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 9 Myspace LLC

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

13 STEPHEN HANDY AGUIAR,

14 Plaintiff,

15 v.

16 MYSPACE INC., aka LEGACY  
 17 VISION, LLC

18 Defendants.  
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CASE NO.: 2:14-CV-05520-SJO-PJWx

Judge: Hon. S. James Otero  
 Patrick J. Walsh

**PROPOSED INTERVENOR  
 MYSPACE LLC'S MOTION FOR  
 LEAVE TO INTERVENE;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

[Filed Concurrently With Declaration of  
 Larry Madden; Complaint in Intervention  
 Request for Judicial Notice; and  
 [Proposed] Order]

Action Filed: July 16, 2014

Hearing Date: April 4, 2017

Time: 10:00 a.m.

Courtroom: 10C

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 4, 2017 at 10:00 a.m., or as soon thereafter  
3 as the matter may be heard in Courtroom 10C of the United States District Court for the  
4 Central District of California, located at 350 W. 1st Street, Los Angeles, California  
5 90012, pursuant to Federal Rule of Civil Procedure 24 Proposed Intervenor Myspace  
6 LLC (“Proposed Intervenor”) will move this Court to intervene in this lawsuit to defend  
7 against Plaintiff’s improper attempts to enter a default judgment against it. Plaintiff has  
8 never served Proposed Intervenor with the Complaint in this lawsuit or otherwise  
9 attempted to join Proposed Intervenor in this action. Consequently, Proposed Intervenor  
10 has never had an opportunity to defend its interests against Plaintiff. Accordingly, if  
11 Proposed Intervenor is not allowed to intervene and participate in this litigation Proposed  
12 Intervenor would be deprived of its due process rights if a default judgment is entered  
13 against it.

14 This motion will be based on this notice of motion and motion, the attached  
15 Memorandum of Points and Authorities, Declaration of Larry Madden, and the pleadings  
16 and papers filed herein.

17 **Compliance with Local Rule 7-3**

18 Prior to bringing this Motion and its associated *ex parte* application, Proposed  
19 Intervenor attempted to resolve this issue informally with Plaintiff. On February 16,  
20 2017, Proposed Intervenor’s counsel engaged in a meet and confer pursuant to Local  
21 Rule 7-3 regarding the basis for this Motion as well as a discussion with Plaintiff’s  
22 counsel concerning the fact that Proposed Intervenor is a separate entity from the  
23 Defendant named in this lawsuit. During this meet and confer, Proposed Intervenor’s  
24 counsel also explained that Proposed Intervenor did not assume any of Defendant’s  
25 liabilities to Plaintiff. Proposed Intervenor’s counsel asked Plaintiff’s counsel to  
26 withdraw the pending request to amend the default judgment. Plaintiff’s counsel  
27 refused. Proposed Intervenor was thus left with no alternative but to file this motion.  
28

1 DATED: March 7, 2017

**LTL ATTORNEYS LLP**

2  
3  
4 By /s/ James M. Lee

5 James M. Lee

6 Aaron R. Kollitz

7 Timothy S. Fox

8 Attorneys for Proposed Intervenor

9 Myspace LLC

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23

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26

27

28

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION..... 1

3

4 II. STATEMENT OF FACTS ..... 2

5 A. Proposed Intervenor is a Separate Entity from Judgment Debtor That

6 Acquired the Name “Myspace LLC” via a Foreclosure by Its Parent

7 Company Time Inc..... 2

8 B. Plaintiff Sued Judgment Debtor in Connection with His Drug Dealing

9 Convictions and Resulting Prison Sentence of 30 Years ..... 3

10 C. Plaintiff Litigated This Case Solely Against Judgment Debtor but Now

11 Seeks Entry of Default Judgment Against Proposed Intervenor ..... 4

12 III. ARGUMENT..... 5

13 A. Proposed Intervenor Should Be Allowed to Intervene in This Lawsuit ..... 5

14 i. Legal Standard ..... 5

15 ii. Proposed Intervenor May Intervene as a Matter of Right ..... 6

16 iii. This Court Should Exercise Its Discretion and Permit Proposed

17 Intervenor to Intervene..... 7

18 B. The Court Lacks Jurisdiction Against Proposed Intervenor if it is not

19 Allowed to Intervene ..... 9

20 C. Plaintiff’s Arguments Against Intervention are Baseless ..... 10

21 i. Proposed Intervenor Could Not Have Intervened Sooner ..... 10

22 ii. Proposed Intervenor is Not a Successor-in-Interest or Continuation

23 of Judgment Debtor..... 11

24 a. Plaintiff Cannot Allege an Assumption of Liability ..... 12

25 b. The Transaction Does Not Amount to a Consolidation or

26 Merger Because Judgment Debtor Still Exists..... 13

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- c. Proposed Intervenor is Not a Mere Continuation of Judgment Debtor Because There Was No Direct Sale Between the Parties ..... 13
- d. The Transfer of Assets Was Not to Avoid Liability Because Judgment Debtor is Not Liable to Plaintiff ..... 13
- e. Plaintiff Improperly Imputes Inaccurate Statements Made by Judgment Debtor’s Counsel to Proposed Intervenor..... 15

