

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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FOX TELEVISION STATIONS, INC., et al.,

**CIVIL ACTION NO. 1:13-cv-00758 (RMC)**

*Plaintiffs/Counter-Defendants,*

v.

FILMON X, LLC, et al.,

*Defendants/Counter-Plaintiffs.*

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**DECLARATION OF RYAN G. BAKER IN SUPPORT OF DEFENDANT FILMON X'S  
REPLY TO PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE WHY  
DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF THE SEPTEMBER 5, 2013  
PRELIMINARY INJUNCTION**

I, Ryan G. Baker, declare:

1. I am an attorney admitted to practice in the State of California, and a partner at Baker Marquart LLP. I represent the defendants in this action.

2. I submit this declaration in support of Defendants FilmOn X LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc. and FilmOn.com, Inc.'s ("Defendants") Reply to Plaintiffs' Response to Order to Show Cause Why Defendant Should Not Be Held in Contempt of the September 5, 2013 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.

3. In addition to this action, I represent defendant FilmOn.com, Inc. in an action captioned *CBS Broadcasting, Inc. v. FilmOn.com, Inc.* in the Southern District of New York, Case No. 10 CV 7532 (NRB) (the "New York Action").

4. On August 15, 2013, the court in the New York Action held a hearing on two motions to compel filed by the plaintiffs and an order to show cause why FilmOn should not be

found in civil contempt for violation of an injunction. I attended this hearing on behalf of FilmOn and third party Alkiviades David.

5. At the August 15, 2013 hearing, FilmOn was ordered by the Court to produce an agreement that it allegedly entered into with a third party by August 21, 2013. It was my understanding from the discussion that took place at the hearing that FilmOn had been ordered to produce the agreement to plaintiffs. I did not believe that FilmOn had been ordered to file a copy of the agreement directly with the Court. It was my understanding that – after production of the agreement to plaintiffs – the parties would conduct a further meet and confer and then submit supplemental briefing on plaintiffs’ contempt motion as necessary before this Court ruled on the merits of that motion.

6. On August 20, 2013, in accordance with this Court’s order at the August 15, 2013 hearing, I emailed a copy of the agreement at issue to Hadrian Katz at Arnold & Porter LLP, counsel for plaintiffs in the New York Action. I also offered to “discuss” the agreement at Mr. Katz’s convenience. Attached as Exhibit A is a true and correct copy of an email chain between myself and Mr. Katz, including my August 20, 2013 email to him.

7. Mr. Katz did not respond to my offer to meet and confer about the agreement; instead, on September 6, 2013, plaintiffs filed a letter with this Court enclosing a copy of the September 5, 2013 preliminary injunction issued in this action.

8. A couple days later, on September 10, the court in the New York Action found FilmOn in contempt on the mistaken ground that FilmOn had “failed to produce [the alleged licensing agreements] despite that court order.” *CBS Broadcasting Inc. v. FilmOn.com, Inc.*, 2013 WL 4828592, \*8 (Sept. 10, 2013 S.D.N.Y.).

9. Recently, the plaintiffs submitted and obtained entry of a ten million dollar judgment in the New York Action against FilmOn, which the court subsequently deleted from the docket after my office advised the court that the judgment was actually against another party and originated from a completely different litigation. A copy of the deleted docket entry is attached as Exhibit B.

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

Executed on October 24, 2013 at Los Angeles, California.

By \_\_\_\_\_

Ryan G. Baker

# **EXHIBIT A**

## Scott Malzahn

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**From:** Ryan Baker  
**Sent:** Wednesday, September 11, 2013 11:12 AM  
**To:** Scott Malzahn  
**Subject:** FW: February 28, 2013 Letter  
**Attachments:** FILMON0001 - FILMON0019.pdf

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**From:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Date:** Tuesday, August 20, 2013 7:26 PM  
**To:** "Katz, Hadrian R." <[Hadrian.Katz@APORTER.COM](mailto:Hadrian.Katz@APORTER.COM)>  
**Subject:** Re: February 28, 2013 Letter

Hadrian,

Pursuant to our conversations and to the Court's order, attached please find a document, Bates labeled FILMON0001-0019. Please note the attached has been designated "Restricted – Attorneys' Eyes Only," pursuant to the protective order signed by the parties on June 1, 2011.

