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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
 13

14 PARAMOUNT PICTURES
 15 CORPORATION; COLUMBIA
 PICTURES INDUSTRIES, INC.;
 16 DISNEY ENTERPRISES, INC.;
 TWENTIETH CENTURY FOX FILM
 17 CORPORATION; WARNER BROS.
 ENTERTAINMENT INC.;
 18 UNIVERSAL CITY STUDIOS
 PRODUCTIONS LLLP; UNIVERSAL
 19 TELEVISION LLC; and UNIVERSAL
 CONTENT PRODUCTIONS LLC,

20 Plaintiffs,

21 vs.

22 OMNIVERSE ONE WORLD
 23 TELEVISION, INC.; JASON M.
 DEMEO,

24 Defendants.

Case No. 2:19-cv-01156-DMG-PJWx

JOINT RULE 26(f) REPORT

Judge: Hon. Dolly M. Gee
Magistrate Judge: Hon. Patrick J. Walsh

1 Pursuant to Federal Rule of Civil Procedure 26 and Central District of
2 California Local Rule 26-1, Plaintiffs Paramount Pictures Corporation, Columbia
3 Pictures Industries, Inc., Disney Enterprises, Inc., Twentieth Century Fox Film
4 Corp., Warner Bros. Entertainment, Inc., Universal City Studios Productions LLLP,
5 Universal Television LLC, and Universal Content Productions LLC (collectively,
6 “Plaintiffs”) and Defendants Omniverse One World Television, Inc. and Jason M.
7 DeMeo (collectively, “Omniverse”), by and through their respective counsel of
8 record, hereby submit the following Joint Report. Counsel for Plaintiffs and
9 Omniverse met and conferred on these issues on June 3, 2019.

10 **I. Statement of the Case**

11 **A. Plaintiffs’ Position**

12 Omniverse has served a central role in the supply chain for unauthorized
13 content delivery, feeding unauthorized streams of Plaintiffs’ copyrighted movies and
14 television shows (“Copyrighted Works”) to numerous customer-facing partners who
15 have advertised their services as “Powered by Omniverse.”

16 Omniverse’s unauthorized delivery of live television content over the Internet
17 directly violates Plaintiffs’ exclusive public performance right under settled United
18 States Supreme Court law. *See Am. Broadcasting Cos., Inc. v. Aereo, Inc.*, 573 U.S.
19 431, 436 (2014). Further, Omniverse’s business of delivering content through
20 downstream services and other resellers has induced and materially contributed to
21 the direct infringement of Plaintiffs’ reproduction and public performance rights by
22 those downstream services, resellers, and their customers. Plaintiffs’ Complaint
23 lays out each of these claims, and it appears there is no genuine dispute on the
24 current record as to whether Omniverse can demonstrate a purported license to
25 support its defense.

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1 In response to this lawsuit, Omniverse initially claimed that its conduct was
2 authorized by a purported one-hundred-year agreement negotiated in the 1990s.¹
3 But more recently, Omniverse issued a press release stating that it has ceased
4 delivering content, including Plaintiffs' Copyrighted Works, to "single dwelling
5 residential customers" as of May 31, 2019.² Through this press release, Omniverse
6 now appears to acknowledge that no agreement, including any agreement in its
7 possession or the agreement recently produced by DirecTV, provides Omniverse
8 with the necessary authority to perform, reproduce, or do anything at all with
9 Plaintiffs' Copyrighted Works. As part of this recent press effort, Omniverse also
10 announced that it intends to continue to deliver live television programming to
11 "multi dwelling unit operators." But nothing supports any supposed right to deliver
12 Plaintiffs' Copyrighted Works in this manner.

13 Plaintiffs will present these issues to the Court for resolution as expeditiously
14 as possible to ensure that Omniverse does not continue its unauthorized delivery of
15 Plaintiffs' Copyrighted Works and is held accountable for its wrongdoing.

