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14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 COLUMBIA PICTURES INDUSTRIES,  
19 INC.; AMAZON CONTENT SERVICES,  
20 LLC; DISNEY ENTERPRISES, INC.;  
21 PARAMOUNT PICTURES  
22 CORPORATION; WARNER BROS.  
23 ENTERTAINMENT INC.; UNIVERSAL  
24 CITY STUDIOS PRODUCTIONS LLLP;  
25 UNIVERSAL TELEVISION LLC; and  
26 UNIVERSAL CONTENT  
27 PRODUCTIONS LLC,

28 Plaintiffs,

v.

29 ALEJANDRO GALINDO, RICHARD  
30 HORSTEN (a/k/a RIK DE GROOT),  
31 ANNA GALINDO, MARTHA  
32 GALINDO, OSVALDO GALINDO,  
33 RAUL ORELLANA, FIRESTREAM  
34 LLC, and DOES 8-10,

Defendants.

Case No. 2:20-cv-03129-SVW-GJSx

**PLAINTIFFS' REPLY IN SUPPORT  
OF MOTION FOR SANCTIONS  
AGAINST DEFENDANT  
ALEJANDRO GALINDO**

Judge: Honorable Gail J. Standish  
Ctm: 640  
Date: June 30, 2021  
Time: 2:00 p.m.

Trial Date: None

1 **I. INTRODUCTION**

2 Defendant's Opposition confirms that he should be prohibited from contesting  
3 his liability for copyright infringement, the works he infringed, and the willfulness  
4 of his infringement. This outcome is necessary to prevent the prejudice to Plaintiffs  
5 that would result if Defendant were permitted to contest these issues after defying  
6 this Court's orders and ignoring his discovery obligations to this point; thus entry of  
7 default judgment is called for. At a minimum, the Court should impose adverse  
8 inferences and foreclose Defendant's introduction of evidence on the spectrum of  
9 subjects on which he has asserted the Fifth Amendment and destroyed evidence.

10 **II. DEFAULT JUDGMENT AND FORECLOSURE FROM**  
11 **CONTESTING LIABILITY AND DAMAGES ARE WARRANTED.**

12 In his Opposition, Defendant admits that "adverse inferences are appropriate,"  
13 Dkt. 165 at 10,<sup>1</sup> but contests the imposition of case-dispositive sanctions in terms of  
14 the Second Amended Complaint ("SAC") and the other relief Plaintiffs request to  
15 address the prejudice created by Defendant's conduct throughout the course of  
16 discovery. According to Defendant, he should be permitted to withhold all records  
17 of Nitro TV's multimillion dollar operation in violation of this Court's Order and  
18 destroy evidence, yet still be able to assert that his infringement was "innocent" and  
19 he did not infringe the works alleged in the SAC through his operation of Nitro TV.  
20 Defendant cites no case that would support this outcome. Instead, he relies upon  
21 general principles of Fifth Amendment jurisprudence that do not apply here. Even  
22 if his assertion of the Fifth Amendment were valid (which it is not, as explained  
23 below and in Plaintiffs' Motion), the case law is clear that adverse inferences alone  
24 are insufficient to address the prejudice created by Defendant wholesale refusal to  
25 comply with discovery; rather, Defendant would also need to be foreclosed from  
26 introducing evidence on all subjects on which he has refused to comply with the

27 <sup>1</sup> See also *id.* at 7 ("Naturally, if the court desires to permit adverse inferences,  
28 Defendant does not have legal grounds to object to that.")

1 Court's Order and his discovery obligations, including the willfulness of his  
2 infringement and any claim that he did not infringe the works identified by title and  
3 copyright registration number in the SAC. *See* Mot. at 14–16.

4 Plaintiffs respectfully submit that the catalogue of Defendant's conduct in this  
5 litigation warrants entry of default judgment, as Plaintiffs established in their  
6 Motion. *Id.* at 6–10. At a minimum, in addition to adverse inferences, Defendant  
7 should be foreclosed from contesting the multitude of issues on which he denied  
8 Plaintiffs' discovery through his conduct (*e.g.*, violating orders, destroying  
9 evidence) and his elections (*e.g.*, invoking the Fifth Amendment).