IV. CONCLUSION..... 16

**TABLE OF AUTHORITIES**

**Cases**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Agit Glob., Inc. v. Wham-O, Inc.*,  
No. 2:09-cv-08133-CAS, 2014 WL 1365200 (C.D. Cal. April 7, 2014)..... 13

*Arakaki v. Cayetano*,  
324 F.3d 1078 (9th Cir. 2003) ..... 6

*Benny v. Pipes*,  
799 F.2d 489 (9th Cir.1986) ..... 9

*Crispin v. Christian Audigier, Inc.*,  
717 F. Supp. 2d 965 (C.D. Cal. 2010) ..... 15

*Cunningham v. David Special Commitment Ctr.*,  
158 F.3d 1035 (9th Cir. 1998) ..... 6

*Daniel v. Ford Motor Co.*,  
806 F. 3d 1217 (9th Cir. 2015) ..... 12

*Daniel v. Riverside Partners, L.P.*,  
206 Cal. App. 4th 1292 (2002) ..... 12

*Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*,  
456 U.S. 694 (1982)..... 9

*Katzir’s Floor & Home Design, Inc. v. M-MLS.com*,  
394 F.3d 1143 (9th. Cir 2004) ..... 13

*Kootenai Tribe of Idaho v. Veneman*,  
313 F.3d 1094 (9th Cir. 2002) ..... 7

*Maloney v. Am. Pharm. Co.*,  
207 Cal. App. 3d 282 (1988) ..... 13

*Mullane v. Cent. Hanover Bank & Trust Co.*,  
339 U.S. 306 (1950)..... 10

*Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*,  
526 U.S. 344 (1999)..... 10

1 *Neal v. State Farm Ins. Cos.*,  
 2 188 Cal. App. 2d 690 (1961) ..... 12

3 *Pennoyer v. Neff*,  
 4 95 U.S. 714 (1878)..... 9

5 *Phillips v. Cooper Laboratories*,  
 6 215 Cal. App. 3d 1648 (1989) ..... 13

7 *Ray v. Alad Corp.*,  
 8 19 Cal. 3d 22 (1977) ..... 12

9 *S.E.C. v. Internet Solutions for Bus. Inc.*,  
 10 509 F.3d 1161 (9th Cir. 2007) ..... 10

11 *S.E.C. v. Ross*,  
 12 504 F.3d 1130 (9th Cir. 2007) ..... 9, 10

13 *Smith v. Pangilinan*,  
 14 651 F.2d 1320 (9th Cir. 1981) ..... 6, 11

15 *Spangler v. Pasadena City Bd. of Ed.*,  
 16 552 F.2d 1329 (9th Cir. 1977) ..... 8

17 *Trbovich v. United Mine Workers of Am.*,  
 18 404 U.S. 528 (1972)..... 6

19 **Statutes**

20 18 U.S.C. § 2703(e) ..... 15

21 18 U.S.C. § 2707(f)..... 14

22

23 **Rules**

24 Fed. R. Civ. P. 4 ..... 9

25 Fed. R. Civ. P. 24 ..... 5

26 Fed. R. Civ. P. 24(a)(2) ..... 6, 11

27

28

1	Fed. R. Civ. P. 24 (b) .....	9
2	Fed. R. Civ. P. 24(b)(1)(B) .....	7
3	Fed. R. Civ. P. 24 (b)(3).....	7
4		
5		
6		
7		
8		
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12		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff filed his lawsuit in 2014 against an entity that then-operated under the  
4 name Myspace LLC (“Judgment Debtor”). In March 2016, in conjunction with a  
5 foreclosure of Judgment Debtor’s assets, including all rights to the “Myspace LLC”  
6 name, Judgment Debtor changed its name to Legacy Vision LLC. Plaintiff specifically  
7 acknowledged this name change when he filed a motion to substitute or join Legacy  
8 Vision LLC as a party in this litigation.

9 At no time has Plaintiff attempted to add the entity that currently operates under  
10 the name “Myspace LLC” (“Proposed Intervenor”) to this litigation. Despite this,  
11 Plaintiff has recently specifically requested that the Court enter a default judgment  
12 against Proposed Intervenor. Plaintiff’s motivations in making such a request are clear.  
13 Having discovered that Judgment Debtor likely no longer has any assets with which to  
14 pay any judgment awarded against it, he seeks to substitute in third-party to pay any  
15 judgment awarded. However, Plaintiff cannot obtain entry of a default judgment against  
16 a third-party simply because it has the same name as Judgment Debtor. To do so would  
17 be a clear violation of that third-party’s due process rights.

18 Accordingly, as Proposed Intervenor’s interests are directly threatened by  
19 Plaintiff’s request for entry of a default judgment against it and as no other party will  
20 adequately protect Proposed Intervenor’s rights in this litigation, Proposed Intervenor  
21 more than satisfies the requirements for either mandatory or permissive intervention  
22 under the Federal Rules of Civil Procedure and should be allowed to intervene in this  
23 action.

