

Case No. S244157

SUPREME COURT
FILED

MAR 23 2018

Jorge Navarrete Clerk

IN THE
SUPREME COURT OF CALIFORNIA

Deputy

FILMON.COM

Plaintiff and Petitioner,

vs.

DOUBLEVERIFY, INC.

Defendant and Respondent

After Decision By the Court of Appeal,
Second Appellate District, Division Three
Case No. B264074

**RESPONDENT'S REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF RESPONDENT'S ANSWERING BRIEF;
DECLARATION OF ROM BAR-NISSIM; [PROPOSED] ORDER**

LINCOLN D. BANDLOW (BAR NO. 170449)
LBANDLOW@FOXROTHSCHILD.COM
ROM BAR-NISSIM (BAR NO. 293356)
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Facsimile: 310.556.9828

**Attorneys for Respondent
DoubleVerify, Inc.**

TO PETITIONER AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Respondent DoubleVerify, Inc. (“DoubleVerify”) hereby moves the California Supreme Court to take judicial notice of various materials that support DoubleVerify’s answering brief.

The Motion is made on the following grounds:

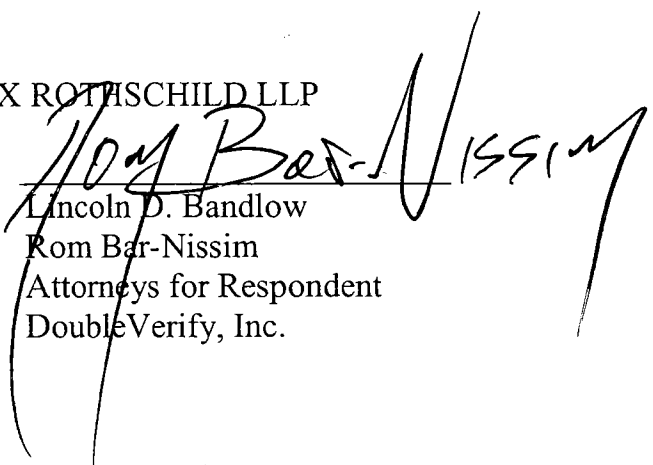
- 1) Evidence Code sections 452, subdivisions (c), (d), (g), and (h) authorize this Court to take judicial notice of the material offered by DoubleVerify; and
- 2) The materials offered by DoubleVerify are relevant to the issues raised in the briefs filed by Petitioner FilmOn.com, Inc. (“FilmOn”) and DoubleVerify.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Rom Bar-Nissim and the attached exhibits, and such other matters as may properly come before this Court.

Dated: March 22, 2018

FOX ROTHSCHILD LLP

By:


Lincoln D. Bandlow
Rom Bar-Nissim
Attorneys for Respondent
DoubleVerify, Inc.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DOUBLEVERIFY'S REQUEST FOR JUDICIAL NOTICE**

I. INTRODUCTION

Respondent DoubleVerify, Inc. (“DoubleVerify”) hereby requests that this Court take judicial notice of the materials that DoubleVerify relies on in its answering brief. These materials include:

- Court Order from the United States District Court for the District of Columbia issued May 23, 2017 granting a Stipulated Consent Judgment and Permanent Injunction against Appellant FilmOn.com, Inc. (“FilmOn”) in the case titled *Fox Television Stations, Inc., et al. v. FilmOn X, LLC, et al.* [Case No.: 13-758 (RMC), Dkt. No. 168] (Attached as **Exhibit A** to the Declaration of Rom Bar Nissim [“Bar-Nissim Decl.”]);
- Court Order from the United States District Court for the Central District of California issued May 24, 2017 granting a Stipulated Consent Judgment and Permanent Injunction against FilmOn in the case titled *Fox Television Stations, Inc., et al. v. FilmOn X, LLC, et al.* [Case No.: CV 12-06921-GW(JCx), Dkt. No. 243] (Attached as **Exhibit B** to the Bar-Nissim Decl.);
- Court Order from the United States District Court for the Northern District of Illinois issued May 25, 2017 granting a Stipulated Consent Judgment and Permanent Injunction against FilmOn in the case titled *FilmOn X, LLC v. Window To The World Commc’n, Inc.* [Case No.: 1:13-cv-08451, Dkt. No. 130] (Attached as **Exhibit C** to the Bar-Nissim Decl.);

