

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

FOX TELEVISION STATIONS, INC., et al.

Plaintiffs,

v.

FILMON X, LLC, et al.

Defendants.

Civil Action No. 1:13-cv-00758-RMC  
Hon. Rosemary M. Collyer**PLAINTIFFS' RESPONSES TO DEFENDANTS' EVIDENTIARY OBJECTIONS TO  
THE DECLARATIONS OF SHERRY BRENNAN AND JULIE SHEPARD IN SUPPORT  
OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Of the nine declarations Plaintiffs<sup>1</sup> submitted in support of their Motion for a Preliminary Injunction, Defendants only objected to portions of the Declarations of Sherry Brennan and Julie Shepard.<sup>2</sup> Plaintiffs hereby respond to those objections.

Defendants' objections are meritless and should be overruled. First, the objections are largely arguments that Defendants' service is legal, not true evidentiary objections. *See, e.g.*, Objection to Shepard Decl., ¶ 14 ("Irrelevance ... FilmOn X does not require authorization or licenses from Plaintiffs to provide its legal service to its customers; therefore, the existence of

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<sup>1</sup> Plaintiffs are Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, Fox Broadcasting Company, NBC Subsidiary (WRC-TV) LLC, NBC Studios LLC, Universal Network Television, LLC, Open 4 Business Productions LLC, Telemundo Network Group LLC, American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., Allbritton Communications Company, and Gannett Co., Inc.

<sup>2</sup> Defendants have submitted no objections to the declarations of the following individuals: Samuel Bahun, Rebecca Borden, Daniel M. Kummer, William H. Lord, Marsha Reed, Carly Seabrook, and Barbara W. Wall.

authorization for the retransmissions of is irrelevant to the issues, claims, and defenses in this action”); Objection to Brennan Decl., ¶¶ 2-4 (“Irrelevance: The copyright ownership of the Broadcast Companies and the retransmission agreements they have entered into ... are irrelevant to the claims, issues, and defenses in this case. FilmOn X’s services operate legally.”).

Second, even if Defendants’ objections had merit – and they do not – it is well settled that “a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less than complete than in a trial on the merits.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Am. Fed’n of Gov’t Emp. v. Dist. of Columbia*, 05-0472, 2005 WL 1017877, at \*4 (D.D.C. May 2, 2005). The evidentiary rules are relaxed because courts recognize the difficulties associated with gathering evidence while pressed with the urgency of a preliminary injunction motion. *See Univ. of Texas*, 451 U.S. at 395 (“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction” does not require strict adherence to the formal rules of evidence).

For example, even if it were correct that Paragraph 16 of the Brennan Declaration and Exhibit D of the Shepard Declaration contain hearsay, Defendants’ objections on this basis lack merit. Courts in this Circuit “generally permit consideration of hearsay evidence in connection with preliminary injunction motions.” *Holiday CVS, L.L.C. v. Holder*, 839 F. Supp. 2d 145, 155 (D.D.C. 2012). Defendants’ hearsay objection to Exhibit D is flatly incorrect as this document is Defendants’ own press release and, as such, it constitutes a party admission. Fed. R. Ev. 801(d).

Finally, Defendants’ other objections -- relevance, foundation, improper lay opinion, improper legal conclusion, etc. -- are similarly groundless and insufficiently explained. Ms.

Shepard's and Ms. Brennan's relevant background and personal experience, as set forth in their declarations, sufficiently support each of the challenged statements and exhibits, which properly bear on factual issues directly relevant to Plaintiffs' Motion for Preliminary Injunction.

For the foregoing reasons, the Court should overrule Defendants' improper and meritless evidentiary objections.

Dated: August 23, 2013

Respectfully submitted,

/s/ Paul Smith

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Paul Smith (D.C. Bar No. 358870)  
psmith@jenner.com  
JENNER & BLOCK LLP  
1099 New York Avenue, NW, Suite 900  
Washington, DC 20001-4412  
Telephone: (202) 639-6000  
Facsimile: (202) 639-6066

Richard L. Stone (admitted *pro hac*)  
rstone@jenner.com  
Julie A. Shepard (admitted *pro hac*)  
jshepard@jenner.com  
Amy Gallegos (admitted *pro hac*)  
agallegos@jenner.com  
JENNER & BLOCK LLP  
633 West 5th Street, Suite 3600  
Los Angeles, CA 90071  
Telephone: (213) 239-5100  
Facsimile: (213) 239-5199

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

/s/ Robert Garrett

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Robert Alan Garrett (D.C. Bar No. 239681)  
Hadrian R. Katz (D.C. Bar No. 931162)  
Christopher Scott Morrow

(D.C. Bar No. 491925)  
Murad Hussain (D.C. Bar No. 999278)  
ARNOLD & PORTER LLP  
555 12th St., NW  
Washington, DC 20004  
Telephone: (202) 942-5444  
Facsimile: (202) 942-5999

James S. Blackburn (admitted *pro hac*)  
james.blackburn@aporter.com  
John C. Ulin (admitted *pro hac*)  
john.uln@aporter.com  
ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, CA 90017  
Telephone: (213) 243-4000  
Facsimile: (213) 243-4199

*Attorneys for Plaintiffs NBC Subsidiary  
(WRC-TV) LLC, NBC Studios LLC,  
Universal Network Television LLC, Open 4  
Business Productions LLC, Telemundo  
Network Group LLC, American  
Broadcasting Companies, Inc., Disney  
Enterprises, Inc., Allbritton  
Communications Company, CBS  
Broadcasting Inc., CBS Studios Inc., and  
Gannett Co., Inc.*