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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 STEPHEN HANDY AGUIAR,

12 Plaintiffs,

13 v.

14 MYSPACE INC., aka LEGACY VISION,
15 LLC,

16 Defendants.
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Case No.: 2:14-CV-05520-SJO (PJWx)

Judge: Hon. S. James Otero

**PLAINTIFF STEPHEN H.
AGUIAR'S OPPOSITION TO
PROPOSED INTERVENOR
MYSPACE LLC'S MOTION TO
INTERVENE**

*Declarations of Scott Hunter, Laura
Gladwin Payne, and Caleb E. Mason
filed concurrently herewith.*

Action filed: July 16, 2014

Hearing date: April 4, 2017

Time: 10:00 a.m.

Courtroom: 10C



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1 Plaintiff Stephen H. Aguiar (“Plaintiff”) opposes Proposed Intervenor MySpace
2 LLC’s (“Proposed Intervenor”) Motion to Intervene (“Motion”) on the grounds that
3 Proposed Intervenor MySpace is and always has been the Defendant in this case.
4 Moreover, Proposed Intervenor Myspace’s argument that it “got out” of the case
5 through transactions it undertook in March 2016, is both (a) forfeited, because
6 MySpace concealed those transactions from Plaintiff, from the Court, and even from
7 its own attorney Jane Rheinheimer, and (b) meritless.

8 **I.**

9 **INTRODUCTION**

10 Proposed Intervenor MySpace begins its Motion by claiming that “[a]t no time
11 has Plaintiff attempted to add the entity that currently operates under the name
12 ‘Myspace LLC’ (‘Proposed Intervenor’) to this litigation.” Mot. 1:9-10. This
13 assertion is nonsensical: MySpace LLC was the original Defendant in this lawsuit. It
14 appeared under that name and litigated under that name, and was represented by
15 counsel under that name. Plaintiff added MySpace LLC to this lawsuit at the time
16 Plaintiff *filed* this lawsuit.

17 Proposed Intervenor now claims that various transfers of ownership—
18 undertaken in March 2016, during the pendency of this case—had the effect of
19 “extracting” it from this lawsuit. MySpace LLC forfeited all such arguments by
20 concealing those transactions from Plaintiff, from the Court, and even from its own
21 counsel. MySpace LLC violated Federal Rule of Civil Procedure 7.1 and L.R. 7.1-1
22 by failing to file corporate disclosure statements or a Notice of Interested Parties, and
23 further violated these rules when it failed to inform Plaintiff or the Court of
24 subsequent changes in ownership. *See* Fed. R. Civ. P. 7.1(b) (“A party must: (1) filed
25 the disclosure statement with its first appearance, pleading, petition, motion, response,
26 or other request addressed to the court; and (2) promptly file a supplemental statement
27 if any required information changes.”); *see also* L.R. 7.1-1 (“Counsel shall be under a
28 continuing obligation to file an amended Notice if any material change occurs in the



1 status of interest parties, as through merger or acquisition or change in carrier that
2 may be liable for any part of a judgment.”).

3 In short, MySpace LLC strategically concealed, from the outset of the case, *all*
4 information regarding its ownership, assets, name changes, etc. Proposed Intervenor
5 fails entirely to address this issue in its Motion—despite Plaintiff’s two prior filings,
6 which emphasize the issue. Doc. 67, 1:11-25; Doc. 69, 1:28-2:1.

7 In addition to its having forfeited the argument by concealing the transactions
8 on which it now purports to rely, Proposed Intervenor’s argument that it is a legally
9 distinct entity and not a continuation of Defendant MySpace LLC fails on the merits.
10 It is based on outdated and factually distinguishable case law, and entirely fails to
11 address the current controlling caselaw on the continuation theory of corporate
12 liability.

13 In fact, the result of the convoluted transactions cited by Proposed Intervenor
14 was that Defendant MySpace LLC was owned by Viant Technology LLC, rather than
15 Viant Technology Inc. and continued in the exact same business, with the same assets,
16 management, personnel, headquarters, and counsel. It is clear that Proposed
17 Intervenor is a continuation of Defendant MySpace LLC under the applicable law and
18 to rule otherwise would cause an injustice to its creditors.

