

No. 16-3628

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

MALIBU MEDIA LLC,
Plaintiff-Appellee.

v.

DAVID RICUPERO,
Defendant-Appellant,

On Appeal from the United State District Court
for the Southern District of Ohio

**DEFENDANT-APPELLANT'S FIFTH MOTION FOR AN EXTENSION OF
TIME TO ALLOW THE DISTRICT COURT TO SUPPLEMENT THE RECORD**

Defendant-Appellant David Ricupero, pursuant to Fed.R.App.P. 26 and Sixth Circuit Rule 26, respectfully requests an extension of time, to and including Wednesday, November 30, 2016, in which to allow the district court to supplement the record and Appellant to file his brief in this case.

1. The brief for the Appellant is currently due on October 28, 2016.
2. Appellant has requested the district court make certain material proceedings part of the record or otherwise include them in greater detail. R.94, *Oct. 26 Conference Supplement*; R.95, *Apr. 16 Conference Supplement*; R.96, *Modification of Record*; and R.97, *Designation of Record*.
3. The proceedings at issue were unrecorded and untranscribed.
4. Appellant has challenged the district court's May 13, 2016 Order [R.91] as contradicting oral orders and findings made at the Oct. 26 and Apr. 16 proceedings. R.96, *Modification of Record*.

5. Appellant has provided a sworn affidavit as to his recollection of the proceedings premised on his contemporaneously made notes and emails with other attorneys and courtroom staff at the time. R.94, *Oct. 26 Conference Supplement*; R.95, *Apr. 16 Conference Supplement*; R.96.
6. The Appellee filed an untimely opposition and chose not to submit an affidavit as to Mr. Faroniya's, its counsel at the time, recollection of the proceedings. R.98, *Opposition to Supplements*; R.99, *Reply to Opposition*.
7. The district court has not yet responded to Appellant's requests. The requests are necessary for the proper adjudication of Appellant's appeal. Until the district court acts, the appeal cannot move forward.
8. Subject to specified limitations not applicable to the present Motion, Fed.R.App.P. 26(b) provides that, for good cause, the Court "may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires."
9. The requested extension is necessary to allow the district court adequate opportunity to supplement the record and allow the Appellant to address those additions in his opening brief.

Dated: October 26, 2016

Respectfully submitted,

/s/ Jason E. Sweet

Jason E. Sweet

BOOTH SWEET LLP

32R Essex Street

Cambridge, MA 02139

(617) 250-8619

jsweet@boothsweet.com

Counsel for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2016, a copy of the foregoing Defendant-Appellant's Motion for Extension of Time to File Brief and this Certificate of Service were filed electronically with the United States Court of Appeals, and notice will be sent by operation of the Court's electronic filing system to counsel of record.