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12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON

14 PREPARED FOOD PHOTOS, INC.,
f/k/a ADLIFE MARKETING
15 & COMMUNICATIONS CO., INC.,
a Florida for profit corporation,

16 Plaintiff,

17 v.

18 POOL WORLD, INC., a Washington for
19 profit corporation,

20 Defendant.

No. 2:23-cv-00160-TOR

**AFFIRMATION OF
PAT FLYNN
SUPPORTING OPPOSITION
TO DISMISSAL WITHOUT
PREJUDICE**

21 1. My name is Pat Flynn. I am the business manager at defendant Pool World. I
22 make this affirmation to explain why Pool World opposes dismissal of this case without
23 prejudice, but would be pleased to see it dismissed with prejudice.
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25 2. In 2022, when we received a demand letter on behalf of the plaintiff Prepared
26 Food Photos (“PFP”), At that time, Pool World was in the midst of an ownership transition.
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28 The original owner and chief executive of the business, Mark Henderson, had died in a freak

1 bicycle accident that occurred April 21st, 2021. I was in place as his designated business
2 manager, working for Grady Early (whom Mark had designated to succeed him to assume
3 ownership of the company, but the will had not been fully settled.) Together we tried to be
4 faithful to Mark's values in handling the demand.
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6 3. Mark's beliefs and values are what made him what he was, and what made Pool
7 World the company it was (and remains). Mark believed in doing the right thing for the
8 right reason. He believed that the easy thing to do was not normally the right thing to do.
9 He also believed that if you are in the wrong, you do what you must do to make it right. We
10 tried to follow what we thought Mark would do in dealing with PFP's demand.
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12 4. We were outraged by the demand. As explained in our responses to PFP's written
13 discovery requests, we were confident that we had not used improperly the composite image
14 containing a photo of vegetables on a grill, because our approach at Pool World has been
15 to stay within the law. Because of our normal business practices for obtaining and using
16 photos from our manufacturers and their distributors, we had reason to believe that the photo
17 must have come from one of our grill suppliers. And it struck us as a more than silly that
18 the cost of getting a photo like that could be more than ten thousand dollars for a year's use.
19 But because we had obtained the photo so long ago, in 2010, and we had no records
20 showing where it came from, and our marketing employee from that time had moved on to
21 another job in Seattle, we figured that we might not be able to prove proper use. And we
22 did not want to end up in lawsuit. So, we just pulled the photo off our site and hoped that
23 would be the end of it.
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1 5. After we received the lawsuit in this case last year, we gave no serious thought to
2 just giving in. We felt we were in the right, and it has long been Pool World's policy not
3 to give in to bullying or cheap threats—I understand that lawyers refer to them as “strike
4 suits.” We felt we were being bullied. We looked for a lawyer in Spokane who could
5 represent us in the litigation. But after an unimpressive interview with a local practitioner,
6 we concluded that he did not know enough about the governing law to provide effective
7 representation. We figured we would have to find a law firm in Seattle or Portland, which
8 could be expensive, but was the right thing to do.

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11 6. When we heard from Paul Levy, and looked into his background, we knew we had
12 found the right lawyer. He was knowledgeable, he was passionate, and he was not going
13 to charge Pool World attorney fees. Hiring him as our lawyer would let us stand up for our
14 rights, and to stand up for all the other little businesses that PFP was bullying. We
15 understood that we might have to pay thousands of dollars in out-of-pocket expenses, but
16 if it came to that, our business could afford that and it would let us do the right thing.
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19 7. We also did not want to refer the claim to our insurance company because we
20 assumed that, with the cost of hiring a knowledgeable copyright lawyer likely costing more
21 than a cheap settlement, we were afraid that an insurance company would just throw money
22 at PFP. And we would not want that done in our name, telling the world that Pool World
23 is easy pickings for baseless lawsuits, and putting more money into PFP's pockets to
24 continuing their bullying efforts directed at other. Somebody needed to stand up to try to
25 stop their bullying. Standing up to the bullying is what Mark would have done and it is also
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1 what Grady Early and I believe is the right thing to do.

2 8. We were, therefore, glad to retain Public Citizen Litigation Group to represent us.
3 Our retainer includes a promise to support an application for an award of attorney fees if
4 Public Citizen recommends this course. We would like to be able to keep that promise.
5 Public Citizen, Steve Kirby and the Stanford Intellectual Property Clinic have been generous
6 to Pool World and we want to be fair in return.
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9 9. The litigation has been expensive for Pool World, including expenses that we
10 understand are not taxable costs. By my calculation, our staff have spent more than a
11 hundred hours on this litigation considering time speaking within the company, time
12 speaking with our lawyers, time looking for documents and information in response to
13 discovery, and time reviewing documents before they were sent or filed. We provided a
14 bonus to our current marketing employee in recognition of all the extra work she had to do
15 responding to discovery. We have also hired expert witnesses who have prepared expert
16 reports. As we understand it, Public Citizen would have the option of reimbursing some of
17 our costs from an attorney fee award, and we would like to see Public Citizen get such an
18 award.
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22 10. PFP could have dropped this case after we first filed our answer. So far as I can
23 see, PFP did not learn any of the supposed facts that its lawyers claim in their brief since
24 they first filed PFP's complaint. The only thing PFP has now learned for sure is that Pool
25 World is not willing to be bullied. It does not seem fair for PFP to put us to all the effort
26 that we have had to expend so far and then just walk away without any judgment against it
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1 and without any expense.

2 11. Pool World wishes to retain the option of suing PFP for malicious prosecution.

3 I understand that prevailing on the merits of this case is a precondition for such a suit.

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Pursuant to 28 U.S.C. § 1746, I hereby certify that the
foregoing is true and correct. Executed on August 28,
2024.

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