19 In summary, this Motion to Intervene should be denied because Proposed
20 Intervenor is already a party to this case. It is the continuation of the named
21 Defendant MySpace LLC and has been litigating as a party since November 2015.

22 **II.**

23 **RELEVANT FACTUAL BACKGROUND**

24 The factual background is set forth in detail in Plaintiff’s Supplemental Brief in
25 Support of Motion for Default Judgment, Doc. 67 at 1-12. Below, Plaintiff sets out
26 the facts most pertinent to the present Motion to Intervene.

27 **A. For Eighteen Months, MySpace Litigates This Case as “MySpace LLC”**

28 On July 16, 2014, Plaintiff sued MySpace, Inc., for violating the Stored



1 Communications Act by willfully disclosing to the government Plaintiff’s private
2 records in the absence of a warrant or other legal authority for such disclosure. Docs.
3 1-1, 7, 22.

4 Plaintiff’s complaint named “MySpace, Inc.” On November 4, 2015, the
5 Marshals Service served MySpace LLC at its corporate headquarters in Irvine,
6 California. The person who accepted service was “Chris Magill, Director of Legal.”
7 MySpace LLC hired counsel, appeared in the case, and moved to dismiss Plaintiff’s
8 complaint, Doc. 27. Counsel Jane Rheinheimer appeared for MySpace LLC, which,
9 per its filing, had been “erroneously sued as MySpace, Inc.” Doc. 27, at 1:5.

10 MySpace LLC also filed a Response to Plaintiff’s Objections to Magistrate
11 Judge’s Report and Recommendation on June 29, 2016. Doc. 37.

12 On October 21, 2016, the Court denied MySpace LLC’s motion to dismiss.
13 Doc. 41. MySpace LLC never filed an answer after its motion to dismiss was denied.
14 On November 17, 2016, the Court, sua sponte, ordered MySpace LLC to answer or
15 explain its failure to do so. Doc. 43. On November 22, 2016, MySpace LLC filed a
16 document captioned “Disclosure of Why Answer has not been filed.” Doc. 44. In that
17 document, MySpace LLC asserted that “MySpace does not exist,” and that “the client
18 has directed that counsel stop work on this matter.” Doc. 44. The “Disclosure” was
19 accompanied by a motion by MySpace LLC’s counsel, Ms. Rheinheimer, to
20 withdraw. At no time—whether at the outset of the case, or at the time of its
21 acquisition by Time, Inc., or its “name change” in Delaware—did MySpace LLC ever
22 file any Corporate Disclosure Statement.

23 Plaintiff then filed a motion for default and to join or substitute Legacy Vision,
24 LLC, as a defendant. Doc. 46. The Court ordered Ms. Rheinheimer to appear, as well
25 as representatives from MySpace LLC and Legacy Vision. Doc. 48. On December
26 22, 2016, the Court held the hearing. A full transcript of that hearing is attached as
27 Exhibit 1 to the Declaration of Caleb Mason filed concurrently herewith (“Mason
28 Decl.”). Doc. 67-1. Plaintiff appeared for the hearing, as did Ms. Rheinheimer.



1 Mason Decl. Ex. 1, 1:4-6. Representatives from MySpace and Legacy Vision failed to
 2 appear. *Id.* at 1:7-8. The Court asked Ms. Rheinheimer why her clients had not
 3 appeared as the Court had ordered, and Ms. Rheinheimer responded that neither entity
 4 “exists as an operating entity anymore.” *Id.* at 1:10-11. She stated that MySpace had
 5 changed its name to “Legacy Vision” and that “[her] understanding is that Legacy
 6 Vision LLC currently exists only in name with the secretary of state. There is no
 7 management; there is no employees; there is no asset; there is no anything; there is no
 8 operating entity there, Your Honor.” *Id.* at 1:14-16. The Court rejected that assertion,
 9 stating that a corporate entity cannot evade liability by changing its name. *Id.* at 7:8-
 10 14.