24 In response to this request, Plaintiff will almost certainly argue that Proposed  
25 Intervenor should not be allowed to intervene in this action because it has waited too  
26 long to intervene or because it is a successor-in-liability to Judgment Debtor and thus  
27 already joined in this litigation. Plaintiff’s argument can quickly be dismissed by the  
28 Court as it directly contradicts Plaintiff’s own acknowledgement in his filings that

1 Judgment Debtor and Proposed Intervenor are distinct entities as well as the relevant  
2 facts discussed below. For these same reasons any argument by Plaintiff that Proposed  
3 Intervenor should have moved to intervene sooner can also be summarily dismissed by  
4 the Court as Proposed Intervenor’s assets were not threatened until Plaintiff’s recent  
5 request for entry of a default judgment against it. Accordingly, Proposed Intervenor had  
6 no basis to intervene previously.

7 For these reasons, Proposed Intervenor respectfully requests the Court grant this  
8 Motion to Intervene and allow Proposed Intervenor to intervene in this action.

9 **II. STATEMENT OF FACTS**

10 **A. Proposed Intervenor is a Separate Entity from Judgment Debtor**  
11 **That Acquired the Name “Myspace LLC” via a Foreclosure by Its**  
12 **Parent Company Time Inc.**

13 Viant Technology Inc. was the former parent company for Judgment Debtor.  
14 Decl. of Madden (“Madden Decl.”) ¶ 2. In September 2013, Specific Media LLC,  
15 another subsidiary of Viant Technology Inc., executed a credit agreement with Bank of  
16 America. *Id.* ¶ 3. In conjunction with this credit agreement, all of Viant Technology  
17 Inc.’s subsidiaries, including Judgment Debtor, pledged all of their assets as collateral  
18 to guarantee the credit agreement.<sup>1</sup> *Id.* These assets included all of Judgment Debtor’s  
19 intellectual property and goodwill, including the right to operate under the name  
20 “Myspace LLC.” *Id.* Bank of America recorded a UCC Filing Statement with the  
21 California Secretary of State to put the world on notice that it had a first position lien on  
22 all of Specific Media’s and Judgment Debtor’s assets. Req. for Judicial Notice (“RJN”),  
23 Exh. A. In late 2015, Specific Media defaulted on the credit agreement. Madden Decl.  
24 ¶ 4.

25 Around the time of Specific Media’s default, Time Inc. began negotiating with  
26 Bank of America to purchase the credit agreement with Specific Media. *Id.* at ¶ 5. In

27 \_\_\_\_\_  
28 <sup>1</sup> The assets of multiple other related entities were also used to secure the credit  
agreement. Madden Decl., ¶ 3.

1 or about February 2016, Time Inc., for significant consideration, acquired all of Specific  
2 Media’s indebtedness under the credit agreement from Bank of America. *Id.* ¶ 6. Time,  
3 Inc. then assigned its rights under the credit agreement to a newly formed subsidiary, TI  
4 Newco LLC. *Id.* TI Newco LLC was created on February 5, 2016. Request for Judicial  
5 Notice (“RJN”), Exh. A. On or about February 9, 2016, TI Newco LLC conducted a  
6 strict foreclosure under the terms of the credit agreement. Madden Decl. ¶ 7. In  
7 conjunction with the strict foreclosure TI Newco LLC acquired all rights, title, and  
8 interest in all collateral that secured the credit agreement, including all collateral of  
9 Judgment Debtor. *Id.* This included the right to use the name “Myspace LLC.” *Id.*  
10 Under the terms of the documents that effectuated the strict foreclosure and transfer of  
11 assets, the transfer of Judgment Debtor’s assets “shall not include any obligations or  
12 liabilities of any kind of nature of [Judgment Debtor] . . . and nothing contained herein  
13 shall be deemed an agreement of [TI Newco LLC] to assume any such liabilities or  
14 obligations.” *Id.* ¶ 8.

15 On March 3, 2016 Judgment Debtor, as it no longer owned the right to use the  
16 name “Myspace LLC,” changed its name to Legacy Vision LLC. RJN, Exh. B. On  
17 March 7, 2016, Proposed Intervenor was formed as a Delaware Limited Liability  
18 Company. RJN, Exh. C. Appreciating the value in a popular and recognizable name,  
19 TI Newco LLC transferred the naming rights for “Myspace LLC” to Proposed  
20 Intervenor, which began operating under the same at that time. Madden Decl. ¶ 9.

21 **B. Plaintiff Sued Judgment Debtor in Connection with His Drug Dealing**  
22 **Convictions and Resulting Prison Sentence of 30 Years**

23 In 2011, well before Proposed Intervenor was even formed, Plaintiff began  
24 serving a 30-year sentence in a federal penitentiary for selling narcotics. RJN, Exh. D.  
25 Despite being convicted of *seven* counts of distributing cocaine, Plaintiff still refuses to  
26 take responsibility for his crimes and instead blames Judgment Debtor for his  
27 incarceration based *solely* on Judgment Debtor’s compliance with a subpoena issued by  
28 the Drug Enforcement Agency (“DEA”).