- The Legislative Counsel’s Digest for Senate Bill 515 (codified as California Code of Civil Procedure (“C.C.P.”) § 425.17), that indicates that Senate Bill 515 was approved by the governor on September 6, 2003 and chaptered with the Secretary of State on September 8, 2003 (Attached as **Exhibit D** to the Bar-Nissim Decl.).
- The Legislative History for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16), specifically:
 - The May 12, 1997 Senate Judiciary Committee Analysis (Attached as **Exhibit E** to the Bar-Nissim Decl.);
 - The May 12, 1997 Senate Floor Analysis (Attached as **Exhibit F** to the Bar-Nissim Decl.);
 - The June 23, 1997 Assembly Floor Analysis (Attached as **Exhibit G** to the Bar-Nissim Decl.);
 - The June 23, 1997 Senate Floor Analysis (Attached as **Exhibit H** to the Bar-Nissim Decl.);
 - The June 23, 1997 Senate Floor Analysis (Attached as **Exhibit I** to the Bar-Nissim Decl.);
 - The July 2, 1997 Assembly Committee On Judiciary Analysis (Attached as **Exhibit J** to the Bar-Nissim Decl.).
- The Legislative History for Senate Bill 515 (codified as C.C.P. § 425.17), specifically:
 - The May 7, 2003 Senate Judiciary Committee Analysis (Attached as **Exhibit K** to the Bar-Nissim Decl.);
 - The May 9, 2003 Senate Floor Analysis (Attached as **Exhibit L** to the Bar-Nissim Decl.);

- The May 12, 2003 Senate Floor Analysis (Attached as **Exhibit M** to the Bar-Nissim Decl.);
- The May 21, 2003 Senate Floor Analysis (Attached as **Exhibit N** to the Bar-Nissim Decl.);
- The June 30, 2003 Assembly Committee Analysis (Attached as **Exhibit O** to the Bar-Nissim Decl.);
- The July 9, 2003 Assembly Floor Analysis (Attached as **Exhibit P** to the Bar-Nissim Decl.);
- The August 22, 2003 Senate Floor Analysis (Attached as **Exhibit Q** to the Bar-Nissim Decl.);
- The Legislative History for Assembly Bill 1158 (codified as C.C.P. § 425.18), specifically:
 - The April 4, 2005 Assembly Committee On Judiciary Analysis (Attached as **Exhibit R** to the Bar-Nissim Decl.);
 - The April 20, 2005 Assembly Floor Analysis (Attached as **Exhibit S** to the Bar-Nissim Decl.);
 - The April 27, 2005 Assembly Floor Analysis (Attached as **Exhibit T** to the Bar-Nissim Decl.);
 - The July 14, 2005 Senate Judiciary Committee Analysis (Attached as **Exhibit U** to the Bar-Nissim Decl.);
 - The August 17, 2005 Senate Judiciary Committee Analysis (Attached as **Exhibit V** to the Bar-Nissim Decl.);
 - The August 24, 2005 Senate Floor Analyses (Attached as **Exhibit W** to the Bar-Nissim Decl.);
 - The August 25, 2005 Senate Floor Analyses (Attached as **Exhibit X** to the Bar-Nissim Decl.);

- The August 29, 2005 Assembly Floor Analysis
(Attached as **Exhibit Y** to the Bar-Nissim Decl.).

II. THE EVIDENCE CODE AND THE RULES OF COURT PERMIT THIS COURT TO TAKE JUDICIAL NOTICE OF THESE MATTERS REQUESTED BY DOUBLEVERIFY

Evidence Code section 452 permits judicial notice be taken of, *inter alia*:

- Official acts of the judicial, legislative and executive departments of the United States and of any state [Evid. Code § 452(c)];
- Records of any court in this state or any court of record of the United States or of any state [Evid. Code § 452(d)];
- Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute [Evid. Code § 452(g)];
- Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy [Evid Code § 452(h)].

Appellate courts may take judicial notice of any matter subject to discretionary judicial notice by the trial court under Evidence Code section 452. Evid. Code § 459(a).