11 In the Court’s Minute Order of December 22, 2016, the Court ordered that
 12 default be entered against “MySpace LLC and Legacy Vision LLC.” Doc. 50 (“The
 13 Court will issue a separate order granting Plaintiff’s request for entry of default
 14 against Myspace LLC and Legacy Vision LLC.”). At all times since March 7, 2016,
 15 the only legal entity in existence named “MySpace LLC” was MySpace LLC, the
 16 company with Delaware Registration Number 5982356.

17 **B. Summary of MySpace LLC’s Relevant Corporate History**

18 In July 2014, at the outset of this case, MySpace LLC was owned by Specific
 19 Media, whose parent company was Interactive Media Holdings, Inc. (“Interactive”) (of
 20 which Timothy Vanderhook (“Vanderhook”) was CEO). Declaration of Scott Hunter
 21 Filed Concurrently Herewith (“Hunter Decl.”) ¶¶ 6-9 and Exs. E-H. On January 14,
 22 2015, Interactive changed its name to Viant, Inc. Hunter Decl. ¶¶ 9-10 and Exs. H, I.

23 In February 2016, Time, Inc. acquired Viant and all its assets, including
 24 MySpace. Hunter Decl. ¶ 11 and Ex. J. On March 3, 2016, Vanderhook filed papers
 25 in Delaware changing the name of MySpace LLC, to Legacy Vision, LLC. *Id.* at Ex.
 26 K. Then, four days later, a new LLC was created in Delaware, named MySpace LLC,
 27 File Number 5982356. Its corporate address is Time, Inc.’s address: 225 Liberty
 28 Street, New York, NY 10281. *Id.* at Exs. L, M, N.

1 MySpace LLC is an ongoing, operating company. It remains part of the “Viant
2 family of companies,” and, through Viant, is a subsidiary of Time, Inc. Vanderhook
3 has given multiple interviews describing the company’s ongoing operations and its
4 relationship with Time, as have Time officials. *Id.* at Exs. H, J.

5 The most reasonable inference is that the “name change” of MySpace to Legacy
6 Vision was to provide “cover” for a subsequent assertion (whether to courts, tax
7 authorities, or creditors) that MySpace is no longer an operating entity, or that Legacy
8 Vision “is only a name.” That was Mr. Rheinheimer’s assertion to this Court. Mason
9 Decl., Ex. 1, 1:14-16, 7:13-14. That assertion is false.

10 Here are the facts:

- 11 (1) MySpace LLC, is an operating entity. Hunter Decl. Ex. L (Incorporation
12 records from Delaware Sec’y of State). Not only is it an *operating* entity, it
13 is an actively *litigating* entity, in multiple district courts around the country.
14 *Id.* at ¶¶ 8, 15-18, Exs. G, O, P, Q.
- 15 (2) MySpace LLC, is owned by Viant, Inc., which is owned by Time, Inc. *Id.* at
16 ¶¶ 11, 17.
- 17 (3) At the outset of this lawsuit, Interactive was the parent company of
18 MySpace. *Id.* at ¶¶ 8-9, Exs. G, H. Interactive changed its name to Viant on
19 January 14, 2015. *Id.* at ¶ 9, Ex. H. Viant was acquired by Time, Inc. on or
20 about February 11, 2016. *Id.* at ¶ 11. On March 3, 2016, Timothy
21 Vanderhook filed a “name change” document with the Delaware Secretary of
22 State, changing the name of MySpace LLC, to Legacy Vision, LLC. *Id.* ¶ 12,
23 Ex. K.
- 24 (4) Four days later, on March 7, 2016, a new company was registered in
25 Delaware called “MySpace LLC.” *Id.* at ¶ 13, Ex. L. Its registration number
26 is Delaware File Number 5982356. *Id.* It registered with the California
27 Secretary of State’s office on April 1, 2016, listing as its address 225 Liberty
28 St., New York, NY 10281, which is Time, Inc.’s corporate address. *Id.* at ¶



1 14, Ex. M. Time’s CEO, Joe Ripp, has given media interviews discussing
2 Time’s acquisition of MySpace and MySpace’s value and ongoing
3 operations. *Id.* at ¶ 23, Ex. V.

