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Motorsports, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CARROLL SHELBY LICENSING,
INC., a California Corporation, and the
CARROLL HALL SHELBY TRUST,

Plaintiffs,

vs.

DENICE SHAKARIAN HALICKI, an
individual, ELEANOR LICENSING,
LLC, a Delaware limited liability
company, GONE IN 60 SECONDS
MOTORSPORTS, LLC, a Delaware
limited liability company, and DOES 1 –
10,

Defendants.

DENICE SHAKARIAN HALICKI, an
individual, ELEANOR LICENSING,
LLC, a Delaware limited liability
company, GONE IN 60 SECONDS

Case No.: 8:20-cv-01344-MCS-DFMx
Assigned to the Hon. Mark C. Scarsi,
Courtroom 7C

**NOTICE OF MOTION AND
MOTION OF HALICKI PARTIES
TO CERTIFY ORDER FOR
INTERLOCUTORY APPEAL;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**NO HEARING WITHOUT
FURTHER COURT ORDER PER
COURT'S ORDER OF DECEMBER
12, 2022 (ECF NO. 354)**

1 MOTORSPORTS, LLC, a Delaware
2 limited liability company

3 Counter-claimants,

4 vs.

5
6 CARROLL SHELBY LICENSING,
7 INC., a California Corporation, and the
8 CARROLL HALL SHELBY TRUST, a
9 trust organized under Texas law,
10 CLASSIC RECREATIONS, LLC, an
11 Oklahoma limited liability company,
12 JASON ENGEL, an individual, TONY
13 ENGEL, an individual, SPEEDKORE
14 PERFORMANCE GROUP, LLC, a
15 Wisconsin limited liability company, and
16 Roes 1 to 10,

17 Counter-defendants.

18 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that Defendants and Counter-Claimants Denice
20 Shakarian Halicki (“Denice Halicki”), Eleanor Licensing, LLC, and Gone in 60
21 Seconds Motorsports, LLC (collectively “the Halicki Parties”) hereby move this Court,
22 for certification of the Court’s November 29, 2022 Order (ECF No. 350) for
23 interlocutory appeal on three issues:

24 (1) Whether the District Court correctly interpreted the *Halicki Films*, *DC*
25 *Comics*, and *Daniels* test regarding copyrightability of a character by
26 requiring under prong 2 of that test an analysis of the character “whenever
27 it appears” and a comparison for consistency based on every instance a
28 character appears in media.

(2) Whether the District Court correctly interpreted the *Halicki Films*, *DC*
Comics, and *Daniels* test regarding copyrightability of a character by

1 denying copyrightability to a character based on its repeated appearance in
2 one work, regardless of how sufficiently delineated the character appears
3 in that work.

4 (3) Whether the District Court correctly interpreted the *Halicki Films, DC*
5 *Comics*, and *Daniels* test regarding copyrightability of a character by
6 determining that an otherwise copyrightable character becomes
7 uncopyrightable if a new iteration of the same character has traits and
8 attributes varied with prior iterations.

9 The Halicki Parties further request the court to stay these proceedings until
10 disposition of the interlocutory appeal.

11 This Halicki Parties' Motion is made pursuant to 28 U.S.C. § 1292(b).

12 This Halicki Parties' Motion is based on this Notice, the attached Memorandum
13 of Points and Authorities, and on such oral argument as the Court may permit.

14 This Motion shall be heard without the filing of a reply brief and without a
15 hearing pursuant to the Court's order of December 12, 2022 (ECF N0. 354).

16 This Motion is made following a conference of counsel pursuant to Local Rule
17 7-3 which took place on January 6, 2023.

18 Dated: January 13, 2023

19 By: /s/ Jason J. Keener

20 Jason J. Keener
21 Irwin IP LLC

22 David L. Brandon
23 Clark Hill LLP

24 Attorneys for Defendants and Counter-
25 claimants DENICE SHAKARIAN HALICKI;
26 ELEANOR LICENSING, LLC; GONE IN 60
27 SECONDS MOTORSPORTS, LLC
28

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. PROCEDURAL HISTORY.....	4
A. Most Remaining Claims and Counterclaims Implicate Copyright Issues.....	4
B. The Court’s November 29, 2022 Order.....	5
III. LEGAL STANDARD.....	11
IV. ARGUMENT.....	11
A. The Court’s Order Implicates Three “Controlling Question[s] of Law”....	12
1. Issue 1 is a “Controlling Question of Law”.....	13
2. Issue 2 is a “Controlling Question of Law”.....	13
3. Issue 3 is a “Controlling Question of Law”.....	14
B. There is “Substantial Ground for Difference of Opinion”.....	15
C. An Immediate Appeal “May Materially Advance the Termination of the Litigation”.....	18
D. The Court Should Stay These Proceedings Until Disposition of the Interlocutory Appeal.....	21
V. CONCLUSION.....	21

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<i>Beeman v. Anthem Prescription Mgmt., Inc.</i> , No. 04-407, 2007 WL 8433884, (C.D. Cal. Aug. 2, 2007).....	11, 18
<i>In re Cement Antitrust Litig.</i> , 673 F.2d 1020 (9th Cir. 1982).....	<i>passim</i>
<i>In re Cintas Corp. Overtime Pay Litig.</i> , 06-01781, 2007 WL 1302496 (N.D. Cal. May 2, 2007).....	11
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<i>Kuehner v. Dickinson & Co.</i> , 84 F.3d 316 (9th Cir. 1996).....	13, 18

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