

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MALIBU MEDIA, LLC

Plaintiff,

v.

Jesse Raleigh,

Defendant.

Civil Action Case No. 1:13-cv-00360-RJJ

Hon. Robert J. Jonker

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**DEFENDANT'S MOTION AND INCORPORATED BRIEF IN SUPPORT,
FOR LEAVE TO EXCEED THE PAGE LIMIT FOR BRIEFS IN SUPPORT OF NON-
DISPOSITIVE MOTIONS WITH REGARD TO BRIEF IN SUPPORT OF *DAUBERT*
MOTION**

COMES NOW Defendant, Jesse Raleigh, and files this Motion to exceed the 10-page page limit for briefs in support of non-dispositive motions imposed under W.D. Mich. LCivR 7.3(b). More particularly, Defendant states:

1. This case concerns a claim of direct copyright infringement, and Plaintiff Malibu Media has disclosed that it intends to offer the testimony of a supposed Computer Forensics expert, one Patrick Paige, to ostensibly help prove that Defendant Jesse Raleigh is the person who either downloaded or uploaded six of its copyrighted pornographic videos between February 11, 2013 and February 17, 2013 through a particular IP address associated with service in Petoskey, Michigan.

2. On October 5, 2015, Plaintiff Paige authored a report (see Doc 108-1), which was provided to Defendant's counsel on October 6, 2015 pursuant to Fed. R. Civ. P. 26(a)(2)(B) and this Court's October 6, 2015 order (Doc. 104).

3. Defendant has prepared a motion to exclude or limit the report and the opinions contained therein based on *Daubert v Merrell Dow Pharm.s, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) and its progeny, as well as on FRE 702, 104(a), 404(b), 104(b), 401, and 403.

4. Although the resolution of that motion will have a significant impact on this case, based on this Court's prior resolution of Defendant's Motion for Summary Judgment, it cannot be said that Defendant's contemplated *Daubert* motion is a "dispositive motion" as defined by W.D. Mich. LCivR 7.2(a). As a result, absent a modification by this Court, the brief in support of the proposed *Daubert* motion is ten pages. W.D. Mich. LCivR 7.3(b).

5. While it is within this Court's discretion to conduct an evidentiary hearing in response to a *Daubert* motion, it is also permissible for this Court to determine on the briefs that a particular opinion or opinions are of the type that should be excluded under *Daubert* or other authority.

6. Consequently, it is to this Court's benefit that Defendant be permitted to identify with particularity the flawed conclusions and inappropriate opinions in the Paige Report and the reasons that it should be excluded.

7. The draft brief that Defendant prepared under the belief that it would be limited to ten pages is attached hereto, and is fourteen pages long. (Attachment # 1.) Rather than cut out four pages, Defendant would actually like to add certain details. Therefore, Defendant would ask this Court to extend the applicable page limit for this particular brief to fifteen (15) pages.

8. On Thursday, January 21, 2016, during a telephone conference with Plaintiff's attorney, Jessica Fernandez, the undersigned explained the basis for this motion (as well as the bases for the underlying *Daubert* motion), and sought concurrence in the relief requested herein. Plaintiff's attorney concurred in the relief requested herein (with the acknowledgment that Defendant concurred in Plaintiff getting similar relief).

BRIEF IN SUPPORT

This Court is expressly authorized to provide the relief requested in this Motion by W.D. LCivR 7.1(c), which provides: "In its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules"

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that he be permitted to support the referenced *Daubert* motion with a Brief of fifteen (15) pages or less.

Respectfully submitted,

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