4 (5) Christopher Magill, the individual who accepted service of this lawsuit for
5 MySpace on November 4, 2015, is, as of February 2017, “the Vice President
6 of Legal Affairs for the Viant family of companies,” which are: “Specific
7 Media, MySpace, Vindico [and] Xumo.” Mr. Magill is a licensed California
8 attorney, and the address and phone number he reported to the Bar are those
9 of Viant. *Id.* at ¶ 22, Ex. U (Christopher Magill LinkedIn profile, Christopher
10 Magill California Bar reporting information).

11 (4) James Lee is the managing partner of LTL Attorneys, LLP, a prominent
12 intellectual property firm with 38 lawyers, and offices in Los Angeles and
13 San Francisco. *Id.* at ¶ 20, Ex. S (LTL’s website pages, including Lee’s
14 email).

15 (5) James Lee’s firm represents MySpace in other litigation. *Id.* at ¶ 21, Ex. T.

16 (6) Timothy Vanderhook was, and remains, CEO of MySpace and Viant. *Id.* at
17 ¶¶ 9, 19, 26, Exs. R, Y.

18 In sum, MySpace, LLC is an operating company, a subsidiary of Viant, Inc.,
19 and Time, Inc. The MySpace that exists today is the same MySpace that Plaintiff
20 sued in 2014. It operates from the same office. Timothy Vanderhook remains CEO.
21 Christopher Magill remains chief legal officer. LTL Attorneys and James Lee remain
22 its outside counsel. The only difference is that since March 2016, MySpace has been
23 owned by Time, Inc.

24 **C. MySpace’s Attorney States Under Oath that She Was Retained by**
25 **Viant, Inc. (MySpace’s Parent Company)**

26 On Monday, February 6, 2017, Ms. Rheinheimer filed a declaration, Doc. 62,
27 revealing—for the first time in two years of litigation—that Viant had actually been
28 the entity that hired her and directed the litigation. Doc. 62 at ¶¶ 2, 4. She declared



1 that she had sent “corporate counsel for Viant” “all pleadings, motions, and minute
2 orders.” She declared that corporate counsel for Viant Inc. told her on September 16,
3 2016, that her “services would no longer be required in connection with this matter.”
4 She declared that after that directive, she made ten attempts to contact Viant, but Viant
5 never responded. The Viant attorney who hired Rheinheimer was Christopher Magill,
6 the attorney who accepted service of Plaintiff’s complaint, and who was and remains
7 general counsel for Viant. In November 2016, Viant told Rheinheimer to cease work
8 on the lawsuit. On December 22, 2016, in preparation for the hearing, Ms.
9 Rheinheimer again attempted to contact her client, and spoke with James Lee, Esq.,
10 current counsel for Proposed Intervenor MySpace, LLC. Mason Decl., Ex. 1, 1:18-24.

11 **D. MySpace’s Attorneys Are at Odds With One Another**

12 In her Declaration, Ms. Rheinheimer declares that Viant, Inc. told her to stop
13 working, then failed to responded to ten successive written communications from her,
14 seeking direction in the case. Doc. 62 at ¶ 3. Ms. Rheinheimer offers to “appear in
15 camera before this Court and outside the presence of Plaintiff’s counsel, to provide
16 additional information as required.” *Id.* ¶ 3.

17 In its ex parte application, Doc. 68, 6:23-26 and 7:25-28, MySpace accuses its
18 attorney Ms. Rheinheimer of providing “less than accurate” information to the Court.
19 In its email communications, it refers to “misstatements made by you and Ms.
20 Rheinheimer.” Doc. 68-1 at 7. MySpace has not specified what these alleged
21 misstatements may be. During the parties’ Rule 26 discussions, Ms. Rheinheimer
22 stated that she has never represented Legacy Vision LLC, that she was hired by Viant
23 to represent MySpace LLC, that her contact at Viant is Christopher Magill, and that
24 she spoke with James Lee, Esq., on December 22, 2017 prior to the hearing before
25 Judge Walsh. Declaration of Laura Gladwin Payne filed concurrently herewith, ¶ 2.