1 In 2009, during the DEA's investigation of Plaintiff, Judgment Debtor was served  
2 with a subpoena for documents, including photographs, from Plaintiff's social media  
3 account. Dkt. 22 (Second Amended Complaint), Exh. A. The DEA never served the  
4 subpoena on Proposed Intervenor.<sup>2</sup> Judgment Debtor complied and produced  
5 photographs from Plaintiff's social media account, including, as alleged by Plaintiff,  
6 photos of Plaintiff with large quantities of narcotics. According to Plaintiff, those  
7 photographs were then used in Plaintiff's criminal trial. Based on this tenuous link,  
8 Plaintiff argues that he is in federal prison not because he actually sold large quantities  
9 of narcotics, but because Judgment Debtor complied with a valid subpoena from the  
10 DEA. Notably, Plaintiff does not dispute that the subpoena served on Judgment Debtor  
11 was valid, but argues that Judgment Debtor should somehow still not have complied  
12 with its terms. Dkt. 22 (Second Amended Complaint), ¶ 11 ("The material provided to  
13 the government by MySpace included material that was covered by a *lawful subpoena*")  
14 (emphasis added). Based on these specious allegations, Plaintiff filed this lawsuit  
15 against Judgment Debtor.

16 **C. Plaintiff Litigated This Case Solely Against Judgment Debtor but Now**  
17 **Seeks Entry of Default Judgment Against Proposed Intervenor**

18 On July 16, 2014, Plaintiff filed his initial complaint in this action naming  
19 Judgment Debtor and various agents of the DEA as defendants. Dkt. 1. On November  
20 7, 2014, Plaintiff filed his First Amended Complaint against the same defendants. On  
21 June 22, 2015, Plaintiff was ordered to file an amended complaint removing all claims  
22 against the DEA agents previously named. Dkt. 14. On October 19, 2015, Plaintiff filed  
23 his Second Amended Complaint naming only Judgment Debtor as a defendant. Dkt. 22.

24 In November 2015, Judgment Debtor moved to dismiss Plaintiff's complaint.  
25 Dkt. 27. The Court denied Judgment Debtor's motion on October 24, 2016 making  
26 Judgment Debtor's answer due by November 7, 2016. Dkt. 43. As Judgment Debtor no

27 \_\_\_\_\_  
28 <sup>2</sup> Proposed Intervenor was created almost seven years after the DEA served the  
subpoena.

1 longer had any assets or employees due to the foreclosure discussed above, it did not file  
2 an answer. Subsequent to this, Plaintiff discovered that Judgment Debtor had changed  
3 its name to Legacy Vision LLC and on December 5, 2016, Plaintiff filed a motion to  
4 substitute or name Legacy Vision LLC as a defendant. Dkt. 46. At this time, Plaintiff  
5 also sought entry of default as to “My Space Inc. aka Legacy Vision LLC” and, following  
6 entry of default filed, a motion for default judgment against the same defendant. Dkts.  
7 51, 53. On February 10, 2017, after not receiving any opposition to its motion for a  
8 default judgment, Plaintiff filed a motion to correct the default entered by the clerk to  
9 now name “Myspace LLC,” despite Plaintiff’s previous acknowledgement that  
10 Judgment Debtor’s operating name was Legacy Vision LLC. Dkt. 65. Plaintiff also  
11 sought to supplement its motion for entry of a default judgment to specifically obtain a  
12 judgment against the entity that currently operates as “Myspace LLC.” Dkt. 67.

13 Following its discovery that Plaintiff planned to seek a default judgment against  
14 Proposed Intervenor, Proposed Intervenor attempted to meet and confer with Plaintiff.  
15 These discussions were unsuccessful and Proposed Intervenor was forced to file an *ex*  
16 *parte* Application seeking to stay entry of default and a briefing schedule for this Motion.  
17 Dkt. 68. The Court denied Proposed Intervenor’s request for a stay, but did grant a  
18 briefing schedule for this motion. Dkt. 70. The Court subsequently struck Plaintiff’s  
19 request for a default judgment and all other pending motions. Dkt. 73. This Motion  
20 followed.

### 21 **III. ARGUMENT**

#### 22 **A. Proposed Intervenor Should Be Allowed to Intervene in This Lawsuit**

##### 23 *i. Legal Standard*

24 Under the Federal Rules of Civil Procedure, Proposed Intervenor may intervene  
25 in an existing matter either through mandatory or permissive intervention. *See* Fed. R.  
26 Civ. P. 24. The rules for intervening “traditionally receive[] liberal construction in favor  
27 of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir.  
28

1 2003). As set forth herein, this Court should grant Proposed Intervenor leave to  
2 intervene under either the mandatory or permissive provisions of the FRCP.

3 *ii. Proposed Intervenor May Intervene as a Matter of Right*

4 Under FRCP 24(a)(2), Proposed Intervenor must satisfy four criteria in order to  
5 intervene as a matter of right. First, the Proposed Intervenor must timely move to  
6 intervene. *Arakaki*, 324 F.3d at 1083. Second, Proposed Intervenor must have a  
7 significantly protectable interest relating to the property or transaction that is subject to  
8 the action. *See* Fed. R. Civ. P. 24(a)(2); *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th  
9 Cir. 1981). Third, Proposed Intervenor must be situated such that the disposition of the  
10 lawsuit *may* impair or impede its ability to protect that interest. *See* Fed. R. Civ. P.  
11 24(a)(2); *Cunningham v. David Special Commitment Ctr.*, 158 F.3d 1035, 1038 (9th Cir.  
12 1998). And fourth, Proposed Intervenor may not be adequately represented by existing  
13 parties. *See* Fed. R. Civ. P. 24(a)(2); *Trbovich v. United Mine Workers of Am.*, 404 U.S.  
14 528, 538 (1972). For this last criterion, only a “minimal” showing is required. *Arakaki*,  
15 324 F.3d at 1086.

