

1 R. Joseph Trojan, CA Bar No. 137,067  
 2 trojan@trojanlawoffices.com  
 3 Dylan C. Dang, CA Bar No. 223,455  
 4 dang@trojanlawoffices.com  
 5 Francis Wong, CA Bar No. 284,946  
 6 wong@trojanlawoffices.com  
 7 TROJAN LAW OFFICES  
 8 9250 Wilshire Blvd., Suite 325  
 9 Beverly Hills, CA 90212  
 10 Telephone: 310-777-8399  
 11 Facsimile: 310-777-8348  
 12 Attorneys for Defendants,  
 13 OMNIVERSE ONE WORLD TELEVISION,  
 14 INC. and JASON M. DEMEO

11 **UNITED STATES DISTRICT COURT**  
 12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 PARAMOUNT PICTURES  
 14 CORPORATION; COLUMBIA  
 15 PICTURES INDUSTRIES, INC.;  
 16 DISNEY ENTERPRISES, INC.;  
 17 TWENTIETH CENTURY FOX FILM  
 18 CORPORATION; WARNER BROS  
 19 ENTERTAINMENT, INC.;  
 20 UNIVERSAL CITY STUDIOS  
 21 PRODUCTIONS LLLP;  
 22 UNIVERSAL TELEVISION LLC;  
 23 and UNIVERSAL CONTENT  
 24 PRODUCTIONS LLC,

22 Plaintiffs,

23 v.

24 OMNIVERSE ONE WORLD  
 25 TELEVISION, INC.; JASON M.  
 26 DEMEO,

26 Defendants.

CASE NO. 2:19-cv-01156-DMG-PJW

**DEFENDNATS' *EX PARTE***  
**APPLICATION TO REQUEST THE**  
**COURT COMPEL MEDIATION**

Judge: Hon. Dolly M. Gee

Magistrate Judge: Hon. Patrick J. Walsh

TROJAN LAW OFFICES  
 BEVERLY HILLS

1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Central District Local Rule 7-19,  
3 Defendants Omniverse One World Television, Inc. and Jason M. Demeo (collectively,  
4 “Defendants”) respectfully submit this *ex parte* application to request the Court  
5 compel mediation. Pursuant to Local Rule 7-19.1, counsel for Plaintiffs were given  
6 notice of this *ex parte* application on August 16, 2019. (Declaration of R. Joseph  
7 Trojan (“Trojan Decl.”), ¶2.)

8 On August 19, 2019, Plaintiffs’ counsel indicated by email that they will  
9 oppose this application. (Trojan Decl., Ex. 2.) Plaintiffs’ counsel can be contacted at:

10 **Glenn D Pomerantz**

11 Munger Tolles and Olson LLP  
12 350 South Grand Avenue 50th Floor  
13 Los Angeles, CA 90071-3426  
14 213-683-9100  
15 Email: glenn.pomerantz@mto.com

16 **Anne K Conley**

17 Munger Tolles and Olson LLP  
18 350 South Grand Avenue 50th Floor  
19 Los Angeles, CA 90071  
20 213-683-9100  
21 Email: anne.conley@mto.com

22 **Mark R Yohalem**

23 Munger Tolles and Olson LLP  
24 350 South Grand Avenue 50th Floor  
25 Los Angeles, CA 90071-3426  
26 213-683-9100  
27 Email: mark.yohalem@mto.com

28 **Melinda E LeMoine**

Munger Tolles and Olson LLP  
350 South Grand Avenue 50th Floor  
Los Angeles, CA 90071-3426

1 Email: melinda.lemoine@mto.com

2 **Rose Leda Ehler**

3 Munger Tolles and Olson LLP  
4 350 South Grand Avenue 50th Floor  
5 Los Angeles, CA 90071  
6 213-683-9100  
7 Email: Rose.Ehler@mto.com

8 **Usha Chilukuri Vance**

9 Munger Tolles and Olson LLP  
10 560 Mission Street 27th Floor  
11 San Francisco, CA 94105  
12 415-512-4070  
13 Email: Usha.Vance@mto.com

14 Respectfully submitted,

15 TROJAN LAW OFFICES  
16 by

17 August 19, 2019

18 /s/ R. Joseph Trojan  
19 R. Joseph Trojan  
20 Attorneys for Defendants,  
21 Omniverse One World Television, Inc. and  
22 Jason M. Demeo  
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## I. Introduction

Defendants request the Court to compel mediation because there is literally nothing left for litigation. Plaintiffs allege in their Complaint that Defendants provided motion picture and television programming content to unauthorized online streaming services in violation of Plaintiffs' copyrights. (Dkt. #1.) There is no conduct to enjoin because Defendants have stopped the alleged offending conduct by shutting down operations. Because Defendants do not have the resources to fight this case, Defendants have ceased operations and are unwinding Omniverse's business operation as Omniverse is going out of business. (Dkt. #39 at pp. 6-7.)