A. The Court Should Take Judicial Notice of the Court Orders Granting Stipulations of Judgment and Injunctive Relief (Exs. A-C)

DoubleVerify requests that this Court take judicial notice of three court orders (Exs. A-C) which each granted a stipulated judgment and permanent injunction against FilmOn that prohibited FilmOn from engaging in the unauthorized re-transmission of broadcast television

programming. These materials constitute (1) orders that embody official acts of the judicial departments of the United States (Evid. Code § 452(c)); and (2) records from the United States District Court for the District of Columbia, United States District Court for the Central District of California, and United States District Court for the Northern District of Illinois (Evid. Code § 452(d)).

These court orders are directly relevant to the determination under C.C.P. section 425.16(e) of whether DoubleVerify's reports concern, or are otherwise connected with, an issue of public interest. The orders demonstrate that FilmOn, a leading web-based entertainment provider whose content can be potentially viewed by millions of people each day, has consented to cease engaging in copyright infringement through the unauthorized retransmission of broadcast television programming.

B. The Court Should Take Judicial Notice of the Legislative Counsel's Digest For Senate Bill 515 And The Date Of Its Enactment And Filing With The Secretary Of State (Ex. D)

The Legislative Counsel's Digest may be judicially noticed pursuant to Evid. Code section 452(c) as an official act of the legislature of the state of California. *See Kaufman & Broad Comty., Inc. v. Performance Plastering, Inc.* (2005) 133 Cal. App. 4th 26, 31, 35 (holding documents from the Legislative Counsel's Digest to be appropriate for judicial notice and listing cases in support). Further, the date a bill is enacted is a fact of such common knowledge and/or capable of immediate and accurate determination by sources of reasonably indisputable accuracy that it cannot be reasonably disputed. Evid. Code § 452(g) and (h).

The Legislative Counsel's Digest is relevant because Petitioner cites a number of cases for the proposition that commercial speech may be analyzed under Section 425.16 but those cases were decided before Section 425.17 was enacted on September 6, 2003 and filed with the Secretary of

State on September 8, 2003. *See* Petitioner's Opening Brief, pp. 20-22 and 28 (citing *Weinberg v. Feisel* (July 25, 2003) 110 Cal.App.4th 1122; *Commonwealth Energy Corp. v. Investor Data Exch., Inc.* (June 30, 2003) 110 Cal.App.4th 26; *Nagal v. Twin Lab., Inc.* (May 22, 2003) 139 Cal.App.4th 39; *Consumer Justice Ctr. v. Trimedica Int'l, Inc.* (March 27, 2003) 107 Cal.App.4th 595; *Globetrotter Software, Inc. v. Elan Comput. Grp., Inc.* (N.D. Cal. September 1, 1999) 63 F.Supp.2d 1127).

C. The Court Should Take Judicial Notice Of The Legislative History Materials For Senate Bill 1296 From 1997 (Exs. E-J)

DoubleVerify requests that this Court take judicial notice of the legislative history of Senate Bill 1296 (*i.e.*, the 1997 Amendment to C.C.P. § 425.16) (Exs. E-J). These materials constitute (1) orders that embody official acts of the legislative department of the State of California (Evid. Code § 452(c)); and (2) records from the State of California (Evid. Code § 452(d)). *See Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45 fn. 9 (Legislative History materials are subject to judicial notice).

The legislative history for Senate Bill 1286 is directly relevant to interpreting C.C.P. § 425.16. *See Torres v. Parkhouse Tire Serv., Inc.* (2001) 26 Cal.4th 995, 1003 (Legislative history is relevant to determining the California Legislature's intent regarding a statute).

D. The Court Should Take Judicial Notice Of The Legislative History Materials For Senate Bill 515 From 2003 (Exs. K-Q)

DoubleVerify requests that this Court take judicial notice of the legislative history of Senate Bill 515 (codified as C.C.P. § 425.17) (Exs. K-Q). These materials constitute (1) orders that embody official acts of the legislative department of the State of California (Evid. Code § 452(c)); and (2) records from the State of California (Evid. Code § 452(d)). *See*

Quelimane, 19 Cal.4th at 45 fn. 9 (Legislative History materials are subject to judicial notice).

The legislative history for Senate Bill 1286 is directly relevant to interpreting C.C.P. §§ 425.16 & 425.17. *See Torres*, 26 Cal.4th at 1003 (Legislative history is relevant to determining the California Legislature’s intent regarding a statute).