16 Here, Proposed Intervenor has satisfied all four elements for mandatory  
17 intervention. As to the first element, Proposed Intervenor’s interests became threatened  
18 only on February 10, 2017 when Plaintiff requested this Court enter a default judgment  
19 specifically against it. Dkt. 67. Prior to this, Plaintiff was only pursuing entry of a  
20 judgment against Judgment Debtor, a completely separate entity. Thus, Proposed  
21 Intervenor’s motion to intervene is timely.

22 As to the second and third elements, Proposed Intervenor faces a high risk that its  
23 assets will be improperly levied or attached through Plaintiff’s enforcement efforts if a  
24 default judgment is entered against it. If any of Proposed Intervenor’s assets are  
25 improperly levied or attached, Proposed Intervenor will be substantially hindered in its  
26 ability to conduct its daily operations and involved in costly, burdensome litigation as a  
27 result. Consequently, Proposed Intervenor’s protectable interest—its assets—would be  
28



1 *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

2 Here, the common questions of law and fact are: (1) whether Proposed Intervenor  
3 is liable to Plaintiff for his alleged damage; (2) whether Judgment Debtor's compliance  
4 with the DEA subpoena caused Plaintiff's alleged damage; and (3) the amount of damage  
5 Plaintiff allegedly suffered. Plaintiff improperly seeks a default judgment against  
6 Proposed Intervenor to make it liable for Plaintiff's damages; and Proposed Intervenor  
7 denies all liability. Proposed Intervenor's intervention will not unduly delay the  
8 adjudication of Plaintiff's rights because Plaintiff already has a default against the  
9 appropriate Judgment Debtor—Legacy Vision LLC. If it desires to pursue this judgment  
10 against Proposed Intervenor, it will need to establish Proposed Intervenor's liability as a  
11 successor to Judgment Debtor's liability. This is the very issue on which Proposed  
12 Intervenor seeks to intervene. Accordingly, as Proposed Intervenor only seeks to  
13 intervene as to an element that Plaintiff already must establish, its intervention will not  
14 unduly delay any adjudication.

15 Furthermore, Plaintiff created the need for the intervention. But for Plaintiff's  
16 attempt to deprive Proposed Intervenor of its due process rights and obtain an improper  
17 default judgment against it, Proposed Intervenor would not need to intervene at all.  
18 Therefore, Plaintiff cannot earnestly argue that the intervention would cause any undue  
19 delay in the amendment and entry of a default judgment.

20 Finally, all applicable *Spangler* factors support intervention. Three of those  
21 factors already are briefed herein. Proposed Intervenor's interest in the amendment and  
22 entry of Plaintiff's proposed default judgment would unfairly expose all of Proposed  
23 Intervenor's assets to debt enforcement and likely impede its normal business operations.  
24 No other party can adequately represent Proposed Intervenor's interests and the  
25 intervention would not cause any undue delay in the litigation as Plaintiff already has  
26 the default judgment against Judgment Debtor to which he is entitled.

27 Proposed Intervenor's standing and legal position also are at the core of our  
28 judicial system: Plaintiff should not obtain an adverse judgment against Proposed



1 Intervenor without due process. Indeed, the intervention is *necessary* for the just and  
2 equitable adjudication of Proposed Intervenor’s purported liability to Plaintiff for  
3 Judgment Debtor’s debt. Therefore, based upon Federal Rule of Civil Procedure 24(b)  
4 and the relevant *Spangler* factors, this Court should grant Proposed Intervenor leave to  
5 intervene in this lawsuit.

6 **B. The Court Lacks Jurisdiction Against Proposed Intervenor if it is not**  
7 **Allowed to Intervene**

8 By seeking an order to enter default judgment against Proposed Intervenor,  
9 Plaintiff is asking this Court to exceed its jurisdictional authority and deprive Proposed  
10 Intervenor of its Constitutional due process rights. The United States Constitution  
11 precludes this Court from entering a default judgment against Proposed Intervenor  
12 without personal jurisdiction:

13 Since *Pennoyer v. Neff*, 95 U.S. 714, 733–34 (1878), the courts’ ability to  
14 exercise personal jurisdiction has been constrained by the Due Process  
15 Clauses of the Fifth and Fourteenth Amendments. The requirement that a  
16 court have personal jurisdiction represents a restriction on judicial power not  
17 as a matter of sovereignty, but as a matter of individual liberty. [internal  
18 quotes omitted.]

19 *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007); citing *Ins. Corp. of Ireland, Ltd. v.*  
20 *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

21 This Court obtains jurisdiction when a defendant is served with a complaint  
22 and summons:

23 Service of process is the means by which a court asserts its jurisdiction over  
24 the person. See *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir.1986) (A federal  
25 court is without personal jurisdiction over a defendant unless the defendant  
26 has been served in accordance with FED. R. CIV. P. 4.) . . . . Service of  
27 process has its own due process component, and must be notice reasonably  
28 calculated ... to apprise interested parties of the pendency of the action and

1 afford them an opportunity to present their objections [internal quotes  
2 omitted.]

