</sup> Rules 4-1.5 (f)(4)(C) states: "Before a lawyer enters into a contingent fee contract for representation of  
22 a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of  
23 client's rights and shall afford the client a full and complete opportunity to understand each of the rights as  
24 set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the  
25 client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained  
26 by the lawyer with the written fee contract and closing statement under the same  
27 conditions and requirements as subdivision (f)(5)."

28 <sup>3</sup> Rules 4-1.5 (f)(5) states: "In the event there is a recovery, upon the conclusion of the  
representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs  
and expenses, together with the amount of fee received by each participating lawyer or law firm. A  
copy of the closing statement shall be executed by all participating lawyers, as well as the  
client, and each shall receive a copy. Each participating lawyer shall retain a copy of the  
written fee contract and closing statement for 6 years after execution of the closing statement.  
Any contingent fee contract and closing statement shall be available for inspection at  
reasonable times by the client, by any other person upon judicial order, or by the  
appropriate disciplinary agency."

1 any recovery.

2 39. LEB and/or Lipscomb also breached its fiduciary duty to MM by failing to provide  
3 MM with a written and signed retainer agreement, reflecting any variation or modification of the  
4 parties' agreement regarding dispersal of funds or costs and expenses.

5 40. LEB and/or Lipscomb also breached its fiduciary duty to MM by charging an  
6 unreasonable or unconscionable fee for services rendered.

7 41. LEB and/or Lipscomb also breached its fiduciary duty to MM by improperly  
8 charging MM for filing fees reflecting the cost of cases filed.

9 42. Further, LEB and/or Lipscomb had a fiduciary duty to maintain detailed monthly  
10 cash flow statements, Profit & Loss Statements, and provide any and all financial statements and  
11 documents to MM upon request. Alternatively, LEB and/or Lipscomb had a fiduciary duty to advise  
12 MM that it was not preparing such financial statements, and to advise MM to seek independent  
13 professional accounting services to monitor the financial aspects of the enforcement program.

14 43. Upon information and belief, during 2012 to August or September 2015, although  
15 tendering funds to MM, LEB did not provide for each and every month full, complete and detailed  
16 monthly cash flow and Profit & Loss statements, with all supporting statements and documents.

17 44. Further, when LEB and/or Lipscomb advised MM in the fall of 2015, that because  
18 of operating costs, LEB wanted to get litigation financing, "encumber" the trust account and the  
19 campaign's future income stream and/or "accrue money," LEB and/or Lipscomb still failed to  
20 provide their client with detailed monthly cash flow statements, Profit & Loss Statements, and  
21 provide any and all financial statements by which MM could evaluate that course of conduct.

22 45. In addition, upon information and belief, LEB and/or Lipscomb never provided MM  
23 with any signed, written agreement explaining or specifying the terms of the "encumbering" of the  
24 future income stream, or "accrual" process, and the effect the "accrual" would have on MM's  
25 settlement payouts. Also, LEB and/or Lipscomb never advised MM to seek independent counsel or  
26 other professionals to advise MM whether such a course of action was in MM's best interests, as  
27 opposed to the interests of LEB and/or Lipscomb.

28 46. Last, when MM demanded an accounting, LEB and/or Lipscomb breached their

1 fiduciary duties to MM by demanding that MM execute an “engagement agreement” (with a release  
2 of liability clause) prior to LEB and/or Lipscomb’s continued representation, and “in advance of an  
3 accounting and P&Ls.”

4 47. On or about June 10, 2016, LEB and/or Lipscomb filed a complaint in the superior  
5 court of the state of Florida against MM and Pillar Law Group, APLC wherein Defendants revealed  
6 attorney-client privileged and confidential information to the Court and the general public for no  
7 reason but to retaliate against MM for their repeated requests for accounting.

8 48. As a direct and proximate result of the aforesaid breach of fiduciary duty, MM has  
9 suffered, and will continue to suffer, harm in an amount according to proof at trial, including but  
10 not limited to punitive damages, and no less than the minimum jurisdictional amount of the court.

11 **THIRD CAUSE OF ACTION**

12 **ACCOUNTING**

13 **(Against LEB and Lipscomb and Does 1-100)**

14 49. Plaintiffs incorporate by this reference all the other allegations set forth in ¶ 1 through  
15 30, inclusive.

16 50. As a result of the aforementioned allegations, Defendants, and each of them, have  
17 received money, a portion of which is due to MM, as previously alleged.

18 51. The amount of money due from Defendants, and each of them, to Plaintiff is  
19 unknown to Plaintiff and cannot be ascertained without an accounting of all funds received and costs  
20 and expenses paid pursuant to the enforcement program from 2012 to the present.

21 52. Plaintiff has demanded an accounting of the aforementioned transactions, but  
22 Defendants, and each of them, have failed and refused, and continues to fail and refuse, to render  
23 such an accounting, as detailed herein.