E. The Court Should Take Judicial Notice Of The Legislative History Materials For Assembly Bill 1158 (Exs. R-Y)

DoubleVerify requests that this Court take judicial notice of the legislative history of Assembly Bill 1158 (*i.e.*, the 1997 Amendment to C.C.P. § 425.16) (Exs. R-Y). These materials constitute (1) orders that embody official acts of the legislative department of the State of California (Evid. Code § 452(c)); and (2) records from the State of California (Evid. Code § 452(d)). *See Quelimane*, 19 Cal.4th at 45 fn. 9 (Legislative History materials are subject to judicial notice).

The legislative history for Senate Bill 1286 is directly relevant to interpreting C.C.P. §§ 425.16 & 425.17. *See W. Sec. Bank v. Super. Ct.* (1997) 15 Cal.4th 232, 244. (“A subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act.”).

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III. CONCLUSION

For the reasons stated above, DoubleVerify respectfully requests that this Court grant DoubleVerify's request for judicial notice of Exhibits A through D attached to the Bar-Nissim Decl.

Dated: March 22, 2018

FOX ROTHSCHILD LLP

By: 

Lincoln D. Bandlow

Rom Bar-Nissim

Attorneys for Respondent

DoubleVerify, Inc.

**DECLARATION OF ROM BAR-NISSIM IN SUPPORT OF
DOUBLEVERIFY'S REQUEST FOR JUDICIAL NOTICE**

I, Rom Bar-Nissim, declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California. I am an associate at the law firm of Fox Rothschild, LLP, and am counsel of record for Respondent DoubleVerify, Inc. ("DoubleVerify") in the above-captioned action. I make this declaration in support of DoubleVerify's Request for Judicial Notice. I have personal knowledge of the facts contained in this declaration and, if called and sworn as a witness, I could and would competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Court Order from the United States District Court for the District of Columbia issued May 23, 2017 granting a Stipulated Consent Judgment and Permanent Injunction against FilmOn in the case titled *Fox Television Stations, Inc., et al. v. FilmOn X, LLC, et al.* [Case No.: 13-758 (RMC), Dkt. No. 168]. This copy was downloaded on or about March 5, 2018, from the Public Access to Court Electronic Records ("PACER") system.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Court Order from the United States District Court for the Central District of California issued May 24, 2017 granting a Stipulated Consent Judgment and Permanent Injunction against FilmOn in the case titled *Fox Television Stations, Inc., et al. v. FilmOn X, LLC, et al.* [Case No.: CV 12-06921-GW(JCx), Dkt. No. 243]. This copy was downloaded on or about March 5, 2018, from PACER.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Court Order from the United States District Court for the Northern District of Illinois issued May 25, 2017 granting a Stipulated Consent Judgment and

Permanent Injunction against FilmOn in the case titled *FilmOn X, LLC v. Window To The World Commc'n, Inc.* [Case No.: 1:13-cv-08451, Dkt. No. 130]. This copy was downloaded on or about March 5, 2018, from PACER.

5. Attached as **Exhibit D** is a true and correct copy of the Legislative Counsel's Digest for Senate Bill No. 515 (codified as California Code of Civil Procedure Section 425.17), which was approved by the governor on September 6, 2003 and filed with the Secretary of State on September 8, 2003. On or about March 19, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040SB515

6. Attached as **Exhibit E** is a true and correct copy of the May 12, 1997 Senate Judiciary Committee Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.

7. Attached as **Exhibit F** is a true and correct copy of the May 12, 1997 Senate Floor Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.

8. Attached as **Exhibit G** is a true and correct copy of the June 23, 1997 Assembly Floor Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.

9. Attached as **Exhibit H** is a true and correct copy of the June 23, 1997 Senate Floor Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.

10. Attached as **Exhibit I** is a true and correct copy of the June 23, 1997 Senate Floor Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.
11. Attached as **Exhibit J** is a true and correct copy of the July 2, 1997 Assembly Committee On Judiciary Analysis for Senate Bill 1296 (*i.e.*, the 1997 amendment to C.C.P. § 425.16). On March 22, 2018, I downloaded a copy of this document from Westlaw.
12. Attached as **Exhibit K** is a true and correct copy of the May 7, 2003 Senate Judiciary Committee Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at: <http://legalinfo.legislature.ca.gov>
13. Attached as **Exhibit L** is a true and correct copy of the May 9, 2003 Senate Floor Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:
<http://legalinfo.legislature.ca.gov>
14. Attached as **Exhibit M** is a true and correct copy of the May 12, 2003 Senate Floor Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:
<http://legalinfo.legislature.ca.gov>
15. Attached as **Exhibit N** is a true and correct copy of the May 21, 2003 Senate Floor Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:
<http://legalinfo.legislature.ca.gov>