3 *See S.E.C. v. Ross, supra*, 504 F.3d at 1138; citing *Mullane v. Cent. Hanover Bank &*  
4 *Trust Co.*, 339 U.S. 306, 314 (1950).

5 Only upon service of process does Proposed Intervenor have an obligation to  
6 participate in this litigation. “One becomes a party officially, and is required to take  
7 action in that capacity, only upon service of a summons or other authority-asserting  
8 measure stating the time within which the party served must appear and defend.”  
9 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). As such,  
10 should this Court amend and enter Plaintiff’s default judgment against Proposed  
11 Intervenor, that default judgment would be void. A judgment is void if the Court lacked  
12 personal jurisdiction over the parties bound to it. *See S.E.C. v. Internet Solutions for*  
13 *Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007).

14 Here, Plaintiff never served Proposed Intervenor with his Complaint and  
15 summons, which means that Proposed Intervenor had no obligation to participate in this  
16 litigation. Furthermore, this Court cannot enter a valid judgment against Proposed  
17 Intervenor without its intervention in this lawsuit as the Court otherwise lacks personal  
18 jurisdiction.

19 **C. Plaintiff’s Arguments Against Intervention are Baseless**

20 In response to this Motion, Plaintiff will likely argue that Proposed Intervenor  
21 should not be allowed to intervene for at least two reasons: (1) Plaintiff will argue that  
22 Proposed Intervenor should have moved to intervene sooner; and (2) Plaintiff will argue  
23 there is no need for intervention because Proposed Intervenor is merely a continuation  
24 of Judgment Debtor and thus already part of the litigation. Both arguments should be  
25 disregarded by the Court.

26 *i. Proposed Intervenor Could Not Have Intervened Sooner*

27 Plaintiff will almost certainly argue that Proposed Intervenor should have moved  
28 to intervene in this litigation sooner. Plaintiff’s argument fails for the simple reason that

1 Proposed Intervenor had no legal basis to intervene until Plaintiff sought an order to  
2 enter a default judgment against it. Before Plaintiff filed his Supplement to his Motion  
3 for Default [Dkt. 67], none of Proposed Intervenor’s interests were impacted, let alone  
4 threatened, by this lawsuit. As discussed above, prior to this Plaintiff only named and  
5 pursued Judgment Debtor as a defendant in this action.

6 Moreover, upon learning that Judgment Debtor had changed its name to Legacy  
7 Vision LLC, Plaintiff attempted to obtain entry of a default judgment against Judgment  
8 Debtor under its new name. Dkts. 51, 53. It was not until February 10, 2017 when  
9 Plaintiff filed his request to correct entry of default and its supplement to its notice of  
10 default that Plaintiff, for the first time, indicated it planned to pursue Proposed Intervenor  
11 in this litigation. Dkts. 65, 67. Accordingly, any attempt to intervene in this lawsuit  
12 prior to these filings of would have been denied because Proposed Intervenor did not  
13 have a protectable interest—a necessary element for intervention. *See* Fed. R. Civ. P.  
14 24(a)(2); *Smith v. Pangilinan, supra*, 651 F.2d at 1324.

15 *ii. Proposed Intervenor is Not a Successor-in-Interest or Continuation*  
16 *of Judgment Debtor*

17 Plaintiff will almost certainly also argue that Proposed Intervenor should not be  
18 entitled to intervene as it is merely a continuation of Judgment Debtor or otherwise a  
19 successor in liability to Judgment Debtor and thus already a party to this litigation. Any  
20 such argument by Plaintiff will fail as there is no dispute that Judgment Debtor and  
21 Proposed Intervenor are separate and distinct entities. Plaintiff admits that Judgment  
22 Debtor is a New York Limited Liability Company formed in November 2011, while  
23 Proposed Intervenor is a Delaware Limited Liability Company formed in March 2016.  
24 Dkt. 67-2 (Declaration of Scott Hunter), ¶¶ 4, 12–13. In fact, Plaintiff’s entire  
25 Supplement to Motion for Default Judgment is a tacit admission that Judgment Debtor  
26 and Proposed Intervenor are separate entities.

27 With separate entities, the general rule is that “where a corporation purchases, or  
28 otherwise acquires by transfer, the assets of another corporation, the acquiring

1 corporation does not assume the selling corporation’s debts and liabilities.” *Daniel v.*  
2 *Riverside Partners, L.P.*, 206 Cal. App. 4th 1292, 1300 (2002). Thus, the only way  
3 Plaintiff can prove Proposed Intervenor is liable for Judgment Debtor’s debts is to  
4 establish that Proposed Intervenor is liable as a successor-in-interest to Judgment Debtor.

5 To prove that Proposed Intervenor is liable for Judgment Debtor’s debts as a  
6 successor-in-interest, Plaintiff must prove one of the following exceptions: “(1) there is  
7 an express or implied agreement of assumption, (2) the transaction amounts to a  
8 consolidation or merger of the two corporations, (3) the purchasing corporation is a mere  
9 continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent  
10 purpose of escaping liability for the seller’s debts.” *Ray v. Alad Corp.*, 19 Cal. 3d 22,  
11 28 (1977).<sup>3</sup> Plaintiff cannot prove any of these exceptions apply.

