

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

**DEFENDANTS RAMSEY AND PILLONATO SUR-REPLY TO PLAINTIFFS MOTION
FOR SUMMARY JUDGEMENT**

- 1. Pocker's declaration attached to plaintiff reply brief should be thrown out because it is dated as the same day as the reply brief. It was obtained by the Plaintiff after the discovery cutoff. Defendants Pillonato and Ramsey have not had the opportunity to conduct discovery regarding it.**
- 2. This is Michael Pocker's 3rd declaration that he has submitted in this case, the accuracy of his testimony is questionable and should be determined by the judge.**
- 3. Regardless of Michael Pocker's 3rd declaration it is clear from his 2nd declaration that no common enterprise existed. As he stated, parties did not share office space, parties did not share marketing materials, parties did not have common employees, parties did not have common owners.**

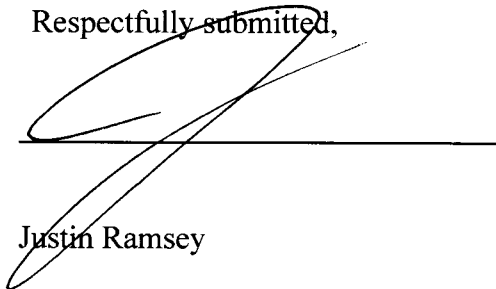
4. Despite Plaintiff's argument the fact that Modern Spotlight entities did not share employees or office space with defendants Pillonato and Ramsey is very much relevant to whether or not a common enterprise existed. Plaintiffs refer to no legal authority in support of their argument.

5. The fact that the Plaintiff felt it was necessary to obtain a 3rd declaration from Michael Pocker and then try to explain its relevance shows that there are discrepancies and that there should be a trial.

6. Defendants did not submit statement of undisputed facts out of concern that testimony would waive their 5th amendment rights. In reviewing the Pocker declarations and paragraphs 27-31 in the Plaintiff's statement of undisputed facts the Plaintiff has not satisfied the elements necessary to find that a common enterprise existed between Ramsey & Pillonato and the Modern Spotlight Defendants.

Dated: February 13, 2019

Respectfully submitted,

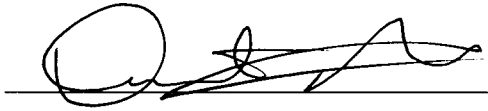
A handwritten signature in black ink, appearing to read "Justin Ramsey", is written over a solid horizontal line. The signature is stylized and loops back under the line.

Justin Ramsey

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A handwritten signature in black ink, appearing to read "Dustin Pilonato", is written over a horizontal line. The signature is stylized and somewhat cursive.

Dustin Pilonato

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CERTIFICATE OF SERVICE

I hereby certify that, on February 13, 2019, a true and correct copy of the foregoing was served on all counsel or parties of record on the Service List, via the method indicated below.



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