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III.
ARGUMENT

A. MySpace’s Brief Never Mentions Its Failure to File Corporate Disclosure Statements as Required by Rule 7.1

As discussed above, Proposed Intervenor’s Motion does not acknowledge or defend its failure to disclose its corporate owners at any time in this case, as is required under Federal Rule of Civil Procedure 7.1 and Local Rule 7.1-1. MySpace concealed its corporate ownership and made none of the required disclosures at any time—not at the outset of this case, and not when MySpace LLC changed ownership, sold assets, or changed its name.

As Plaintiff sets forth in his Supplemental Brief in Support of Default Judgment and his Opposition to Proposed Intervenor’s Ex Parte Application, Docs. 67 and 69, MySpace’s present attempt to evade liability in this and other cases was predicated on its deliberate failure to file the required disclosure statements under Rule 7.1 and L.R. 7.1-1.

Yet, Proposed Intervenor’s Motion *never mentions* MySpace’s failure to file its disclosure statements, let alone explains or defends that failure.

B. The Motion to Intervene Should be Denied Because Proposed Intervenor is Already a Party to the Case, as a Continuation of Named Defendant MySpace LLC

Proposed Intervenor MySpace’s Motion to Intervene argues that it is not a party to this litigation, despite having the same name, ownership, management, headquarters, personnel, and counsel as the named defendant, because it is a “newly formed, separate entity” from Defendant MySpace LLC. Mot. 11:19-21. That argument is meritless both legally and factually.

It is clear from the facts obtained in public records and those outlined in the Motion that Proposed Intervenor MySpace is a continuation of Defendant MySpace LLC and is liable for Defendant MySpace LLC’s debts under California’s

1 continuation theory of successor liability. Under California law, a successor
 2 corporation will be held liable for the debts of its predecessor in the following
 3 circumstances: “(1) there is an express or implied agreement of assumption, (2) the
 4 transaction amounts to a consolidation or merger of the two corporations, (3) the
 5 purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets
 6 to the purchaser is for the fraudulent purpose of escaping liability for the seller’s
 7 debts.” *Cleveland v. Johnson*, 209 Cal. App. 4th 1315, 1327 (2012) (quoting *Ray v.*
 8 *Alad Corp.*, 19 Cal.3d 22, 28 (1977)).

9 However, Proposed Intervenor relies on a single line from an outdated, factually
 10 inapplicable case to argue that it is not a continuation of Defendant MySpace LLC.
 11 Proposed Intervenor cites to *Maloney v. Am. Pharm. Co.*, 207 Cal. App. 3d 282 (1988)
 12 for the proposition that it cannot be the continuation of Defendant MySpace LLC
 13 because it did not directly purchase assets from Defendant MySpace LLC.¹ Mot.
 14 13:14-22. This assertion fails. *Maloney* does not stand for that proposition; it is
 15 factually distinguishable; and more recent caselaw sets forth the broader, controlling
 16 standard.

17 In fact, the *Maloney* court found the lack of a direct sale of assets to be just *one*
 18 *factor* among many that weighed against a finding of continuation. It never states that
 19 a direct sale of assets is an absolute requirement for the continuation theory of
 20 liability; rather, it is merely a “characteristic” of continuation. *Id.* at 288. Indeed,
 21 *Maloney* focused primarily on the fact that the newly formed corporation in that case
 22 did *not* operate the same line of business of the former company, and it only acquired
 23 10% of its assets and employed only one of its former employees. *Id.* at 285-86.

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 25
 26 ¹ Proposed Intervenor also cites to federal case law that applies the *Maloney* decision.
 27 *Katzir’s Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1151 (9th. Cir
 28 2004); *Agit Glob., Inc. v. Wham-O, Inc.*, No. 2:09-cv-08133-CAS, 2014 WL 1365200,
 at *5 (C.D. Cal. April 7, 2014). However, these cases misapply *Maloney* and do not
 consider the subsequent, controlling California case law in *Cleveland v. Johnson*, 209
 Cal. App. 4th 1315 (2012).