12 a. Plaintiff Cannot Allege an Assumption of Liability

13 Neither TI Newco LLC nor Proposed Intervenor assumed any of Judgment  
14 Debtor’s liability. “Where a contract provision is clear and unambiguous, it is not  
15 subject to questions of construction or interpretation.” *Daniel v. Ford Motor Co.*, 806  
16 F. 3d 1217, 1224 (9th Cir. 2015) (quotations omitted) (citing *Neal v. State Farm Ins.*  
17 *Cos.*, 188 Cal. App. 2d 690 (1961)). Here, as discussed above the terms of the  
18 foreclosure expressly provide that assumption of assets excludes “any obligations or  
19 liabilities of any kind of nature.” As TI Newco LLC did not assume any liabilities, TI  
20 Newco LLC could not have transferred those liabilities to Proposed Intervenor.<sup>4</sup>  
21 Therefore, Proposed Intervenor did not assume liability for Plaintiff’s debt.

22 \_\_\_\_\_  
23 <sup>3</sup> In its Supplement to Motion for Default Judgment, Plaintiff solely argued that  
24 Proposed Intervenor was a continuation of Judgment Debtor. Dkt. 67 at 13:18-15:6.  
25 As the Court has struck this motion, it is likely Plaintiff will attempt to raise additional  
26 arguments in any subsequent filing. Dkt. 73. Accordingly, all four exceptions are  
27 addressed here.

28 <sup>4</sup> Moreover, with no pre-existing relationship with Judgment Debtor, the notion that  
Proposed Intervenor would gratuitously assume Judgment Debtor’s liability in this  
lawsuit is incredulous given the nature of Plaintiff’s claims.

1                   b.     The Transaction Does Not Amount to a Consolidation or  
2                                     Merger Because Judgment Debtor Still Exists

3             Judgment Debtor’s mere existence conclusively proves that it did not merge with  
4 Proposed Intervenor. “A merger is the absorption of one corporation by another which  
5 survives; retains its name and corporate identity together with the added capital,  
6 franchises, and powers of the merged corporation; and continues the combined business.  
7 [Citations.] The merged corporation ceases to exist, and the merging corporation alone  
8 survives.” *See Phillips v. Cooper Laboratories*, 215 Cal. App. 3d 1648, 1660 (1989).  
9 Here, as Judgment Debtor and Proposed Intervenor are separate, viable entities, there is  
10 no successor liability.

11                   c.     Proposed Intervenor is Not a Mere Continuation of Judgment  
12                                     Debtor Because There Was No Direct Sale Between the  
13                                     Parties

14             “A mere continuation contemplates a direct sale of assets from the predecessor  
15 corporation to the successor corporation, not a sale from a creditor of the predecessor  
16 corporation which has taken over its assets.” *Maloney v. Am. Pharm. Co.*, 207 Cal. App.  
17 3d 282, 288 (1988); *see also Katzir’s Floor & Home Design, Inc. v. M-MLS.com*, 394  
18 F.3d 1143, 1151 (9th. Cir 2004); *Agit Glob., Inc. v. Wham-O, Inc.*, No. 2:09-cv-08133-  
19 CAS, 2014 WL 1365200, at \*5 (C.D. Cal. April 7, 2014.) Here, there is no direct  
20 transaction between Proposed Intervenor and Judgment Debtor. TI Newco LLC  
21 acquired Judgment Debtor’s assets and subsequently transferred some of them to  
22 Proposed Intervenor. This lack of privity precludes successor liability.

23                   d.     The Transfer of Assets Was Not to Avoid Liability Because  
24                                     Judgment Debtor is Not Liable to Plaintiff

25             Avoiding potential liability to Plaintiff did not motivate TI Newco LLC’s  
26 foreclosure of Judgment Debtor’s assets because Plaintiff’s claims have no merit and  
27 can be dismissed pursuant to a dispositive motion. Plaintiff alleges two claims for relief:  
28

1 (1) breach of contract; and (2) violation of the Stored Communications Act. Plaintiff  
2 fails to state a claim for both.

3 As to his breach of contract claim, Plaintiff's vague and conclusory allegations  
4 lack sufficient facts to support his breach of contract claim making it subject to a motion  
5 for judgment on the pleadings. Notably, Plaintiff has not included a copy of the alleged  
6 contract, established its validity, identified what portion was breached, or explained how  
7 his damages derive from the alleged breach.<sup>5</sup>

8 Likewise, Plaintiff's claim for violation of Stored Communications Act fail for  
9 numerous reasons. First, Plaintiff's claim is almost certainly barred by the two-year  
10 statute of limitations.<sup>6</sup> *See* 18 U.S.C. § 2707(f). Plaintiff's attorney had all of the  
11 discovery relevant to his criminal proceeding, including the documents Judgment Debtor  
12 produced in response to the DEA's subpoena. *See* Dkt. 22 (Second Am. Compl.), ¶ 15.  
13 Plaintiff also attended his criminal trial in 2011 where he saw and heard all of the  
14 evidence offered against him, including documents from Judgment Debtor's production.  
15 Thus by 2011 at the latest Plaintiff had constructive notice, if not actual knowledge, of  
16 the documents in Judgment Debtor's production to the DEA. As such, Plaintiff's claim  
17 for violation of the Stored Communications Act is barred by the statute of limitations.