10 **III. DEFENDANT HAS NO VALID EXCUSE FOR VIOLATING THIS**  
11 **COURT'S ORDER AND HIS DISCOVERY FAILURES.**

12 Defendant's belated assertion of the Fifth Amendment does not excuse his  
13 violation of this Court's Order and his general discovery obligations.

14 **A. Defendant Has Not Established Good Cause to Be Relieved of His**  
15 **Waiver of the Fifth Amendment.**

16 To escape the conclusion that Defendant waived his Fifth Amendment  
17 objection by failing to timely assert it, Defendant would have had to establish good  
18 cause for his delay in his Opposition. *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th  
19 Cir. 1981); *see also* Mot. at 11–12. Defendant has not met his burden.

20 Notably, Defendant has not submitted a declaration to support his Opposition.  
21 Instead, Defendant's counsel argues that Defendant discovered his purported bases  
22 for asserting the Fifth Amendment “[s]ubsequent ... to responding to initial  
23 discovery,” “after the lawsuit was well underway” and as “things were learned  
24 through discovery and investigation.” Opp. at 2–6. This is belied by the record.

25 *First*, by engaging in massive copyright infringement, Defendant was always  
26 at risk of criminal liability for copyright infringement. Defendants' after-the-fact,  
27 conspiracy-driven excuses cannot change this fundamental fact. Neither can his  
28 purported belief that he could convince a trier of fact that his infringement was  
“innocent”—notably, a position he asserted after he had already engaged in

1 extensive email destruction and while (falsely) claiming no Nitro TV documents  
2 existed. *See* Dkt. Nos. 58-1, 58-2, 58-3.

3 *Second*, Defendant repeatedly failed to assert the Fifth Amendment even after  
4 “6/30/2020,” which is when his counsel claims to have received “[Plaintiffs’  
5 counsel’s] blog discussing the criminal aspects of copyright.” *Opp.* at 2.<sup>2</sup>  
6 Importantly, he failed to assert the Fifth Amendment when responding to the second  
7 RFPs due two weeks later and in his interrogatory responses served three weeks  
8 later. *See* Dkt. Nos. 58 ¶ 3; 58-4; Dkt. No. 58-2. He also did not raise it in opposing  
9 Plaintiffs’ Discovery Motion two months later or at the October 14, 2020 hearing.

10 *Third*, the record contradicts Defendant’s claim about his supposed late  
11 revelation that Jan van Voorn, Executive Vice President and Chief Global Content  
12 Protection Enforcement and Operations for the Motion Picture Association  
13 (“MPA”), is “involved in this lawsuit.” *Opp.* at 3. Mr. van Voorn’s and the MPA’s  
14 involvement in this lawsuit was disclosed at the outset. Indeed, Defendant was  
15 personally served with a declaration from Mr. van Voorn, Dkt. No. 14, on April 3,  
16 2020, the same day that the initial complaint was filed and served. This was months  
17 before Defendant’s discovery responses were due and over six months before  
18 Defendant first invoked the Fifth Amendment.

19 *Finally*, Defendant concedes that Plaintiffs have informed Defendant that they  
20 have not made a criminal referral. *Opp.* at 6.

21 In short, Defendant’s explanations do not add up; his assertion of the Fifth  
22 Amendment is simply a tactic for him to avoid his discovery obligations. The Court  
23 should not condone this conduct.<sup>3</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> This was a *survey* of U.S. copyright laws; it was *not* focused on criminal liability.  
26 *Mot.* at 4. Further, this “blog” clearly did not inform Defendant’s counsel of  
27 anything he did not already know about criminal copyright liability as he posted a  
28 video tutorial entitled “When Does Copyright Infringement Become Criminal?” in  
2018. *See* <https://www.youtube.com/watch?v=6QyKe8HAMn0>Further.