1 This case presents almost literally opposite facts. Here, the new company
2 operates exactly the same business, with the same owner, the same staff, the same
3 headquarters, address, and counsel. It is clear why Proposed Intervenor MySpace did
4 not discuss these other factors that were determinative in *Maloney*: in this case,
5 Proposed Intervenor MySpace, or its parent companies, purchased substantially *all* of
6 Defendant MySpace LLC’s assets and now operates the *exact same* business as
7 Defendant MySpace LLC did with the same individuals running the company. *See*
8 Declaration of Larry Madden (“Madden Decl.”) ¶ 1, 3, 7; Hunter Decl. ¶¶ 9, 17, 19,
9 26, Exs. R, Y (For example, Vanderhook was MySpace LLC’s CEO both before and
10 after its asset transfers). Mr. Madden’s declaration appears to intentionally leave out
11 certain determinative facts, but what can be gleaned from it is:

- 12 (1) Mr. Madden was formally the CFO of Specific Media LLC, which he
13 suggests was the parent company of Defendant MySpace LLC;
- 14 (2) Mr. Madden is currently the CFO of Viant Technology LLC, which is the
15 current parent company of Proposed Intervenor MySpace; and
- 16 (3) Time Inc. and its subsidiaries now own all of Defendant MySpace LLC’s
17 assets. Madden Decl. ¶¶ 1, 3, 6, 7.

18 Mr. Madden does not specify what Time Inc.’s relationship is with Viant
19 Technology LLC. However, Time Inc. is the parent company of Viant Technology
20 LLC. Hunter Decl. ¶ 11. Proposed Intervenor also makes clear in its Motion that
21 Defendant MySpace LLC, re-named Legacy Vision LLC, is now a shell company
22 without any assets. Mot. 1:13-14.²

23 Recent, controlling California law makes clear that the continuation theory of
24 _____

25 ² This is an admission of precisely what Plaintiff alleges: that MySpace and its
26 parents, Viant and Time, engaged in secret, undisclosed transactions in March 2016,
27 with the specific aim of creating a “new” MySpace and an “empty shell,” Legacy
28 Vision, keeping the transactions hidden from creditors and litigants so that they could
later “spring” them on creditors, as they are attempting to do here. **There is no legal
basis or excuse for MySpace to have hidden these transactions from Plaintiff and
from the Court.**





1 liability is an equitable doctrine that requires the examination of the specific facts of
2 each case to determine liability, and “no single factual element, standing alone, would
3 establish or negate successor liability.” *Cleveland*, 209 Cal. App. 4th at 1334. The
4 *Cleveland* court thoroughly analyzed numerous cases ruling on the continuation
5 theory, including *Maloney*, and determined that no “abstract statement of a legal
6 point—in a case involving issues and facts entirely different from those in this case—
7 can or should control the application of an equitable doctrine where ‘[c]onsiderations
8 of fairness and equity apply’ and ‘it is appropriate to examine successor liability
9 issues on their own unique facts.’” *Id.* at 1332-33.

10 Significantly, the court in *Cleveland* found successor liability in a factual
11 posture in which there was no formal purchase of the assets of another corporation.
12 *Id.* at 1327. Thus, Proposed Intervenor’s assertion that the direct sale of assets is
13 required under *Maloney* is demonstrably false.

14 After analyzing the relevant case law, the *Cleveland* court found successor
15 liability and ruled as follows:

16 The significant principle is that ‘if a corporation organizes another
17 corporation with practically the same shareholders and directors, transfers
18 all the assets but does not pay all the first corporation’s debts, and
19 continues to carry on the same business, the separate entities may be
20 disregarded and the new corporation held liable for the obligations of the
old.’

21 *Id.* at 1334; *Wolf Metals Inc. v. Rand Pac. Sales, Inc.*, 4 Cal. App. 5th 698, 709 (2016)
22 (finding continuation liability where defendant merely continued predecessor’s
23 business operations under a different name with the same employees after
24 predecessor’s bankruptcy proceeding closed).³

25 The scenario the *Cleveland* court describes is precisely the scenario in this case.
26 Proposed Intervenor obtained substantially all of the assets from Defendant MySpace
27 _____

28 ³ It should also be noted that *Wolf Metals* found that inadequacy of consideration is
not necessary to find successor liability. *Wolf Metals*, 4 Cal. App. 5th at 710.