24 53. Wherefore it is requested that the Court order an accounting of all funds received,  
25 and costs and expenses paid, and all other financial transactions related to the copyright enforcement  
26 program from 2012 to the present, as detailed herein.

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**FOURTH CAUSE OF ACTION**

**VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.**

**(Against LEB and Lipscomb and Does 1-100)**

54. Plaintiffs incorporate by this reference all the other allegations set forth in ¶ 1 through 30, inclusive.

55. The actions of LEB and Lipscomb, as detailed herein, constitute unfair, deceptive or unlawful business practices, within the meaning of Business and Professions Code §§ 17200 et seq.

This includes, but is not limited to:

- a. Failed to provide a written, signed retainer and other documents at the inception of their legal representation, as required under Florida bar rules, as detailed herein, including but not limited to, Rule 4-1.5(f); Rule 4-1.5(f)(4)(C) and Rule 4-1.5(f)(5), and failed to secure a written and signed retainer agreement outlining the method by which Defendants' fee were to be determined; what percentage or percentages were to accrue to Defendants in event of settlement, trial or appeal; and reflecting other expenses to be deducted from any recovery.
- b. Failed to provide MM with a written and signed retainer agreement, reflecting any variation or modification of the parties' agreement regarding dispersal of funds and costs and expenses;
- c. Charged an unreasonable or unconscionable fee for services rendered;
- d. Failed to maintain detailed monthly cash flow statements, Profit & Loss Statements, and provide any and all financial statements and documents to MM upon request;
- e. Failed to advise MM to seek independent professional accounting services to monitor the financial aspects of the enforcement program;
- f. Represented MM in a mediation with various third-parties in the summer of 2015, when LEB and/or LEB knew or should have known that MM's interests were adverse to LEB and/or Lipscomb's interest;

- 1 g. Demanded that MM execute an “engagement agreement” (with a release of
- 2 liability clause) prior to LEB and/or Lipscomb’s continued representation,
- 3 and “in advance of an accounting and P&Ls”;
- 4 h. Withdrew from representing MM when LEB and/or Lipscomb were aware or
- 5 should have been aware that liability would foreseeably result;
- 6 i. Improperly charging MM for filing fees reflecting the cost of cases filed;
- 7 j. Filed a complaint in the superior court of the state of Florida against MM and
- 8 Pillar Law Group, APLC wherein Defendants revealed attorney-client
- 9 privileged and confidential information to the Court and the general public
- 10 for no reason but to retaliate against MM for their repeated requests for
- 11 accounting.

12 56. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the general  
13 public are prejudiced by Defendant’s unfair trade practices.

14 57. As a direct and proximate result of the unfair business practices of LEB and  
15 Lipscomb, Plaintiff is entitled to equitable and injunctive relief, including full restitution,  
16 disgorgement, and/or specific performance of all amounts unlawfully withheld from Plaintiff as a  
17 result of the business acts and practices described herein, and enjoining Defendants to cease and  
18 desist from engaging in the practices described herein.

19 **PRAYER FOR RELIEF**

20 On the First Cause of Action for Professional Negligence:

- 21 a. Damages in an amount to be proven at trial, but not less than the jurisdictional
- 22 minimum of the Court;
- 23 b. Costs of suit;
- 24 c. Pre and Post-Judgment interest;
- 25 d. For such other and further relief and the Court deems just and proper.

26 On the Second Cause of Action for Breach of Fiduciary Duty:

- 27 e. Damages in an amount to be proven at trial, but not less than the jurisdictional
- 28 minimum of the Court;

- 1 f. Costs of suit;
- 2 g. Pre and Post-Judgment interest;
- 3 h. Punitive damages;
- 4 i. For such other and further relief and the Court deems just and proper.

5 On the Third Cause of Action for an Accounting:

- 6 j. For an accounting between Plaintiff and Defendants;
- 7 k. For the amount found to be to be due from Defendants to Plaintiff as a result of
- 8 the accounting;
- 9 l. Pre and Post-Judgment interest;
- 10 m. Costs of Suit;
- 11 n. For such other and further relief and the Court deems just and proper.

12 On the Fourth Cause of Action for Violation of Business & Professions Code §§ 17200 et  
13 seq.

- 14 o. For an order enjoining Defendants to cease and desist from engaging in the
- 15 practices described herein;
- 16 p. For an order of full restitution, disgorgement, and/or specific performance of all
- 17 amounts unlawfully withheld from Plaintiff as a result of the business acts and
- 18 practices described herein;
- 19 q. Pre and Post-Judgment interest;
- 20 r. Costs of Suit;
- 21 s. For such other and further relief and the Court deems just and proper.

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DATED: June 28, 2016

**PILLAR LAW GROUP**  
*A Professional Law Corporation*

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