

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

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GEORGE OUZOUNIAN, P/K/A MADDOX, and,
JANE DOE,

Index No: 656779/2017

Plaintiff,
v.

**AFFIDAVIT OF DAX
HERRERA IN SUPPORT OF
MOTION TO DISMISS**

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,

Defendant.

-----X
STATE OF CALIFORNIA)
COUNTY OF Los Angeles^{SS:})

DAX HERRERA, being duly sworn, states the following under the penalty of perjury.

1. I am both an individual defendant in this lawsuit as well as a principal of defendant Foundation Digital, LLC ("Foundation Digital"). I submit this affidavit in support of Moving Defendants' motion to dismiss.

2. I do not reside in nor have I ever been a resident of New York. I am a resident of the state of California and I have lived in Los Angeles for approximately twenty-six years i.e. since approximately 1991.

3. It is unfair and burdensome for me to have to defend this action in New York, as there is no connection between New York and the things being alleged, nor do I have any type of ongoing or continuous activity in New York that would be sufficient to subject me to personal jurisdiction in New York.

4. In fact, I have had very limited contact with New York. I rarely travel to New York. I believe I have only been in New York three times, all of which were for personal vacations and are wholly unrelated to this lawsuit. The last time I was even in New York was approximately six years ago and only for a few days.

5. I have never paid income taxes in New York, I do not own or lease any property in New York, I do not have an office in New York, nor do I have bank accounts in New York. I do not own any personal property that is located in New York, nor do I derive substantial revenue from New York. I also do not have any employees, designated agents, or registered agents in New York.

6. Separate from my work at Foundation Digital, I am a satirist that is known under the stage name or pseudonym Dick Masterson, and under that name I host a podcast called "The Dick Show" (the "Podcast"). I also have a website promoting my Podcast located at thedickshow.com (the "Website"). My podcast is hosted, recorded, produced, and edited in my home office in California. Occasionally other guests participate remotely, however mostly my Audio Engineer Sean co-hosts the Podcast with me. I have also occasionally done live shows most recently in Chicago, Philadelphia and Los Angeles, but never in New York.

7. The Podcast is available on the internet, including through the Apple Store and my Website, to virtually anyone with an internet connection everywhere across the United States and in many places around the world.

8. In the promotion of the Podcast I do not target any particular region or area, or consumers in any particular geographic area, I have never targeted any consumers or audiences in New York.

9. The Podcast has a worldwide appeal and has listeners all over the United States

and the World. The Podcast is free to download by anyone.

10. I have hosted live shows for the Podcast in front of live audiences in Chicago, Philadelphia, and Los Angeles. However, I have never hosted a live show in New York.

11. The content of the Podcast is not targeted to any particular region or state, including New York. The Podcast is not advertised in local media in New York.

12. The Podcast receives financial support through an online patronage system known as Patreon.

13. Essentially, Patreon allows fans to make contributions to the Podcast and they receive perks for supporting the Podcast such as bonus content, acknowledgements by me, and special chatrooms where fans can communicate directly with the show.

14. While I solicit contributions to the Podcast's Patreon account during the Podcast itself, at no point have I ever specifically solicited contributions from anyone in New York, or sought out any group of people in particular.

15. Additionally, most of my entertainment relationships have been cultivated and remain in California.

16. I do not solicit or engage in any systematic business in New York.

17. One of my guest commenters, Asterios Kokkinos, has appeared on the Podcast several times. However, he is not under my employ.

18. Before starting the Dick Show, in or around 2014, I hosted a podcast known as "the Biggest Problem in the Universe" along with George Ouzounian the Plaintiff who is another satirist known under the penname "Maddox."

19. I have known George Ouzounian since 2008. Since I have known George Ouzounian, I believe to the best of my knowledge that he has either been a resident of California

or Utah. However, I have never known him to live in New York or have any substantial relationships with New York.

20. Foundation Digital, LLC ("Foundation Digital") is a digital marketing company that I am a part owner in, along with Greg Boser and Loren Baker.