16. Attached as **Exhibit O** is a true and correct copy of the June 30, 2003 Assembly Committee Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

17. Attached as **Exhibit P** is a true and correct copy of the July 9, 2003 Assembly Floor Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

18. Attached as **Exhibit Q** is a true and correct copy of the August 22, 2003 Senate Floor Analysis for Senate Bill 515 (codified as C.C.P. § 425.17). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

19. Attached as **Exhibit R** is a true and correct copy of the April 4, 2005 Assembly Committee On Judiciary Analysis for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at: <http://legalinfo.legislature.ca.gov>

20. Attached as **Exhibit S** is a true and correct copy of the April 20, 2005 Assembly Floor Analysis for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

21. Attached as **Exhibit T** is a true and correct copy of the April 27, 2005 Assembly Floor Analysis for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from

the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

22. Attached as **Exhibit U** is a true and correct copy of the July 14, 2005 Senate Judiciary Committee for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

23. Attached as **Exhibit V** is a true and correct copy of the August 17, 2005 Senate Judiciary Committee Analysis for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at: <http://legalinfo.legislature.ca.gov>

24. Attached as **Exhibit W** is a true and correct copy of the August 24, 2005 Senate Floor Analyses for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

25. Attached as **Exhibit X** is a true and correct copy of the August 25, 2005 Senate Floor Analyses for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

26. Attached as **Exhibit Y** is a true and correct copy of the August 29, 2005 Assembly Floor Analysis for Assembly Bill 1158 (codified as C.C.P. § 425.18). On March 22, 2018 I downloaded a copy of this document from the State of California's Legislative Information website located at:

<http://legalinfo.legislature.ca.gov>

[PROPOSED] ORDER

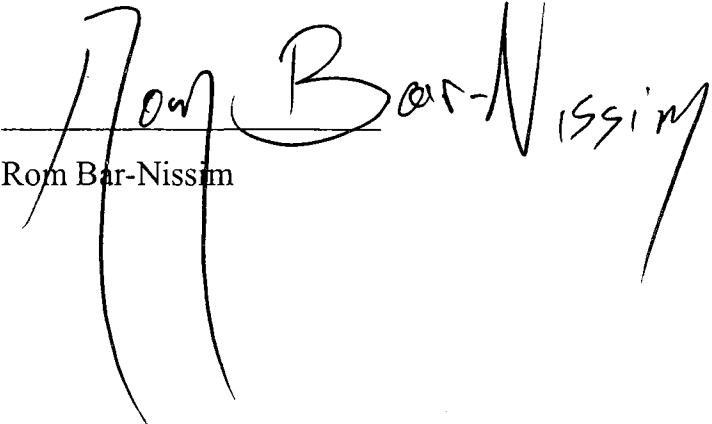
Good cause appearing therefor,

IT IS HEREBY ORDERED that judicial notice is taken of the documents requested by Respondent DoubleVerify.

Dated: _____, 2018

Justice of the California Supreme Court

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of March, 2018, in Los Angeles, California.


Rom Bar-Nissim

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10250 Constellation Blvd., Suite 900, Los Angeles, California 90067.

On March 22, 2018, I served the following document(s) described as **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF; DECLARATION OF ROM BAR-NISSIM; [PROPOSED] ORDER** on the interested parties in this action as follows:

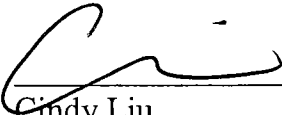
Ryan G. Baker, Esq. Brian E. Klein, Esq. Scott M. Malzahn, Esq. BAKER MARQUART LLP 2029 Century Park East, Suite 1600 Los Angeles, CA 90067 Tel: 424-652-7800 Facsimile: 424-652-7850 E-Mail: rbaker@bakermarquart.com bklein@bakermarquart.com	Attorneys for Plaintiff and Petitioner, FILMON.COM, Inc.
Hon. Terry A. Green Los Angeles County Superior Court Stanley Mosk Courthouse Department 14 111 North Hill Street Los Angeles, CA 90012	Trial Judge (LASC Case No.: BC561987)
Clerk of the Court California Court of Appeal Second Appellate District, Div. 3 Ronald Reagan State Building 300 S. Spring Street, 2 nd Floor Los Angeles, CA 90013	Appeal Case No.: B264074

[X] BY OVERNIGHT MAIL (FEDEX): I enclosed said document(s) in an envelope or package provided by FEDEX and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FEDEX or delivered such document(s) to a courier or driver

authorized by FEDEX to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2018, at Los Angeles, California.



