

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
 GEORGE OUZOUNIAN, P/K/A MADDOX, and :  
 JANE DOE, :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 DAX HERRERA P/K/A DICK MASTERSON, :  
 FOUNDATION DIGITAL, LLC, GREG BOSER, :  
 LOREN BAKER, CMGRP, INC., D/B/A WEBER :  
 SHANDWICK, JOSHUA KAUFMAN, ASTERIOS :  
 KOKKINOS, TREVOR BIRT, PATREON, INC., and :  
 JORDAN COPE :  
 :  
 Defendants. :  
 -----X

Index No.: 656779/2017

STATE OF CALIFORNIA            )  
  ) ss.:  
COUNTY OF SAN FRANCISCO    )

**AFFIDAVIT OF COLIN SULLIVAN IN SUPPORT OF MOTION TO DISMISS**

COLIN SULLIVAN, being duly sworn, hereby deposes and says:

1. I, Colin Sullivan, am Head of Legal at Patreon, Inc., a corporate defendant in this action. As such, I have personal knowledge of the information presented herein.

2. I graduated from the University of the Pacific, McGeorge School of Law in Sacramento, California. I co-founded Indie Voyage, a crowdfunding game label that helps developers with their planning, production, marketing, community management, and quality assurance. Before that, I founded CrowdCounsel, a law firm focused on crowdfunding and intellectual property law.

3. In November 2015, I became the Head of Legal at Patreon. Patreon is an Internet-based platform that enables creators, such as artists and musicians, to be compensated for their work by

their fans. Patreon was launched in 2013 and reimagined what it meant to be a “patron” of the arts by enabling a generation of creators to transform online fan bases into reliable income. On Patreon, fans sign up to give small, regular payments to their favorite online visual artists, podcasters, vloggers, comic-book artists and other creators. In 2017, Patreon paid approximately \$150 million to creators, thereby helping them to grow their businesses and establish stable, long-lasting careers. Patreon also helps creators build relationships and provide exclusive experiences to their subscribers, or “patrons.”

4. Patreon is a Delaware limited liability company with its headquarters and offices in San Francisco, California. It has no offices in New York, owns no real property, bank accounts, or other assets in New York, is not authorized to conduct business in New York, and has no employees in New York. Approximately 4% of Patreon’s user base, which includes both creators and patrons, is located in New York, based on the associated IP addresses. An IP address is a numerical label assigned to a networked device.

5. Jordan Cope is an employee of Patreon who lives and works in the San Francisco Bay area. He joined Patreon in 2015 as a Creator Talent Lead, which means that he works with established creators to launch a page on Patreon.

6. Plaintiff Ouzounian joined Patreon as a registered user on June 3, 2016.

7. All registered Patreon users are required to agree to the Terms of Use as a condition of joining Patreon and availing themselves of Patreon’s services. When signing up for Patreon, the user is asked to indicate his or her agreement to the Terms of Use by checking the box next to the statement “You agree to our Terms of Use.” The Terms of Use are provided by hyperlink, which means the user has the ability to click through and read the Terms of Use at their leisure.

8. The Terms of Use that Plaintiff Ouzounian agreed to when he joined Patreon (“the

Original Terms of Use”) explicitly provided that Patreon had the right to change, modify, and update its Terms of Use. Section 25 of the Original Terms of Use states:

Patreon.com reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement or delete any of the terms and conditions of this Agreement (including the Privacy Policy) and review, improve, modify or discontinue, temporarily or permanently, the Service or any content or information through the Service at any time, effective with or without prior notice and without any liability to Patreon.com. Patreon.com will endeavor to notify you of these changes by email, but will not be liable for any failure to do so. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must terminate, and immediately stop using, the Service. Your continued use of the Service following any revision to this Agreement constitutes your complete and irrevocable acceptance of any and all such changes.


9. After Plaintiff Ouzounian registered for Patreon, Patreon updated its Terms of Use.

According to the parties’ agreement, Plaintiff Ouzounian was now bound by the revised Terms of Use (the current “Terms of Use”). There are only two potentially relevant differences between the arbitration clause contained in the Original Terms of Use and that contained in the Current Terms of Use. First, under the Original Terms of Use, the arbitration clause empowered either party to require that a dispute be resolved through binding arbitration, whereas under the Current Terms of Use binding arbitration is mandatory. Second, the Original Terms of Use provided that the arbitration must be conducted under the Commercial Arbitration Rules of the American Arbitration Association, but the Current Terms of Use provides that the arbitration must be administered by JAMS under the JAMS Streamlined Arbitration Rules & Procedures. There is no meaningful difference between the Original Terms of Use and the Current Terms of Use with regard to the choice of forum and choice of law provisions, since both state that if a lawsuit does arise, it will be decided by a court in San Francisco, California, and that California law shall govern the parties’ agreement.


- 10. Patreon’s Terms of Use incorporate by reference Patreon’s Privacy Policy and Community Guidelines, which are provided by hyperlink.
- 11. Attached hereto as Exhibit 1 is a true and correct copy of Patreon’s sign up page.
- 12. Attached hereto as Exhibit 2 is a true and correct copy of Patreon’s Original Terms of Use.
- 13. Attached hereto as Exhibit 3 is a true and correct copy of Patreon’s current Terms of Use.
- 14. Attached hereto as Exhibit 4 is a true and correct copy of Patreon’s Community Guidelines.

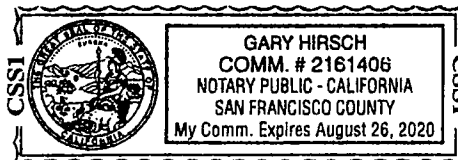
WHEREFORE, the affiant respectfully requests that the Court grant the motion to dismiss filed on behalf of Defendants Patreon, Inc. and Jordan Cope.

Dated: January 12, 2018  
San Francisco, CA

  
\_\_\_\_\_  
Colin Sullivan

Sworn to before me this 12  
day of January, 2018.

  
\_\_\_\_\_  
Notary Public



CERTIFICATE OF CONFORMITY

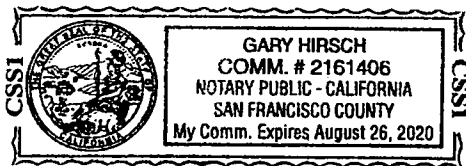
STATE OF CALIFORNIA )

) ss.:

COUNTY OF SAN FRANCISCO )

I, Gary Hirsch, a notary public licensed in the State of California, do hereby certify that the acknowledgement or proof upon the foregoing Affidavit of Colin Sullivan, notarized in the state of California, was taken in the manner prescribed by the laws of the state of California and duly conforms to the laws thereof for the taking of oaths and acknowledgements.

Dated: January 12, 2018  
San Francisco, CA



*[Handwritten Signature]*

Notary Public