Please let me know when you would like to discuss. I am available most of the day on Thursday.

Thanks,

Ryan

Ryan G. Baker

Baker Marquart LLP

Direct: (424) 652-7801

[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)

[www.bakermarquart.com](http://www.bakermarquart.com)

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**From:** <Katz>, "Hadrian R." <[Hadrian.Katz@APORTER.COM](mailto:Hadrian.Katz@APORTER.COM)>  
**Date:** Saturday, August 17, 2013 4:49 AM  
**To:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Subject:** Re: February 28, 2013 Letter

Thank you, Ryan. I should be around most of next week.

Sent from my iPad

On Aug 16, 2013, at 9:04 PM, "Ryan Baker" <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)> wrote:

Hadrian,

I apologize that I missed the email you sent me in May with the protective order.

I will produce the documents ordered by the Court. Also, we should schedule a time to discuss what my clients will do with regard to material available on the internet.

Thanks,

Ryan

Ryan G. Baker  
Baker Marquart LLP  
Direct: (424) 652-7801  
[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)  
[www.bakermarquart.com](http://www.bakermarquart.com)

---

**From:** Katz, Hadrian R. [<mailto:Hadrian.Katz@APORTER.COM>]  
**Sent:** Thursday, May 02, 2013 2:05 PM  
**To:** Ryan Baker  
**Cc:** Jaime Marquart  
**Subject:** Re: February 28, 2013 Letter

Attached is the *CBS Broadcasting v. FilmOn* protective order. If you are able to sign it, we can move forward on the VOD issue as we discussed.

---

**From:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Date:** Wednesday, March 27, 2013 8:38 PM  
**To:** "Hadrian R. Katz" <[Hadrian.Katz@aporter.com](mailto:Hadrian.Katz@aporter.com)>  
**Cc:** Jaime Marquart <[jmarquart@bakermarquart.com](mailto:jmarquart@bakermarquart.com)>  
**Subject:** RE: February 28, 2013 Letter

Harry,

The court has granted the request to continue the hearing until May 2 at 3:30 pm.

Please confirm that you have received this email.

Thanks,

Ryan

Ryan G. Baker  
Baker Marquart LLP  
Direct: (424) 652-7801  
[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)  
[www.bakermarquart.com](http://www.bakermarquart.com)

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**From:** Katz, Hadrian R. [<mailto:Hadrian.Katz@APORTER.COM>]  
**Sent:** Tuesday, March 26, 2013 7:59 AM

**To:** Ryan Baker  
**Cc:** Jaime Marquart  
**Subject:** Re: February 28, 2013 Letter

I have polled all of our clients, and there is no objection to a May 2 rescheduling. If you can work that out with the court, it is fine with us.

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**From:** <Katz>, "Hadrian R. Katz" <[Hadrian.Katz@aporter.com](mailto:Hadrian.Katz@aporter.com)>  
**Date:** Friday, March 22, 2013 6:05 PM  
**To:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Cc:** Jaime Marquart <[jmarquart@bakermarquart.com](mailto:jmarquart@bakermarquart.com)>  
**Subject:** Re: February 28, 2013 Letter

I will get back to you on that.

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**From:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Date:** Friday, March 22, 2013 6:00 PM  
**To:** "Hadrian R. Katz" <[Hadrian.Katz@aporter.com](mailto:Hadrian.Katz@aporter.com)>  
**Cc:** Jaime Marquart <[jmarquart@bakermarquart.com](mailto:jmarquart@bakermarquart.com)>  
**Subject:** RE: February 28, 2013 Letter

Thank you. Would May 2 at 3:30 work for you?

Ryan G. Baker  
Baker Marquart LLP  
Direct: (424) 652-7801  
[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)  
[www.bakermarquart.com](http://www.bakermarquart.com)

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**From:** Katz, Hadrian R. [<mailto:Hadrian.Katz@APORTER.COM>]  
**Sent:** Friday, March 22, 2013 12:53 PM  
**To:** Ryan Baker  
**Cc:** Jaime Marquart  
**Subject:** Re: February 28, 2013 Letter

Thank you for your voice message.

We have no objection to rescheduling the conference for a different date in April.

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**From:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>  
**Date:** Friday, March 22, 2013 3:21 PM  
**To:** "Hadrian R. Katz" <[Hadrian.Katz@aporter.com](mailto:Hadrian.Katz@aporter.com)>  
**Cc:** Jaime Marquart <[jmarquart@bakermarquart.com](mailto:jmarquart@bakermarquart.com)>  
**Subject:** RE: February 28, 2013 Letter

Henry,

I apologize if you did not receive a copy of that letter prior to today. I was sure you were copied, but I do not see any indication of that.

Regards,

Ryan

Ryan G. Baker  
Baker Marquart LLP  
Direct: (424) 652-7801  
[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)  
[www.bakermarquart.com](http://www.bakermarquart.com)

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**From:** Jaime Marquart  
**Sent:** Friday, March 22, 2013 12:17 PM  
**To:** Katz, Hadrian R.; Ryan Baker  
**Cc:** Toby M.J. Butterfield  
**Subject:** RE: February 28, 2013 Letter

Counsel, here is a copy of the letter being referenced.

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**From:** Katz, Hadrian R. [<mailto:Hadrian.Katz@APORTER.COM>]  
**Sent:** Friday, March 22, 2013 12:03 PM  
**To:** Ryan Baker; Jaime Marquart  
**Cc:** Toby M.J. Butterfield  
**Subject:** February 28, 2013 Letter

Judge Buchwald's letter, which we received today, refers to "defendants' letter dated February 28, 2013." We have not received a copy of that letter, and would appreciate your sending one to us.

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# **EXHIBIT B**

## Scott Malzahn

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**From:** NYSD\_ECF\_Pool@nysd.uscourts.gov  
**Sent:** Tuesday, October 08, 2013 6:42 AM  
**To:** CourtMail@nysd.uscourts.gov  
**Subject:** Activity in Case 1:10-cv-07532-NRB CBS Broadcasting Inc. et al v. Filmon.Com, Inc. Note Regarding Deleted Document

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

### U.S. District Court

### Southern District of New York

#### Notice of Electronic Filing

The following transaction was entered on 10/8/2013 at 9:41 AM EDT and filed on 10/7/2013

**Case Name:** CBS Broadcasting Inc. et al v. Filmon.Com, Inc.

**Case Number:** 1:10-cv-07532-NRB

**Filer:**

**WARNING: CASE CLOSED on 08/09/2012**

**Document Number:** No document attached

**Docket Text:**

**\*\*\*DELETED DOCUMENT. Deleted document number [90] Stipulated Consent Judgment and Permanent Injunction. The document was incorrectly filed in this case. (ml)**

**1:10-cv-07532-NRB Notice has been electronically mailed to:**

Toby Michael John Butterfield [tbutterfield@fkks.com](mailto:tbutterfield@fkks.com), [docket@fkks.com](mailto:docket@fkks.com)

Peter L. Zimroth [peter\\_zimroth@aporter.com](mailto:peter_zimroth@aporter.com), [anthony\\_boccanfuso@aporter.com](mailto:anthony_boccanfuso@aporter.com)

Scott Zarin (Terminated) [scottzarin@copyrightrademarkcounsel.com](mailto:scottzarin@copyrightrademarkcounsel.com)

Hadrian Ronald Katz [katzha@aporter.com](mailto:katzha@aporter.com), [Robert\\_garrett@aporter.com](mailto:Robert_garrett@aporter.com)

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Jaime Wayne Marquart [jmarquart@bakermarquart.com](mailto:jmarquart@bakermarquart.com), [calendar@bakermarquart.com](mailto:calendar@bakermarquart.com),  
[file@bakermarquart.com](mailto:file@bakermarquart.com), [kraney@bakermarquart.com](mailto:kraney@bakermarquart.com)

**1:10-cv-07532-NRB Notice has been delivered by other means to:**

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Robert Alan Garrett  
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