Cindy Liu

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOX TELEVISION STATIONS, INC.,)	
<i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 13-758 (RMC)
v.)	
)	
FILMON X, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

STIPULATED CONSENT JUDGMENT
AND PERMANENT INJUNCTION

WHEREAS, Plaintiffs Fox Television Stations, LLC, Twentieth Century Fox Film Corporation, Fox Broadcasting Company, NBC Subsidiary (WRC-TV) LLC, Universal Television LLC, Universal Cable Productions LLC, Open 4 Business Productions LLC, Telemundo Network Group LLC, American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., Tegna Inc., and Sinclair Television Stations, LLC filed the above-captioned action asserting claims of copyright infringement against Defendants FilmOn X, LLC (formerly known as Aereokiller LLC), FilmOn.TV Networks, Inc., FilmOn.TV, Inc., FilmOn.com, Inc., and Alkiviades David (the "Defendants") (Dkt. Nos. 1 and 66);

WHEREAS, on September 5, 2013, the United States District Court for the District of Columbia, the Honorable Rosemary M. Collyer, presiding, entered a preliminary injunction against Defendants and its agents, servants, employees, and attorneys, and all those acting in concert or participation with them, restraining them from streaming, transmitting, retransmitting, or otherwise publicly performing, displaying, or distributing any Copyrighted Programming over the Internet (through websites such as filmon.com or filmonx.com), via web applications

(available through platforms such as the Windows App Store, Apple's App Store, the Amazon App Store, Facebook, or Google Play), via portable devices (such as through application on devices such as iPhones, iPads, Android devices, smart phones, or tablets), or by means of any device or process (*see* Dkt. Nos. 33 and 34);

WHEREAS, on September 25, 2014, Defendants filed a second amended counterclaim alleging that FilmOn X, LLC is entitled to a compulsory copyright license to retransmit broadcast television pursuant to 17 U.S.C. § 111 (the "Section 111 Counterclaim") (Dkt. 67);

WHEREAS, on November 12, 2015, the Court entered an order on the parties' cross motions for partial summary judgment in which it dismissed the Section 111 Counterclaim (Dkt. No. 128);

WHEREAS, on January 5, 2016, the Court entered an order in which it entered a final judgment on the Section 111 Counterclaim and found there is no just reason for delay of appeal from this partial judgment under Federal Rule of Civil Procedure 54(b) (Dkt. No. 136);

WHEREAS, on January 29, 2016, Defendants appealed (Dkt. No. 140) and oral argument took place on March 17, 2017;

WHEREAS, the Parties have reached agreement for resolution of this action, the terms and conditions of which are set forth in a settlement agreement dated May 11, 2017 (the "Settlement Agreement"); and

WHEREAS, the Parties' Settlement Agreement is conditioned upon entry by the Court of a stipulated consent judgment and permanent injunction and the continuing jurisdiction of the Court on the terms and conditions set forth herein;

THEREFORE, the Parties stipulate and agree that this Court has jurisdiction to enter a stipulated consent judgment and permanent injunction on the following terms and conditions and that the Court shall have continuing jurisdiction for purposes of construction, modification and

enforcement of this consent judgment and permanent injunction and the Parties' Settlement Agreement, and request that the Court enter the attached ~~Proposed~~ Consent Judgment and Permanent Injunction Pursuant to Stipulation ("Stipulated Consent Judgment and Permanent Injunction").

IT IS SO STIPULATED.

