

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FOX TELEVISION STATIONS, INC., et al.,

Plaintiffs,

v.

Civil Action No. 13-cv-00758-RMC
Hon. Rosemary M. Collyer

FILMONX, LLC (f/k/a AEREOKILLER
LLC), et al.,

Defendants.

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DECLARATION OF JULIE A. SHEPARD IN SUPPORT OF PLAINTIFFS’
OPPOSITIONS TO DEFENDANTS’ EMERGENCY MOTIONS

I, Julie A. Shepard, declare as follows:

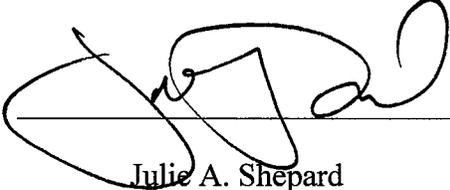
1. I am an attorney licensed to practice law in the State of California, and I am a partner at Jenner & Block LLP, counsel of record for plaintiffs Fox Television Stations, Inc., Twentieth Century Fox Film Corp., and Fox Broadcasting Company (collectively, "Fox"). I submit this declaration in support of the Plaintiffs' Opposition to Defendants FilmOnX, LLC (f/k/a Aereokiller LLC), FilmOn.TV Networks, Inc., FilmOn.TV, Inc., and FilmOn.com, Inc. (collectively, "FilmOnX" or "Defendants") Motion for Reconsideration and Motion to Stay. As used herein, the term "Plaintiffs" means Fox and the other plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to such facts under oath.

2. FilmOnX recently expanded its Internet television operations into Seattle, Washington. It did so even though FilmOnX cannot (and to Plaintiffs' knowledge does not) retransmit Plaintiffs' broadcast copyrighted programming in Seattle or anywhere else in the Ninth Circuit in light of the injunction issued by Judge Wu in *Fox Television Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138, 1148 (C.D. Cal. 2012), barring FilmOnX from retransmitting the Plaintiffs' content within the Ninth Circuit. Attached hereto as **Exhibit A** is a true and correct copy of FilmOn's press release describing its Seattle service, dated August 13, 2013, which was downloaded from Defendants' web site.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of a declaration filed by Defendants in support of their opposition to Fox's motion for a preliminary injunction in the *Fox Television Stations, Inc. v. BarryDriller Content Sys., PLC* case in the Central District of California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of September, 2013 at Los Angeles, California.



Julie A. Shepard

EXHIBIT A

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Billionaire Media Entrepreneur Alki David Officially Opens FilmOn's Seattle Antenna Array Free to the Public



Billionaire Media Entrepreneur Alki David Officially Opens FilmOn's Seattle Antenna Array Free to the Public

LOS ANGELES, Aug. 13, 2013 (GLOBE NEWSWIRE) -- FilmOn.com (<http://www.FilmOn.com/affiliate/channels>), the world's largest free internet television provider, today announced the opening of its Seattle antenna array, making it the twelfth FilmOn data center in the USA offering consumers free access to individual antennas over the internet and outperforming its rival Aereo in coverage, size and price.

A photo accompanying this release is available at <http://www.globenewswire.com/newsroom/prs/?pkqid=20450>

FilmOn is legally able to offer its full service in the rest of the country outside of the 9th Circuit and is currently doing so in New York, Boston, Chicago, Dallas, Miami, Denver, Atlanta, New Jersey and Connecticut. Within the next two weeks Philadelphia, Detroit, Minneapolis and Honolulu will open.

FilmOn is also active with other local channels in San Francisco, Phoenix, and Los Angeles, as these cities fall within the 9th Circuit as a result of a temporary restraining order given to FilmOn, preventing it from allowing consumers to tune their antennas to the four major networks.

Billionaire media entrepreneur Alki David officially opened the Seattle data center today, saying: "This is an important day for FilmOn because we have opened a fourth data center within the 9th Circuit. The Federal Court of Appeals is hearing our case on August 27th where we sincerely hope an unfair decision is overturned. In the 9th Circuit (mainly West Coast) we are currently restrained from allowing consumers to tune in to NBC, FOX, CBS and ABC via our perfectly legal antenna arrays. Unlike would-be competition we do not charge audiences to watch something that is already freely available." David continues: "We have been likened to being an Aereo copycat service, but we are in far more cities with our antenna arrays than any other firm. We carry over 600 live worldwide channels, plus 45,000 Video On Demand titles - and all for free. FilmOn has been in business since 2006 and we produce and license content from premium providers, which clearly makes us a totally different proposition to any other service.



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EXHIBIT B

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8 Attorneys for Defendant Aereokiller, LLC

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

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13 NBCUNIVERSAL MEDIA, LLC,
14 UNIVERSAL NETWORK
15 TELEVISION, LLC,
16 OPEN 4 BUSINESS
17 PRODUCTIONS LLC,
18 NBC SUBSIDIARY (KNBC-TV)
19 LLC,
20 TELEMUNDO NETWORK
21 GROUP LLC,
22 WNJU-TV BROADCASTING LLC,
AMERICAN BROADCASTING
COMPANIES, INC.,
ABC HOLDING COMPANY INC.,
DISNEY ENTERPRISES, INC.,
CBS BROADCASTING INC.,
CBS STUDIOS INC., and
BIG TICKET TELEVISION, INC.,

23 Plaintiffs,

24 v.

25 BARRY DRILLER, INC.,
26 BARRYDRILLER CONTENT
27 SYSTEMS PLC, AEREOKILLER
28 LLC, and JOHN DOES 1-10,

Defendants.

CASE NO. CV12-06950-GW (xE)

**DECLARATION OF ALKIVIADES
DAVID IN SUPPORT OF
AEREOKILLER LLC'S OPPOSITION
TO PLAINTIFFS' APPLICATION FOR
PRELIMINARY INJUNCTION**

Date: December 6, 2012
Time: 8:30a.m.
Judge: Hon. George Wu
Place: Courtroom 10 – Spring Street
Courthouse

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DECLARATION OF ALKIVIADES DAVID

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I, Alkiviades David, declare:

1. I submit this declaration in support of Aereokiller LLC’s Opposition to Plaintiffs’ Motion for a Preliminary Injunction. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

A. FilmOn’s Business, Technology and Officers

2. I am the Founder and CEO of FilmOn TV Networks, Inc. (“FilmOn”). Since 2008, FilmOn provides high-definition (“HD”) subscription-based television services to internet protocol (“IP”)-enabled devices including televisions, set-top boxes, personal computers, mobile phones, and tablets. FilmOn subscription packages include access to over a hundred television channels, premium movie channels, pay-per-view channels, as well as over 2,000 video on demand titles. FilmOn also provides some content for free in standard definition (“SD”) format.

3. FilmOn provides services worldwide across a proprietary delivery platform connected to datacenters in London, Geneva, New York and Los Angeles. FilmOn is based in the United States with some operations and staff located in Europe.

4. As Founder and CEO, I have full knowledge of FilmOn’s business operations. In addition to managing the business, I am the creator of certain radio frequency (“RF”) technologies involving video compression. Currently, I have several patents pending for this technology.

5. FilmOn has a senior management team including Chief Technology Officer (“CTO”) Mykola Kutovyy. FilmOn relies upon Mr. Kutovoy to implement, operate and manage its technology.

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1 28. FilmOn has licenses to broadcast content with about 15 different
2 traditional cable channels, including Inspiration Network and Real Channel.

3 29. In its July 11, 2012 press release, FilmOn stated that it “pays
4 retransmission fees on behalf of all of its paying subscribers. FilmOn feels its only
5 right to pay the content producers their fair dues.” See Exhibit B, attached hereto.

6 30. FilmOn has engaged in discussions and negotiations with Fox and NBC
7 to enter into licenses for content distribution, and had similar discussions with the
8 Disney Channel and CBS. Prior to release of its new technology, on August 3, 2012,
9 FilmOn again offered payment for content in electronic communications with Katz,
10 legal counsel to FOX and NBC in the New York Action. See Exhibit C, attached
11 hereto.

12 31. Despite FilmOn’s desire to enter into such licenses, the major television
13 networks have not agreed to such relationships.

14 **F. FilmOn’s Investment and Revenues**

15 32. FilmOn has invested over \$10 million into its technology, with several
16 patents pending.

17 33. FilmOn receives revenue from multiple sources, including direct
18 customer subscriptions, licensee fees, and advertising revenue.

19 34. Through third party vendors, FilmOn has the ability to track percentages
20 of user viewing by content, including free-to-air network programming.

21 35. Approximately 50 percent of FilmOn’s United States customers have
22 subscriptions for local channels which includes network programming.

23 36. To date, the FilmOn mobile application has been downloaded about nine
24 million times worldwide. About 20,000 to 30,000 of those downloads were in the
25 United States.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 15, 2012, at Beverly Hills, California.



Alkiviades David

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