18 Second, Plaintiff's claim that Judgment Debtor somehow "over-complied" with  
19 the subpoena from the DEA by allegedly producing photographs less than 180 days old  
20 is not supported by the plain language of the subpoena itself, which specifically  
21 requested "photographs, friends, *private messages over 180 days old* and any other  
22 information available." Dkt. 22 (Second Am. Compl.), ¶ 8 (emphasis added). Based on  
23 this plain language, the 180-day limitation, only applied to private messages, not  
24

25 \_\_\_\_\_  
26 <sup>5</sup> If these additional allegations are ever added it is almost certain they will provide  
27 additional arguments to summarily dismiss these claims.

28 <sup>6</sup> While Judgment Debtor's Motion to Dismiss raised a similar argument and was  
denied [Dkt. 41], this does not establish that Plaintiff will ultimately overcome this  
likely bar to his claims.

1 photographs.<sup>7</sup> Thus, even assuming Judgment Debtor did produce photographs from  
2 Plaintiff that were less than 180 days old, it was merely complying with a valid  
3 subpoena. Under 18 U.S.C. § 2703(e) “[n]o cause of action shall lie in any court against  
4 any provider of wire or electronic communication service” for complying with a  
5 subpoena.

6 Lastly, Plaintiff does not dispute that during his criminal trial his counsel did not  
7 move to suppress the photographs as his own counsel believed that the photographs were  
8 available to the general public. Dkt. 40 at 3 n.2. Thus, it is questionable whether the  
9 Stored Communications Act even applied to Judgment Debtor’s actions in disclosing the  
10 photographs as they were never meant to be private. *Crispin v. Christian Audigier, Inc.*,  
11 717 F. Supp. 2d 965, 991 (C.D. Cal. 2010) (finding that Stored Communications Act  
12 protection for Facebook wall posts depends on plaintiff’s use of privacy settings).

13 Due to the legal deficiencies and fatal flaws of Plaintiff’s claims, Plaintiff cannot  
14 credibly argue that the strict foreclosure of Judgment Debtor’s assets was motivated to  
15 avoid payment to Plaintiff.

16 e. Plaintiff Improperly Imputes Inaccurate Statements Made by  
17 Judgment Debtor’s Counsel to Proposed Intervenor

18 Plaintiff continues to ignore the facts laid out above in favor of clinging to the  
19 erroneous statements made by Judgment Debtor’s counsel, Ms. Jane Rheinheimer.  
20 However, Ms. Rheinheimer was never hired by Proposed Intervenor and has not had any  
21 communications with Judgment Debtor for over six months therefore she is not  
22 authorized to speak on either entities behalf. As such, her supposition that Mr. Lee is

23 \_\_\_\_\_  
24 <sup>7</sup> It is also unclear if the photographs in question were actually less than 180 days old.  
25 Plaintiff claims he uploaded the photographs in mid-to-late November 2008. 180 days  
26 after November 15, 2008 is May 15, 2009. The subpoena-at-issue listed a response  
27 date of May 9, 2009. Accordingly, if an extension of time to respond to the subpoena  
28 was given, which is common, or if Plaintiff actually uploaded the photographs earlier  
in November 2008, the photographs would have been more than 180 days old at the  
time they were produced and thus under Plaintiff’s allegations no violation could have  
occurred.

1 the general counsel for Judgment Debtor, Proposed Intervenor, Time Inc., or any other  
2 entity is wrong. Likewise her statements regarding corporate ownership, employees, or  
3 anything else regarding Judgment Debtor or Proposed Intervenor are completely  
4 unsupported.

5 It is clear from her statements that Ms. Rheinheimer's goal in this litigation is to  
6 be relieved as counsel as soon as possible<sup>8</sup> and that she is willing to make statements she  
7 is not authorized or qualified to make to do so. For example, despite admitting she has  
8 not had any contact or instructions from her client for many months, she is still making  
9 representations to the Court on behalf of her client, the truth of which she admits she  
10 cannot confirm. Despite being well aware of this, when confronted with the actual facts  
11 in this case, Plaintiff still relies upon the inaccurate statements made by an uninformed,  
12 unauthorized person. Accordingly, any statements by Ms. Rheinheimer regarding this  
13 litigation should be evaluated carefully by the Court.

14 **IV. CONCLUSION**

15 Based upon the foregoing, Proposed Intervenor respectfully requests that this  
16 Court grant it leave to intervene in this litigation.

17  
18 DATED: March 7, 2017

**LTL ATTORNEYS LLP**

19  
20  
21 By: /s/ James M. Lee

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Timothy S. Fox

Aaron R. Kollitz

Attorneys for Proposed Intervenor

Myspace LLC

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24  
25  
26  
27 \_\_\_\_\_  
28 <sup>8</sup> Indeed, on March 6, 2017 Ms. Rheinheimer renewed her request to withdraw as  
counsel for Judgment Debtor. *See* Dkt. 74.