Dated: May 23, 2017

Respectfully submitted,

/s/ Julie A. Shepard

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*Attorneys for Plaintiffs Fox Television Stations,
LLC, Twentieth Century Fox Film Corporation,
and Fox Broadcasting Company*

Dated: May 23, 2017

/s/ James S. Blackburn

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*Attorneys for Plaintiffs NBC Subsidiary
(WRC-TV) LLC, Universal Television LLC,
Universal Cable Productions LLC, Open 4
Business Productions LLC, Telemundo
Network Group LLC, American
Broadcasting Companies, Inc., Disney
Enterprises, Inc., TEGNA, Inc., CBS
Broadcasting Inc., CBS Studios Inc., and
Sinclair Television Stations LLC*

Dated: May 23, 2017

/s/ Ryan G. Baker

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Plaintiffs FilmOn X, LLC, FilmOn.TV, Inc.,
FilmOn.TV Networks, Inc., and FilmOn.com, Inc.
and Defendant Alkiviades David*

Pursuant to the Settlement Agreement reached between Plaintiffs and Defendants, the foregoing stipulation of the Parties, and for good cause shown, the Court hereby enters the following Stipulated Consent Judgment and Permanent Injunction:

STIPULATED CONSENT JUDGMENT AND PERMANENT INJUNCTION

1. Defendants, its affiliated companies, and all of its officers, directors, agents, servants, and employees, and all natural and corporate persons in active concert or participation or in privity with any of them (collectively, the “Enjoined Persons”) ARE HEREBY PERMANENTLY RESTRAINED AND ENJOINED from streaming, transmitting, retransmitting, or otherwise publicly performing, displaying, or distributing without Authorization any Copyrighted Programming over the Internet (through websites such as filmon.com or filmonx.com), via web applications (available through platforms such as the Windows App Store, Apple’s App Store, the Amazon App Store, Facebook, or Google Play), via portable devices (such as through applications on devices such as iPhones, iPads, Android devices, smart phones, or tablets), or by means of any device or process, and from otherwise infringing, by any means, directly or indirectly, any of Plaintiffs’ exclusive rights under Section 106 of the Copyright Act with respect to Copyrighted Programming. “Authorization” means and requires a written license from the copyright holder.

2. “Copyrighted Programming” shall mean each of those television programming works, or portions thereof, whether now in existence or later created, including but not limited to original programming, motion pictures and newscasts, in which the Plaintiffs, or any of them, (or any parent, subsidiary, or affiliate of any of the Plaintiffs) owns or controls an exclusive right under the United States Copyright Act, 17 U.S.C. §§ 101 et seq.

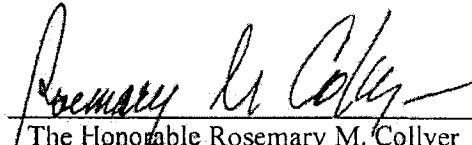
3. Violation of this Stipulated Consent Judgment and Permanent Injunction shall expose Defendants and all other persons bound by this Stipulated Consent Judgment and Permanent Injunction to all applicable penalties, including contempt of Court.

4. All claims and defenses in this action are hereby resolved by this Stipulated Consent Judgment and Permanent Injunction.

5. This Court shall retain continuing jurisdiction over the Parties and the action for purposes of construction, modification, and enforcement of this Stipulated Consent Judgment and Permanent Injunction and/or enforcing the Parties' Settlement Agreement.

6. All parties are to bear their own costs.

IT IS SO ORDERED.



The Honorable Rosemary M. Collyer
United States District Judge

23 May 2017

EXHIBIT B

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 Century Fox Film Corp., and Fox
 7 Broadcasting Company
 8

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12 FOX TELEVISION STATIONS, INC.,
 13 TWENTIETH CENTURY FOX FILM
 14 CORP., and FOX BROADCASTING
 COMPANY,

15 Plaintiffs,

16 v.

17 FILMON X, LLC, FILMON.TV, INC.,
 18 FILMON.TV NETWORKS, INC.,
 19 FILMON.COM, INC., ALKIVIADES
 DAVID, and JOHN DOES 1-3,
 inclusive,

20 Defendants.

21 NBCUNIVERSAL MEDIA, LLC, et al.

22 Plaintiffs,
 23

24 v.

25 FILMON X LLC, et al.,

26 Defendants.
 27
 28

Case No.: CV 12-6921-GW(JCx)
 (consolidated with Case No. CV 12-
 6950-GW(JCx))

Hon. George H. Wu

**STIPULATED CONSENT
 JUDGMENT AND PERMANENT
 INJUNCTION**