1 LLC and continues to run the exact same business—Myspace.com—with the same
2 individuals running the business (same website, same subscribers, same advertisers,
3 same headquarters, same executives, same general counsel) Hunter Decl., ¶¶ 17, 19,
4 yet it is trying to avoid paying the liabilities incurred by its predecessor. This is the
5 *exact situation* that the continuation theory of liability was designed to address. The
6 whole point of the doctrine is that companies will not be permitted to engineer
7 convoluted transactions in the attempt to shift assets and disguise the ownership of the
8 company to stiff creditors and avoid liability.

9 Furthermore, it is likely the case that Defendant MySpace LLC’s transfer of
10 assets to Proposed Intervenor was done with the fraudulent purpose of escaping
11 liability for its debts, which forms another basis to hold Proposed Intervenor liable.
12 Proposed Intervenor claims that this cannot possibly be true because Plaintiff’s claims
13 are without merit. Mot. 13:25-15:15. Proposed Intervenor then spends pages detailing
14 the alleged deficiencies in Plaintiff’s claims.

15 However, the particular merits of Plaintiff’s claims (which are not, *contra*
16 Proposed Intervenor’s assertion, deficient—indeed, the Court has already ruled on this
17 point, denying MySpace’s motion to dismiss, Doc. 41) are not the issue. Plaintiff
18 does not allege that MySpace was only trying to avoid liability to him; on the
19 contrary, MySpace was trying to avoid liability to *all* its creditors. It is clear from
20 examining the various lawsuits pending against MySpace LLC that the company
21 likely has significant debts and numerous creditors pursuing claims against it. *See,*
22 *e.g.,* Hunter Decl. ¶¶ 8, 16, 17, 18, Ex. G, O, P, Q. Accordingly, Defendant MySpace
23 LLC would have ample motivation to try to avoid such debts, irrespective of
24 Plaintiff’s claims. Considering that Defendant MySpace LLC’s assets made various
25 transfers of ownership before they ended up owned and controlled by the same parent
26 company—Time, Inc.—with only a shell company devoid of assets remaining, the
27 inference is unavoidable that these transfers were done with the specific intention to
28 shed its liabilities while retaining its assets.

1 Moreover, two additional facts demonstrate that MySpace’s strategy was
2 deliberately intended to evade creditors. First, it concealed the transactions not only
3 from Plaintiff and the Court, but also, apparently, from its own attorney, Ms.
4 Rheinheimer. *See* Mason Decl., Ex. 1, 1:10-16. The only conceivable reason to
5 conceal the transactions from Ms. Rheinheimer was to ensure that she would not be
6 able to report them to the Court, as required under the Federal Rules of Civil
7 Procedure and Local Rules.

8 Second, MySpace LLC is at present employing the same “gotcha” ruse against
9 other creditors. As set forth in Plaintiff’s Opposition to Proposed Intervenor’s Ex
10 Parte Application, MySpace is presently attempting the exact same subterfuge with
11 another creditor in another court. Doc. 69. Altitude Digital Partners, Inc., a business
12 with which MySpace LLC contracted, obtained a judgment against MySpace LLC,
13 and when it tried to enforce that judgment in Orange County Superior Court,
14 MySpace LLC, through counsel James Lee, claimed that MySpace LLC had changed
15 its name to Legacy Vision LLC and there was no relationship between that entity and
16 the current MySpace LLC. *Id.* at 8:1-18; Hunter Decl. ¶ 18, Ex. Q. MySpace LLC,
17 per Mr. Lee, is making the same baseless assertion as it is here: that MySpace LLC
18 has no relationship to MySpace LLC except the happenstance of a shared name. *Id.*

19 In sum, Proposed Intervenor MySpace LLC should not be permitted to
20 intervene because it is already a party to this lawsuit. It is a continuation of and
21 successor to Defendant MySpace LLC. It deliberately declined to answer or contest
22 the allegations against it, and default has been entered. Proposed Intervenor’s only
23 remedy now is to attempt to set aside the default entered against Defendant MySpace
24 LLC. It cannot be allowed to re-litigate this case.

25 IV.

26 CONCLUSION

27 For the reasons set forth herein, the Court should deny Proposed Intervenor’s
28 Motion to Intervene.



1 DATED: March 14, 2017

Respectfully submitted,

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By:

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