

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

MALIBU MEDIA, LLC Plaintiff, v. KELLEY TASHIRO and N. CHARLES TASHIRO Defendants	Case No. 1:13-cv-00205-WTL-MJD Hon. Mark J. Dinsmore
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**DEFENDANTS SECOND MOTION IN LIMINE
TO EXCLUDE ANY TESTIMONY FROM BRITTANY SNOOK**

The Defendants, KELLEY TASHIRO and N. CHARLES TASHIRO, come to this Honorable Court and move it to exclude Brittany Snook’s testimony from the evidentiary hearing scheduled for January 29, 2015. In support of the same, the Defendants state as follows:

1. The Plaintiff asserts that he may call Brittany Snook “to testify that Malibu Media, LLC owns the copyrights to the works at issue” among other irrelevant matters. (ECF Doc. 169, at 2).
2. Such testimony should be excluded. Ms. Snook was never disclosed as having any knowledge of these proceedings in the *Second* Corrected Fed. R. Civ. P. 26(a) disclosure and, importantly, ownership of copyrights is irrelevant to the matter at hand – purported spoliation.
3. Rule 26 required Malibu to provide the names of all persons who have knowledge of discoverable information in this case. Fed. R. Civ. P. 26(a)(1)(A)(i). It also required Malibu to seasonably supplement the same. Fed. R. Civ. P. 26(e). Accordingly, by failing to disclose these persons in its Rule 26 disclosures, Malibu suggests that these people either don’t have discoverable information. The only conclusion is that Malibu has willfully refused to comply with

Rule 26. Despite handling several Malibu cases, in differing jurisdictions, this is the first that undersigned has become aware of Ms. Snook.

4. Accordingly, her testimony should be excluded. Fed. R. Civ. P. 37(c)(1). The failure cannot be considered harmless or justifiable – the disclosure has been amended twice.

WHEREFORE, KELLEY TASHIRO and N. CHARLES TASHIRO respectfully request that this Honorable Court bar Brittany Snook from testifying.

Respectfully submitted,

/s/ Jonathan LA Phillips
One of their attorneys
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CERTIFICATE OF SERVICE

I certify that on January 1, 2015, a copy of the foregoing has been filed with the Clerk of the Court via the Court's ECF filing system, thereby serving it upon all counsel of record.

/s/ Jonathan LA Phillips