Electronically FILED by Superior Court of California, County of Los Angeles on 10/20/2022 04:44 PM Sherri R. Carter, Executive Officer/Clerk of Court, by S. Reyna,Deputy Clerk
DocuSign Envelope ID: 009468B6-E788-40F2-99A6-2FE313DD2212

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Attorneys for Defendants Guillermo Macias, Colt International Clothing Inc. dba Colt LED, erroneously sued herein as distinct entities, and "Colt LED," an alleged unincorporated association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, NORTH VALLEY DISTRICT

LAYSION, LLC,

Plaintiff,

v.

GUILLERMO MACIAS; COLT INTERNATIONAL CLOTHING INC.; COLT LED; DOES 1-20,

Defendants.

CASE NO.: 21CHCV00339
[Unlimited Jurisdiction]

(Case assigned to Hon. Stephen P. Pfahler, Dept. F49)

DECLARATION OF GUILLERMO MACIAS IN SUPPORT OF DEFENDANTS' CONSOLIDATED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

[Opposition To Motion For Summary Adjudication, Declaration In Support Thereof, Response To Separate Statement, Evidentiary Objections And Proposed Order On Evidentiary Objections Filed Concurrently Herewith]

Complaint Filed: April 30, 2021
Trial Date: February 6, 2023

Date: November 4, 2022
Time: 8:30 a.m.
Dept.: F49

FISHER, KLEIN & WOLFE LLP

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IPR2023-00614

DECLARATION OF GUILLERMO MACIAS

I, GUILLERMO MACIAS, declare:

1. I have personal knowledge of the matters set forth herein, I am over eighteen (18) years and, if called upon, could and would competently testify thereto.

2. My name is Guillermo Macias. I have never gone by the name "Duillenno" nor have I ever known anyone who goes by the name "Duillenno." I am a Defendant in this matter along with Colt International Clothing Inc. dba Colt LED, erroneously sued herein as distinct entities (hereinafter, collectively, "Defendants"). Colt LED is not a separate and distinct entity from myself or Colt International Clothing Inc. Colt LED is not my "alter ego." Colt International Clothing Inc. is not my "alter ego." Colt LED is nothing more than a fictitious business name or "dba" under which Colt International Clothing Inc. does business.

3. Plaintiff Laysion, LLC ("Plaintiff" or "Laysion") claims that I am the General Partner in "Colt LED," an unincorporated association, which I deny. That said, I make this declaration in support of Defendants' Consolidated Oppositions to Plaintiff's Motion for Summary Adjudication (the "Motion").

4. Throughout all of 2019, I was a principal of Colt International Clothing, Inc. dba Colt LED ("Colt International") and therefore familiar with its books and records. A true and correct copy of Colt International's current "dba" is attached hereto as Exhibit "A."

5. I met Yajun Zhang ("Yajun") in approximately the end of 2018. Yajun was a facilitator to Chinese manufacturers. He decided at some point in time to open a U.S. office and did so at Colt's location of 28416 Constellation Road, Santa Clarita, CA 91355. At the time I was fine with this because Yajun and I had developed a good working relationship. Neither Yajun nor Laysion are manufacturers. Yajun and Laysion were merely "middlemen" seeking to coordinate the sale of goods manufactured by third parties.

6. Thereafter Yajun and I, on behalf of Colt International, entered into discussions for the development and acquisition of certain stage lighting equipment (the "Equipment") which is the basis for the underlying lawsuit.

7. Colt International presently engages in the business of renting and selling stage lighting

rental equipment.

8. During our discussions with respect to lighting fixtures, Yajun and I discussed the potential scope of and need for the Equipment within the marketplace as I was concerned that any Equipment would have to have an end-user. As the discussions were preliminary in nature, we had no conversations as to what the price of the units to Colt International would be or for that matter, the cost of production to Laysion/Yajun.

9. We also had no detailed discussions of the potential number of units to be manufactured, payment terms or anything else that one (including Colt International) might anticipate to form a binding agreement. In April 2019, Yajun advised that he had already produced the Equipment we had been discussing, and that a substantial order was ready to be shipped. There was not an order or agreement that Colt International or any other Defendant in this Action ever made in advance or otherwise. Until the shipment was en route from China, I had no idea that the Equipment had been produced or the magnitude of its production.

10. Laysion now claims to be owed $1,000,000.00 from Defendants for a total of 500 units delivered to Colt International, even though there is no written contract evidencing an order for the Equipment, there is no contemporaneous writing or email evidencing even a verbal agreement, and there is no prior agreement as to payment terms. Laysion claims that the agreement is evidenced by a February 19, 2021, invoice for $1,000,000.00 (Exhibit D to the Yajun Declaration) which was sent only months before the filing of the lawsuit, and almost two (2) years after the Equipment was delivered to the United States. A true and correct copy of the invoice is attached hereto as Exhibit B. It is the only invoice attached to the First Amended Complaint at pages 32 and 54.