21. Foundation Digital has absolutely nothing to do with the Podcast, it is a completely separate business. Foundation Digital does no work for the Podcast, it does no content creation or marketing for the Podcast. Foundation Digital has no part in the writing, hosting, recording, production, editing, or distribution of the Podcast. The Podcast is a personal project of mine that is entirely separate from my work with Foundation Digital. Attached hereto as Exhibit A is a screenshot of The Dick Show as it appears on Apple Podcasts indicating that the Podcast is by Dick Masterson, my pseudonym.

22. Foundation Digital creates content for companies and brands, and also assists companies and brands in strategizing and optimizing the distributing and promoting of content in order to advertise.

23. Foundation Digital, is a California limited liability company that was formed in California.

24. Foundation Digital does not have any contractors, employees or principals in New York.

25. Foundation Digital does not have any clients in New York, nor does it target businesses in New York as potential clients. Foundation Digital, does not conduct business in New York, nor does it derive substantial revenue from New York.

26. Foundation Digital does do not own or lease any real or personal property, keep an office, maintain bank accounts, or have a designated agent in the New York. Foundation

Digital does not have any brick and mortar offices. It is a virtual company whose business is run by the principals, myself and Mr. Baker who live in California and Mr. Boser who lives in Nevada.

27. Foundation Digital does not maintain a physical office at 23890 Copper Hill Drive, Box 216, Valencia, CA 91354, that is just a mailing address for Foundation Digital. No one at that location is authorized to accept service on behalf of Foundation Digital. It is just a UPS store where Foundation Digital receives mail. We have a separate agent that is authorized to accept service for Foundation Digital.

28. As a resident and citizen of California who has almost no connection with New York, and no connection with New York that relates to this case, both personally, and through Foundation Digital, LLC, it would be unfair, burdensome, and prejudicial to me as an individual to have to defend myself personally in a Court in New York, as it will require me to travel to New York which is expensive and time consuming and will interfere with my work in California.

29. Additionally, having to defend this case in New York will be prejudicial because many of the witnesses who I believe would aid in my defense, including Randy Kiyon, my manager and Sean Jacobson, my co-host, both of whom previously had a relationship with the Plaintiff and have knowledge of facts relevant to this dispute, live in California and would be outside the subpoena power of a New York Court.

30. Given that the Plaintiffs also reside in California this action should not only be dismissed for lack of personal jurisdiction over the Moving Defendants, but it should be dismissed on the grounds that New York is an inconvenient forum.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On January 2, 2018 before me, Michael Boh, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared KIAN RAOUL PARVANEH MAGANA
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: CERT OF CONFORMITY Document Date:
Number of Pages: Signer(s) Other Than Named Above:

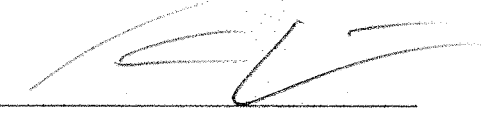
Capacity(ies) Claimed by Signer(s)

Signer's Name:
Corporate Officer -- Title(s):
Partner -- Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

Signer's Name:
Corporate Officer -- Title(s):
Partner -- Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

CERTIFICATION OF CONFORMITY


The undersigned does hereby certify that he/she is an attorney at law duly admitted to practice in the State of California; that he/she makes this affidavit in accordance with the requirements of the Clerk of the County of LOS ANGELES pertaining to the acknowledgement of the proof of the Affidavit of Dax Herrera, to be filed in Supreme Court of the State of New York, New York County; that the foregoing acknowledgment of Dax Herrera, named in the foregoing instrument taken before MICHAEL BOH, a Notary in the State of California, being the state in which it was taken, and based upon my review thereof, appears to conform with the law of the State of California.


By: KIAN R. MAGAÑA

Sworn to before me this 2nd
Day of January, 2018



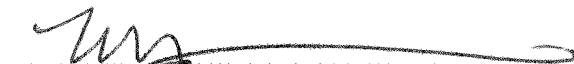
NOTARY PUBLIC



DAX HERRERA

Sworn to before me this

2nd day of January, 2018



NOTARY PUBLIC

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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State of California)
County of Los Angeles)
On January 2, 2018 before me, Michael Boh, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Dax Arthur Herrera
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

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Description of Attached Document

Title or Type of Document: AFFIDAVIT Document Date:
Number of Pages: Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing: