

# **Yeh Exhibit 135**

**REDACTED**

# **Yeh Exhibit 136**

**REDACTED**

# **Yeh Exhibit 137**

**REDACTED**

# **Yeh Exhibit 138**

**REDACTED**

# **Yeh Exhibit 139**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20427-WILLIAMS/TURNOFF

DISNEY ENTERPRISES, INC.,  
TWENTIETH CENTURY FOX FILM CORPORATION,  
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP,  
COLUMBIA PICTURES INDUSTRIES, INC., and  
WARNER BROS. ENTERTAINMENT INC.,

*Plaintiffs,*

v.

HOTFILE CORP., ANTON TITOV, and  
DOES 1-10.

*Defendants.*

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HOTFILE CORP.,

*Counterclaimant,*

v.

WARNER BROS. ENTERTAINMENT INC.,

*Counterdefendant.*

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**JOINT MOTION AND MEMORANDUM OF LAW OF THE PARTIES FOR  
VOLUNTARY DISMISSAL OF SECOND AND THIRD COUNTS OF HOTFILE'S  
FIRST AMENDED COUNTERCLAIM AND FOR AMENDMENT OF FIRST COUNT**

In order to avoid unnecessary motion practice, Plaintiff Warner Bros. Entertainment Inc. (“Warner”) and Defendant Hotfile Corp. (“Hotfile”) jointly move pursuant to Federal Rule of Civil Procedure 41 for voluntary dismissal without prejudice of the Second Count (“Intentional Interference With a Contractual of Business Relationship”) and Third Count (“Negligence”) of Defendant Hotfile Corp.’s First Amended Counterclaim (collectively, the “state law

counterclaims”), which is contained in Hotfile’s First Amended Answer, Affirmative Defenses and Counterclaim [D.E. #144]. Warner and Hotfile further stipulate that Hotfile may amend the First Amended Counterclaim with respect to the First Count (“Violation of the DMCA, 17 U.S.C. § 512(f)”) (the “DMCA Counterclaim”), and that Warner’s time to answer the First Count shall be extended, as described below.

Warner has informed Hotfile that it intends to move to dismiss the state law counterclaims as preempted by the Copyright Act, and that, for purposes of this action, Warner will not dispute that the Digital Millennium Copyright Act, 17 U.S.C. § 512 *et seq.* (“DMCA”) governs the conduct alleged in the First Amended Counterclaim. Warner has further informed Hotfile that it intends to move to strike in part and dismiss in part the allegations underlying Hotfile’s DMCA Counterclaim under Federal Rule of Civil Procedure 9(b) insofar as the DMCA Counterclaim alleges misrepresentations by Warner other than those specifically identified in the counterclaim itself. To avoid unnecessary motion practice on these issues, for purposes of this litigation only, Warner and Hotfile both agree, by and through their undersigned counsel, to be bound by the following stipulations:

**STIPULATION AND MEMORANDUM OF LAW**

1. Warner has used a tool made available by Hotfile, called a Special Rightsholder Account (“SRA”), to notify Hotfile of material on the Hotfile system that Warner claims infringes its copyrights.
2. Warner’s notifications by means of Hotfile’s SRA are (and have the effect of) notifications of claimed infringement to Hotfile’s designated agent under 17 U.S.C. § 512(c)(3)(A), and are therefore subject to 17 U.S.C. § 512(f).
3. Hotfile’s state law counterclaims set forth in the Second Count (“Intentional Interference With a Contractual of Business Relationship”) and Third Count (“Negligence”) of Defendant Hotfile Corp.’s First Amended Counterclaim are hereby voluntarily dismissed by Hotfile without prejudice. This Court has

authority pursuant to Rule 41 of the Federal Rules of Civil Procedure to grant the dismissal of Hotfile's state law counterclaims.

4. Hotfile shall file, and Warner consents to Hotfile's filing of, a Second Amended Counterclaim amending Hotfile's DMCA Counterclaim. The Second Amended Counterclaim will specify each use of the SRA by Warner, including the date and the specific URL taken down as a result, that Hotfile alleges to be a violation by Warner of Section 512(f) of the DMCA. The files so identified in the exhibits to Hotfile's Second Amended Counterclaim shall constitute a definitive list of deleted files that will make up Hotfile's First Count under Section 512(f) of the DMCA. In the Second Amended Counterclaim, the First Count shall expressly state that the files so identified in the exhibits constitute such a "definitive list." Hotfile shall not make further substantive amendments to the First Amended Counterclaim. Hotfile may file such Second Amended Counterclaim no later than fourteen days after the completion of one day of Hotfile's Rule 30(b)(6) deposition of Warner.
5. Warner shall answer Hotfile's Second Amended Counterclaim and will not seek dismissal pursuant to Rule 12(b)(6) or move to strike. Warner's time to answer shall be extended until ten calendar days after the date on which Hotfile files its Second Amended Counterclaim described in Paragraph 4 above; Warner shall not be required to file a separate answer to the First Amended Counterclaim before that date.

### **CONCLUSION**

On the basis of the foregoing, the Parties respectfully request that the Court grant their Joint Motion for Voluntary Dismissal of Second and Third Counts of Hotfile's First Amended Counterclaim and for Amendment of First Count. A proposed Order is attached hereto as Exhibit "A."

CASE NO. 11-20427-WILLIAMS-TURNOFF

Dated September 22, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served this 22nd day of September, 2011, on all counsel of record or pro se parties identified below either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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