16 **B. Omniverse's Position**

17 Defendants object to the notion of using press releases to frame the issues of
18 fact and law in this case. Omniverse and its CEO, Mr. Demeo, negotiated an
19 agreement with a noted inventor, cable entrepreneur, and developer, Shant
20 Hovnanian, whereby Omniverse would act as a marketing agent for the delivery of
21 cable content for Mr. Hovnanian's cable operator company or companies. Mr.
22 Hovnanian had a complex network of companies and entities including Speedus,
23 Grand View Cable, and HovSat. But it is clear that he had a cable operation
24 company and that he delivered cable service to multi-dwelling units and used a

25 _____
26 ¹ [https://www.lightreading.com/video/video-services/omniverse-ceo-im-doing-
27 everything-literally-by-the-book-/d/d-id/749924?_mc=RSS_LR_EDT](https://www.lightreading.com/video/video-services/omniverse-ceo-im-doing-everything-literally-by-the-book-/d/d-id/749924?_mc=RSS_LR_EDT)

28 ² [https://www.prweb.com/releases/omniverse_tv_announces_changes_to_its_live
television_services_offering/prweb16348740.htm](https://www.prweb.com/releases/omniverse_tv_announces_changes_to_its_live_television_services_offering/prweb16348740.htm)

1 headend in New Jersey. Ultimately a joint venture agreement was agreed to and
2 negotiated with HovSat. The Joint Venture Agreement, dated Nov. 1, 2017 provided
3 that HovSat, Inc., a New Jersey company, and Omniverse, and their appropriate
4 “affiliates” would distribute television programming received under agreements that
5 HovSat or its affiliates had with cable signal providers such as DirecTV using a
6 proprietary “over the top” or OTT media streaming platform, infrastructure and
7 distribution relationships. Omniverse (called OmniSat in the agreement) was to
8 launch an innovative new television streaming service for distributing television
9 programming currently received under contract by HovSat, a multi-channel
10 programming provider. HovSat undertook to and did provide a co-location
11 agreement for access to the content and technology, and provided equipment and
12 infrastructure at a data center facility in New Jersey. The venture undertook to serve
13 underserved and low-income residential and multi-dwelling residential subscribers.
14 It later expanded its base to non-local residential subscribers who were customers of
15 various companies that had affiliate relationships with it.

16 For a brief time Omniverse also has a set top box which allowed for the
17 delivery of live TV and video on demand. This product was offered for sale from
18 2014 to 2017 was supported by Omniverse through January 2018. At its peak, the
19 Omnibox userbase was less than 200 users. In substance the Omnibox was sold
20 hard-coded to open the Omnibox application allowing the owner to pay for and
21 receive live TV services and video on demand. The box did not provide any Kodi or
22 Kodi-like applications, add-ons or other software or applications that might allow
23 owners to access and stream or copy pirated content available online. Any VOD
24 services provided included licensed content from Flimon, MediaFly and Playon, and
25 possible others.

26 Omniverse streaming was accomplished with various streaming partners such
27 as SotalCloud, TikiLIVE and Vista TV. The conditional access technology ensured
28 that streamed content was viewable by paying subscribers (namely subscribers of

1 companies like TikiLIVE) and was considered to be highly robust with respect to
2 preventing third-party misappropriation of streams for unlicensed re-transmission.

3 During its period of streaming, Omniverse had contracts with “partners” with
4 HTTP Headers and login credentials that enabled them to pull Omniverse streams
5 (which it obtained from what it thought were licensed sources like HovSat) from
6 Omniverse controlled domain names.

7 Omniverse did not subscribe to Amazon Web Services and Google Cloud
8 Platform [Omniverse did subscribe to Amazon Cloud Front, a content delivery
9 service, however this is not the same as storing movies for replaying or VOD], did
10 not store large amounts of data or media, and never used such services to store
11 media or any sort. When Omniverse provided VOD services, the media was
12 delivered to subscribers separate from the Hovsat service and such content was
13 managed, served and charged for by unrelated third parties. Where in the past
14 Omniverse through OmniBox, delivered VOD that content was licensed from and
15 was stored on the servers of the rights owners, such as Filmon, Mediafly, and
16 Playon.

17 Omniverse accordingly disagrees with the claim that it copied or stored or
18 caused to be copied or stored copyrighted content of Plaintiffs. It did not copy
19 copyrighted works. It did stream what it believed to be (and which still may be)
20 licensed content and it paid for that content by, for example, paying significant fees
21 to HovSat, which was supposed to be accounting appropriately to DirecTV.

22 Omniverse was not itself a licensed broadcaster or re-broadcaster of media
23 content but understood that it was marketing technology and other media delivery
24 services through its joint venture partner, HovSat. It also understood that HovSat
25 was licensed to distribute live TV under a distribution agreement or series of
26 agreements between HovSat (or Hovnanian affiliates) and DirecTV. As Omniverse
27 understood it, DirecTV held the right to distribute and sub-distribute content,
28 including copyrighted content of rights holders, by way of their distribution

1 agreements with television networks and movie studios. In fact, it paid substantial
2 sums for what was always a small company to HovSat with the understanding that
3 DirecTV in turn was receiving appropriate fees from HovSat, with whom there was
4 a direct contract relationship of a confidential nature. Investors in Omniverse
5 advanced millions of dollars to Omniverse to buy the equipment and infrastructure
6 and to finance the growth of the company believing that the DirecTV and HovSat
7 relationship was as related above and was in full compliance with the law.

8 After this litigation commenced, Omniverse made many demands on HovSat
9 for proof to corroborate its license relationships and for material assistance in
10 defending the claims in suit. Omniverse also agreed to a subpoena to DirecTV to
11 obtain what it expected to be archived records dating back to the 1990s and early
12 2000s between Hovanian entities (of which there were many) and DirecTV or its
13 predecessor companies. Thus far the subpoenas have not located historical records
14 of significance earlier than 2003. It is not known if such records will be found in
15 discovery or not. Mr. Hovnanian is apparently in Armenia and his attorneys have
16 not come forward to support the legal position of HovSat. What is more, the
17 DirecTV production did not reflect the receipt of large license fees from HovSat
18 even though large payments were made to HovSat by Omniverse. This was of
19 substantial concern to Omniverse and its investors because they were aware of the
20 accounting records showing the payments to HovSat and fully expected the
21 DirecTV records to reflect the receipt of appropriate license fees from HovSat to
22 DirecTV. After further efforts to learn what happened to the money and to master
23 distribution or other contracts with DirecTV or its predecessors that antedated 2003,
24 Omniverse management directed the cessation of all streaming services to
25 residential subscribers, effective May 31, 2019, and determined that the company
26 will be wound-up and go out of business under the provisions of Delaware law.
27 This will result in a very considerable loss of investor funds in the business.

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1 Omniverse accounting records and tax returns will not show that it made a
2 profit during its operations. On the contrary, it is believed to have lost substantial
3 sums.

4 While the company did announce by press release that it intended to continue
5 to deliver MDU-related services, it has elected to discontinue its business
6 relationship with HovSat and will not be pursuing any MDU opportunities with
7 third-parties as a company. Instead, the company will be unwinding its business
8 operations and will make commercially reasonable dispositions of its equipment and
9 assets in accordance with Delaware law.

10 There are currently funds due to HovSat for alleged license rights. Given the
11 circumstances related above, however, Omniverse has suspended these payments.

12 Omniverse expects to investigate in discovery in this case its rights to
13 indemnification from HovSat and related entities and may sue HovSat and various
14 third parties as a result.

15 Omniverse reiterates the position it has taken in its pending and unresolved
16 motion for more definite statement. It disputes the claims of copyright infringement,
17 including claims under 17 U.S.C. §106 (4). *See generally Fox Broadcasting Co v.*
18 *Dish Network LLC.*, 160 F. Supp. 3d 1139 (C.D. Cal. 2015). It likewise disputes any
19 contributory or vicarious infringement alluded to by plaintiffs in their complaint. To
20 the extent there was any infringement, such infringement was, on information and
21 belief, without malice or bad intent by Omniverse or its management and was
22 caused or contributed to by third-parties such as HovSat.

23 **II. Changes to Timing, Form, or Requirements for Initial Disclosures under**
24 **Rule 26(a) [Fed. R. Civ. P. 26(f)(3)(A)]**

25 The Parties have agreed to exchange initial disclosures on June 24, 2019.
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1 **III. Subjects, Timing, and Phasing of Discovery [Fed. R. Civ. P. 26(f)(3)(B)]³**

2 **A. Plaintiffs' Position**

3 1. Subjects of Discovery

4 Plaintiffs intend to seek discovery from both Defendants:

- 5 • Omniverse's operations and streaming activities;
- 6 • Omniverse's sources of content;
- 7 • Omniverse's relationships with downstream services, including
- 8 communications with such services, fee structure, advertising and
- 9 marketing materials, any support offered, etc.;
- 10 • Omniverse's claim that it operates under a valid license;
- 11 • Omniverse and/or Jason M. DeMeo's financial records showing
- 12 revenues and ability to satisfy a judgment.

13 Plaintiffs will obtain such discovery through requests for production,

14 interrogatories, requests for admission, at least one 30(b)(6) deposition from

15 Omniverse, and a deposition of Jason M. DeMeo personally. Plaintiffs also

16 anticipate some additional third-party discovery, to the extent necessary.

17 The Court previously authorized the Parties to seek expedited third-party

18 discovery of Hovsat Cable, Inc. ("Hovsat"). (ECF No. 33.) However, Hovsat's

19 business registration in New Jersey was revoked in 2012, and its principal, Shant

20 Hovnanian, has apparently left the country, making service difficult. To date,

21 Plaintiffs have been unable even to identify counsel for Hovsat. Omniverse's

22 counsel stated that he has been in contact with Hovsat's counsel on two occasions,

23 but continues to decline to provide Plaintiffs with contact information for Hovsat's

24 counsel despite repeated requests from Plaintiffs' counsel.

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28 ³ For the Court's convenience, the Parties' respective proposed deadlines are set forth in table form in Appendix A.

1 2. Timing of Discovery

2 During the Parties' conference, Plaintiffs suggested that the period of fact
3 discovery need not be prolonged because the issues to be resolved are narrow and
4 focused. Omniverse stated that it did not believe discovery should be expedited,
5 because it intended to seek deposition testimony from Mr. Hovnanian, who, as noted
6 above, is out of the country. To accommodate Omniverse's position, Plaintiffs
7 therefore request that the Court set September 20, 2019 as the close of fact
8 discovery, which will provide the parties with 9 months from filing of Plaintiffs'
9 Complaint to conduct fact discovery or the investigation Omniverse states that it
10 requires. Plaintiffs then request that the Court set the following deadlines for expert
11 discovery:

- 12 • Deadline for affirmative expert reports: November 20, 2019;
- 13 • Deadline for rebuttal expert reports: January 6, 2020; and
- 14 • Close of expert discovery: January 31, 2020.

15 Plaintiffs further request that the Court set a deadline for dispositive motions of
16 February 28, 2020 and set the case for trial 60 days after the hearing on any
17 dispositive motions filed by the Parties.

18 **B. Omniverse's Position**

19 Defendants will conduct all necessary discovery into the DirecTV and
20 Hovnanian license and contract relationships, including such discovery as may be
21 available from predecessors in interest to DirecTV. It expects to depose Hovnanian
22 affiliates and persons with knowledge of HovSat, Inc, HovSat, LLC and all
23 affiliated companies concerning the license claims by Shant Hovnanian and HovSat.
24 It will also engage in third-party subpoenas and discovery necessary to "follow the
25 money" paid to HovSat for what it believed to be license rights.

26 Defendants expect to depose Plaintiffs and their corporate representatives for
27 details as to each alleged act of infringement attributed to Omniverse and Demeo.
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1 It is likely that Omniverse will pursue third-party claims in this case and will
2 need appropriate time to engage those parties for information and to develop claims
3 against them. It therefore regards the discovery schedule suggested by Plaintiffs as
4 too short and proposes the following deadlines:

- 5 • Fact discovery cut-off and Fact discover motion cut-off: January 24,
6 2020.

7 It should be added that Omniverse believes that some of the claims asserted
8 by the Plaintiffs are likely to be subject to insurance coverage and that Omniverse is
9 possibly entitled to a defense on such claims. The speedy discovery schedule
10 suggested by counsel for Plaintiffs would only hinder the transition to new counsel
11 that appears likely to occur in order to permit the defense of the case by an insurance
12 carrier.

13 **IV. Electronically Stored Information [Fed. R. Civ. P. 26(f)(3)(C)]**

14 In accordance with Federal Rule of Civil Procedure 34(b)(2)(E)(ii), the
15 Parties will produce electronically stored information in the manner it is kept in the
16 usual course of business and in a reasonably usable form. The Parties intend to meet
17 and confer further on a stipulation regarding the appropriate format and
18 specifications for the exchange of electronically stored information.

19 **V. Claims of Privilege; Protective Order [Fed. R. Civ. P. 26(f)(3)(D)]**

20 The Parties discussed and neither side anticipates any unusual or significant
21 issues relating to privilege. The Parties have stipulated to a protective order, which
22 the Court entered on March 25, 2019. (ECF No. 24.) The Parties intend to meet
23 and confer further on a stipulation regarding the appropriate format and
24 specifications for privilege logs to ensure that the obligation to identify what
25 documents are being withheld for privilege is not unduly burdensome on either side.

26 Pursuant to Federal Rule of Evidence 502(b), the Parties agree that if any
27 documents subject to a claim of privilege or protection are inadvertently produced,
28 such an inadvertent disclosure shall not operate as a waiver of privilege.

1 **VI. Limitations on Discovery [Fed. R. Civ. P. 26(f)(3)(E)]**

2 The Parties agreed that the Federal Rules of Civil Procedure and Local Rules
3 governing discovery shall not be modified with one exception. Omniverse believes
4 it requires 15 depositions as opposed to the 10 provided under the Federal Rules. In
5 particular, Omniverse seeks a 30(b)(6) deposition from each Plaintiff, as well as
6 certain third-party depositions and perhaps other depositions of individuals affiliated
7 with Plaintiffs. Plaintiffs propose that the Parties continue to meet and confer on
8 whether it is necessary to expand the number of depositions beyond 10 per side,
9 since the Parties likely will seek third-party depositions from the same people or
10 entities. In the event the Parties have a dispute as to whether more than 10
11 depositions per side are required, the Parties can present that to the Magistrate Judge
12 on a more complete record.

13 **VII. Other Orders [Fed. R. Civ. P. 26(f)(3)(F)]**

14 The Parties are unaware of any other orders that the Court should issue under
15 Rule 26(c) or Rules 16(b) or (c).

16 **VIII. Complexity of the Case [L.R. 26-1(a)]**

17 The Parties do not believe that this case is complex or that it requires
18 reference to the procedures set forth in the Manual for Complex Litigation.

19 **IX. Motion Schedule [L.R. 26-1(b)]**

20 **A. Plaintiffs' Position**

21 Plaintiffs intend to file a motion for summary judgment on liability as soon as
22 is practicable. Plaintiffs propose a dispositive motion filing cut-off of February 28,
23 2020, one month after the close of expert discovery.

24 **B. Omniverse's Position**

25 Omniverse requests that the Court set a deadline for filing of dispositive
26 motions of April 17, 2020; a deadline for opposition briefs to dispositive motions of
27 May 15, 2020; a deadline for reply to dispositive motions of May 29, 2020; a
28 deadline for hearing on dispositive motions of June 26, 2020, a Pretrial Conference

1 deadline of July 20, 2020, and set the case for jury trial no earlier than August 3,
2 2020.