11. Yajun never disclosed to me the cost of goods, his expected profit, or the final cost to Colt International for the lighting fixtures prior to their shipment. It was only after delivery that he started demanding payments. Other than the invoice at Exhibit "B" I have no other documentation from Laysion with respect to an "order" for the lighting fixtures.

12. Although, I had a good working relationship with Yajun on a prior project, the shipment of 500 units of untested products to Colt International, without any agreement or even understanding as to price or payment terms, was unacceptable. I told Yajun that Colt International

would attempt to sell or lease the products to the best of its ability but there was no way Colt International could guarantee payment of such a significant "order."

13. Eventually, Colt International was able to place through lease certain of the products. Colt International attempted to salvage the situation by wiring a portion of the monies it received and offered to return the remaining product. Yajun/Laysion accepted the funds, although he never responded to Colt International's offer to return the remaining fixtures.

14. In this regard, I caused to be wired $210,000.00 to Laysion between November 2019 and February 2020. I also wrote to Laysion, LLC on October 7, 2019, advising that the shipment was far too large as the products had never been tested, nor was there evidence of any established market for them. A true and correct copy of my email is attached hereto as Exhibit C. I had conversation with Yajun in this regard as well. This correspondence also is Colt International's offer to return the lighting fixtures.

15. Laysion alleges that Defendant Colt International provided seven (7) checks totaling $800,000, of which Laysion suggests (although it never clearly states) that two checks, dated July 25, 2019 and August 25, 2019, were declined or rejected by Bank of America. On behalf of Colt International, I contacted Bank of America about those two checks and the bank informed me that they were never deposited. Further, no notice was ever received from any banking institution that any checks referenced in Laysion's Applications were deposited or rejected for nonpayment or otherwise.

16. When I learned that Laysion was only charged $387,599.00 for the lighting equipment I was shocked. Laysion and Yajun are now attempting to charge Colt International $1,000,000.00 for the same product. $1,000,000.00 is not the fair-market value for the product. Had I previously known that Laysion was seeking to make a 260% profit margin, Colt International would have immediately returned the lighting fixtures and not attempted to salvage its relationship with Yajun. A true and correct copy of the invoice to Laysion which Defendants received in discovery is attached hereto as Exhibit D.

17. Laysion also represented that the product had an eighteen-month warranty, and committed that warranty to writing. (See invoice attached as Exhibit D to the Yajun Declaration.)

18. By February 2020, the Equipment had a significant failure rate. Specifically, within

the eighteen-month warranty period, at least 64 of the 500 units were no longer functioning and more have failed since.

19. In February 2020, I informed Laysion that the units were failing but Laysion refused to honor its warranty, materially breaching same and offered no proposal to fix those which have failed. The failed products, and the breach of warranty, make any determination of monies due to any parties at this stage impossible.

20. In addition to Laysion's material breach of warranty, Defendants also should be entitled to offset under Commercial Code Section 2312 (3), which provides a statutory warranty that goods are free from infringing on another's rights, and specifically, patent rights. Presently pending in federal court in Delaware is a patent infringement case entitled, "*Colt International Clothing Inc d/b/a/ Colt LED v. Quasar Science, LLC, et al.*, Case No. 1:22-cv-00213-CFC." There, counsel for Defendants here have stated that they intend to assert that Laysion's equipment which is the subject of this litigation violates their client's patents. Although the claim has not yet been formally presented, this patent case further makes it impossible to determine what sums, if any, may currently be due Laysion for purposes of attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed this 20th day of October 2022, at London, England.

DocuSigned by:
Guillermo Macias
509DCD25C0E3403...

Guillermo Macias

EXHIBIT A

Fictitious Business Name Search

You may search filed Fictitious Business Names using the search tool below. Fictitious Business Names expire 5 years from the date filed.

Enter Information

Business Name: *

Colt LED

I'm not a robot
reCAPTCHA
Privacy - Terms

Search Reset

Results(*data may not be current)

Fictitous Business Name	Document #	Legacy Document #	Date Filed
COLT LED	2022075041		04/07/2022

EXHIBIT B

Laysion LLC

Add: 28416 Constellation Rd, Santa Clarita, CA 91355
Tel：+86-18665600766
Web：www.laysion.com

Proforma Invoice

Consignee: Guillermo Macias
Attn.: Guillermo Macias
Tel: (213)321-3273
E-mail: gmacias@coltled.com

Ref.: L2021001
Date: 02/19/2021
Fax:
Zip Code: 91355

Add: 28416 Constellation Rd, Santa Clarita, CA 91355

This Proforma Invoice is ~~made by and agreed between the buyers and the sellers, in~~ accordance with the terms and conditions stipulated as below:

No	Products Description	Model	QTY [pcs]	CBM	G.W [KGS]	Unit price	Amount
1	Skyflower LED Space Light	LS-SFL70H	500			US$ 2,000.00	US$1,000,000.00
（Please see the attachment for the detailed list）							
DDP(Delivered duty paid-named place of destination) Amount Paid: US$ 210,000.00							
	Balance DUE					US$ 790,000.00	
	Balance DUE Date					March 1st, 2021	

PAY US DOLLAR (790,000.00) SEVEN HUNDRED NINETY THOUSAND DOLLARS

NOTE:
All bank charges should be Paid by the Buyer

1. The balance DUE date is March 1st, 2021;
2. The warranty expires in 18 months from the date the Products are delivered to Buyer.

5.Payment Method:

1] Bank Information:
Account Number:325089414965
ACH Routing Number:121000358
Title on Account: LAYSION LLC
Address: 28416 Constellation Rd, Valencia, CA 91355

The Seller:
LAYSION LLC

Add：28416 Constellation Rd, Santa Clarita, CA 91355
Tel：+86-18665600766
E-mail: 407135434@qq.com

The Buyer:
COLT LED
Contact：Guillermo Macias

Add：28416 Constellation Rd, Santa Clarita, CA 91355
Tel：(213)321-3273

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EXHIBIT C

From: gmacias coltled.com <gmacias@coltled.com>
Sent: Monday, October 7, 2019 1:26 PM
To: QF YAJUN <407135434@qq.com>
Cc: alex@creativemastercorp.com <alex@creativemastercorp.com>
Subject: Re: Status

Zhang as we discussed when I was there if you feel more comfortable picking up all your equipment and holding onto it until you get paid or we sell some of it - That will be a better situation for me. If one of my clients pays me on the 25th or before as we discussed I will give you a payment. Your equipment is new and you can't expect everyone to jump on board just because I have a relationship with them ; lights have to be tested and approved before they start working on any stage -I will be in China before the 25th and even if I'm in China I can arrange a payment..

Sent from my iPhone

On Oct 7, 2019, at 1:17 PM, QF YAJUN <407135434@qq.com> wrote:

> Hello,
> Last time when we met in Shanghai you told Alex and me that you are going to pay me at least 150,000 dollar starting from this month before 25th. I just want to know that have you scheduled the exact date yet?
> Yajun
>
> ---Original---

EXHIBIT D

INVOICE

INVOICE NO: 1354005-2-I-1 DATE:2019/03/23

卖方:东莞市类行星照明科技有限公司

东坑镇凤大村横东路108号三楼

SHIP TO: Laysion LLC

28416 Constellation Rd, Santa Clarita, CA91355

出口代理人:阿里巴巴一达通企业服务（东莞）有限公司

Alibaba OneTouch Business Service (Dongguan) Co., Ltd.

广东省东莞市东城街道东莞大道东城段13号2902室

Office 1602, Unit 1, Taishang Building, No. 11, Dongguan Avenue, Huolianshu Community, Dongcheng Street, Dongguan

ITEM 项号	DESCRIPTION 产品及型号	QUANTITY 数量	UNITPRICE 单价	AMOUNT 总价
				FOB 深圳 USD 运费：0.00 保费：0.00
1	太空灯 SFL70H	500 套	767.9440	383972.00
2	太空灯 SFL100H	3 套	804.0000	2412.00
3	太空灯 SFL50H	3 套	405.0000	1215.00
			TOTAL AMOUNT:	USD 387599.00

出口代理人： 阿里巴巴一达通企业服务（东莞）有限公司

PROOF OF SERVICE

I, Nicole Haugh, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9401 Wilshire Boulevard, Suite 640, Beverly Hills, California 90212.

On October 20, 2022, I served on the interested parties in this action the following document(s) described as **DECLARATION OF GUILLERMO MACIAS IN SUPPORT OF DEFENDANTS' CONSOLIDATED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION** by placing a true and correct copy thereof enclosed and addressed as follows:

SERVICE LIST

Michael W. Atkin PO Box 11256 Palm Desert, California 92255	**Attorneys for Plaintiff Laysion, LLC** Tel: (760) 574-8008 Email: mwa@atkinlawyers.com

☐ **BY MAIL**: The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

☐ **OVERNIGHT DELIVERY**: I deposited such envelope in a facility regularly maintained by GLS with delivery fees fully provided for or delivered the envelope to a courier or driver of GLS authorized to receive documents at 9401 Wilshire Boulevard, Suite 640, Beverly Hills, California 90212 with delivery fees fully provided for.

☒ **BY E-MAIL AGREEMENT**: The document(s) was sent from e-mail address nh@fkwllp.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on October 20, 2022, at Beverly Hills, California.

Nicole Haugh

Nicole Haugh

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