<sup>3</sup> Defendant makes the bizarre claim that his assertion of the Fifth Amendment is

1           **B. Defendant’s Ongoing Refusal to Produce Documents Violates This**  
 2           **Court’s Order and His Discovery Obligations.**

3           Anticipating Defendant’s reliance on the “act of production” principle,  
 4 Plaintiffs’ Motion explained in detail why the “foregone conclusion” exception to  
 5 this principle applies here and, in turn, how Defendant’s ongoing refusal to produce  
 6 documents violates this Court’s Order and his discovery obligations. *See* Mot. at  
 7 12–14. Defendant does not meaningfully dispute that Plaintiffs have established the  
 8 elements of the exception. Instead, Defendant merely asserts that “whether the  
 9 existence of documents is foregone conclusion is a question of fact,” Opp. at 9. But  
 10 that does not help Defendant because the facts proffered by Plaintiffs—which  
 11 Defendant has not countered—establish the foregone conclusion exception applies.  
 12 *See* Mot. at 12–14. Accordingly, Defendant has no valid basis for refusing to  
 13 produce documents in violation of this Court’s order and his discovery obligations.

14           **IV. DEFENDANT’S SPOILIATION WARRANTS ENTRY OF DEFAULT.**

15           Defendant did not put forth any evidence to counter Plaintiffs’ proof that he  
 16 has spoliated evidence. Instead, his only response is his confusing, off-base claim  
 17 that “it is not Defendant who created the [auto-delete] setting” in Telegram. Opp. at  
 18 8. But even if that statement is credited, Defendant had an obligation to suspend this  
 19 auto-deletion after he became aware of this litigation, but he did not. *See* Mot. at 17.  
 20 Importantly, Defendant also does not dispute that he engaged in a mass email purge  
 21 and jettisoned his electronic devices with relevant information after being served.  
 22 *See id.* at 16–17. Accordingly, default judgment is warranted as a sanction for this  
 23 spoliation, regardless of whether the Court accepts Defendant’s untimely Fifth  
 24 Amendment invocation.

25           \_\_\_\_\_

26           “not malicious or in bad faith” because Plaintiffs “were accusing Defendant of a  
 27 crime of destroying evidence.” Opp. at 3, 4. As a threshold matter, Defendant seems  
 28 to be admitting that he has destroyed evidence. Further, Defendant has  
 unquestionably been aware of his evidence destruction all along, so Plaintiffs’  
 accusations do not excuse his failure to invoke the Fifth Amendment earlier.

**V. THE COURT SHOULD ALSO ORDER IMAGING.**

In the event the Court does not enter default judgment, it should order imaging of all devices in Defendant’s possession, custody, or control consistent with the intent the Court expressed at the October 2020 hearing. Mot. at 18. Defendant’s conduct since that hearing provides even further reason to order imaging now. Although Defendant is now belatedly objecting to computer imaging on the basis that it could “potentially incriminate” him, Opp. at 9, Defendant does not cite any case holding that the Fifth Amendment is a valid basis on which to object to device imaging. That is not surprising, as Plaintiffs have provided multiple cases reflecting that courts confronted with this issue have concluded otherwise. Mot. at 18–19. Accordingly, the Court should order that all devices currently within Defendant’s possession, custody, or control be submitted for imaging.

**VI. DEFENDANT SHOULD BE ORDERED TO PRODUCE DOCUMENTS AND RESPOND TO PLAINTIFFS’ INTERROGATORIES.**

Defendant should be ordered to produce documents responsive to Plaintiffs’ third RFPs and to substantively respond to Plaintiffs’ second and third set of interrogatories—including providing Martha Galindo’s contact information—as he cannot establish any “danger of incrimination” from providing this information. *See Davis*, 650 F.2d at 1160 (danger of incrimination not evident from discovery requesting party’s “address, his social security number, and . . . address, place of employment, and nearest living relative” of wife); *see also* Mot. at 19–20.

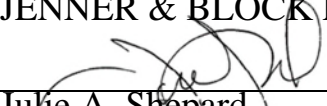
**VII. CONCLUSION**

Plaintiffs request that the Court enter the default judgment requested by Plaintiffs, as it is called for based on Defendant’s conduct and elections in this case.

Dated: June 16, 2021

JENNER & BLOCK LLP

By:

  
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Attorneys for Plaintiffs