3 **X. Alternative Dispute Resolution [L.R. 26-1(c)]**

4 The Parties agree that formal settlement discussions are unlikely to be
5 productive until the Court adjudicates the Parties' summary judgment motions. If
6 such motions do not resolve the case, Plaintiffs elect to proceed in mediation before
7 a private mediator under ADR Procedure No. 3, while Omniverse prefers to ask the
8 Magistrate Judge assigned to the case to mediate pursuant to ADR Procedure No. 1.
9 *See* L.R. 16-15.4. Plaintiffs are willing to proceed in front of the Magistrate Judge if
10 Omniverse will not consider a private mediator.

11 Defendants propose a deadline for court-ordered mediation of January 31,
12 2020.

13 **XI. Trial Estimate [L.R. 26-1(d)]**

14 Plaintiffs have demanded a jury trial. The Parties anticipate a trial time of 5
15 to 10 court days, depending on the number of issues that may be resolved on
16 summary judgment.

17 **XII. Additional Parties [L.R. 26-1(e)]**

18 **A. Plaintiffs' Position**

19 Plaintiffs do not intend at this time to join additional parties to this action.

20 **B. Omniverse's Position**

21 Omniverse expects that third parties will be added to the case after a short
22 time of discovery into the indemnification issues associated with its relationship
23 with HovSat, Hovnanian and their respective affiliates, and proposes a deadline of
24 July 26, 2019.

25 **XIII. Expert Discovery [L.R. 26-1(f)]**

26 The Parties discussed and contemplate a minimum of two experts per side,
27 including a technical expert and a damages expert.

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A. Plaintiffs’ Position

Plaintiffs propose November 20, 2019 as the deadline for the disclosure of affirmative experts and affirmative expert reports, and propose January 6, 2020 as the deadline for the disclosure of rebuttal experts and rebuttal expert reports. Plaintiffs propose a cut-off for expert discovery of January 31, 2020.

B. Omniverse’s Position

Defendants suggest the following deadlines:

- Deadline for opening expert reports (on issues for which the party bears the burden of proof): February 28, 2020;
- Deadline for rebuttal expert reports: March 27, 2020; and
- Close of expert discovery: April 28, 2020.

DATED: June 18, 2019

MUNGER, TOLLES & OLSON LLP

By: /s/ Melinda E. LeMoine

MELINDA E. LEMOINE

Attorneys for Plaintiffs

DATED: June 18, 2019

BYRD CAMPBELL, P.A.

By: /s/ Stephen D. Milbrath

STEPHEN D. MILBRATH

Attorneys for Defendants

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FILER’S ATTESTATION

I, Melinda E. LeMoine, am the ECF user whose identification and password are being used to file this Joint Rule 26(f) Report. Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I hereby attest that the above-named signatories concur in and authorize this filing.

DATED: June 18, 2019

By: /s/ Melinda E. LeMoine
MELINDA E. LEMOINE

APPENDIX A

Event	Plaintiffs' Proposed Deadline	Omniverse's Proposed Deadline
Initial disclosures	June 24, 2019	June 24, 2019
Deadline to join additional parties		July 26, 2019
Close of fact discovery	September 20, 2019	January 24, 2020
Affirmative expert reports	November 20, 2019	February 28, 2020
Rebuttal expert reports	January 6, 2020	March 27, 2020
Close of expert discovery	January 31, 2020	April 28, 2020
Dispositive motions deadline	February 28, 2020	April 17, 2020
Opposition briefs deadline	To be negotiated or set by Local Rules	May 15, 2020
Reply briefs deadline	To be negotiated or set by Local Rules	May 29, 2020
Hearing on dispositive motions	To be negotiated or set by Local Rules	June 26, 2020
Court-ordered mediation	After adjudication of dispositive motions	January 31, 2020
Pretrial conference	To be negotiated or set by Local Rules	July 20, 2020
Trial	60 days after hearing on dispositive motions	August 3, 2020