In light of all this, the parties have exchanged several offers, but have reached an impasse to settle the case. (Trojan Decl., Ex. 1.) The parties have exchanged drafts of a stipulated judgment, but the parties reached an impasse when Plaintiffs demanded that Defendants admit to what amounts to egregious conduct in exchange for settlement. Defendants fear Plaintiffs intend to use such a stipulated judgment as part of a criminal investigation against Defendants. To resolve the impasse, Defendants proposed a mediation, which Plaintiffs have flatly refused.

To coerce Defendants to settle on Plaintiffs' terms, Plaintiffs have propounded voluminous discovery requests and issuing a deposition notice, all to drive up the costs of litigation. As Omniverse is out of business and there is nothing left to litigate, Defendants are left with no choice but to ask the Court to compel mediation so that this case can be settled quickly, efficiently, and economically without wasteful and unnecessary discovery. Defendants apply *ex parte* because Plaintiffs are pressing discovery, threatening to move to compel, and unless mediation is ordered, Plaintiffs will engage in months of expensive discovery.

## II. Arguments

### A. Plaintiffs' Demands for the Stipulated Judgment Are Unreasonable

1 Pursuant to Local Rule 16-15, “[i]t is the policy of the Court to encourage  
2 disposition of civil litigation by settlement when such is in the best interest of the  
3 parties.” Since Defendants have already ceased the alleged offending activities, it  
4 thus makes sense to resolve the case as early and economically as possible.  
5 Defendants have yet to answer the Complaint as there are pleading motions pending,  
6 and the Court has yet to issue a scheduling order.

7 As noted in the Joint Rule 26(f) Report, on May 31, 2019, “Omniverse  
8 management directed the cessation of all streaming services to residential subscribers,  
9 effective May 31, and determined that the company will be wound-up and go out of  
10 business under the provisions of Delaware law.” (Dkt. #39 at p. 6.) Additionally,  
11 “the company [would] be unwinding its business operations and will make  
12 commercially reasonable dispositions of its equipment and assets in accordance with  
13 Delaware law.” (*Id.* at p. 7.)

14 Also on May 31, Defendants made the first of two written settlement offers to  
15 Plaintiffs in an effort to settle the litigation and minimize costs. A second settlement  
16 offer was sent on July 24, 2019. Plaintiffs’ did not confirm if the settlement offers  
17 were received by each and every plaintiff and that each and every plaintiff responded  
18 to the settlement offers. (Trojan Decl., ¶4.) Defendants are entitled to know that the  
19 settlement offers were sent to each and every plaintiff and that a response was  
20 received from each and every plaintiff in the form of a full privilege log.

21 An impasse also arose over the language of the stipulated judgment.  
22 Defendants dispute there was any infringement at all, and Defendants particularly  
23 dispute that the alleged infringement, if any, was done with malice or bad intent.  
24 Defendants also fear that Plaintiffs’ proposed judgment could be used in a criminal  
25 investigation against Defendants. Given the impasse, on July 31, 2019, Defendants  
26

1 proposed mediation regarding the stipulated judgment and the parties' respective  
2 disputes:

3 We appear to be at an impasse concerning the terms of the  
4 stipulated judgment. Rather than give up, it would most likely be  
5 helpful to hold a mediation...In fact, we will agree to pay the cost  
of the mediation.

6 *Id.* Plaintiffs' counsel responded on August 1: "We do not see a reason to mediate at  
7 this time in light of where we are." (Trojan Decl., ¶5.) A compelled mediation is  
8 required to help this matter conclude in an efficient and fair manner.

9 **B. Plaintiffs Have Threatened a Motion to Compel to Extract**  
10 **Concessions from Defendants in Settlement**

11 Rather than mediate, Plaintiffs seek to use discovery to drive up costs of  
12 litigation to force Defendants to concede to Plaintiffs' settlement demands. Mere  
13 days after Defendants informed Plaintiffs that Omniverse was unwinding its business  
14 operations in the Joint Rule 26(f) Report, Plaintiffs served five separate discovery  
15 requests on June 21. Defendants responded to Plaintiffs' discovery requests on  
16 August 6 and are currently supplementing their responses. On that same day, August  
17 6, Plaintiffs served a notice of deposition under Federal Rule of Civil Procedure  
18 30(b)(6) for Omniverse. On August 9, Plaintiffs emailed notice of its intent to file a  
19 motion to compel discovery requests.

20 Plaintiffs have accelerated discovery when the parties should be settling. Yet,  
21 Plaintiffs are threatening to move to compel, even though there is no discovery cut-  
22 off and the parties are in the midst of negotiating settlement. Discovery is moot  
23 because Omniverse has ceased operations, and proceeding with further discovery and  
24 related motions is wasteful. Unless Plaintiffs are compelled to participate in  
25 mediation, Plaintiffs will continue to use the mechanisms of discovery to grind  
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1 Defendants into settlement on Plaintiffs' terms. A Court ordered mediation is  
2 required to ensure the fairest and most judicially economical outcome to this matter.

3 **III. CONCLUSION**

4 Based on the foregoing, Omniverse respectfully requests that the Court to  
5 temporarily stay discovery until mediation is completed.

6  
7 Respectfully submitted,

8 TROJAN LAW OFFICES

9 by

10 August 19, 2019

11 /s/ R. Joseph Trojan

12 R. Joseph Trojan

13 Attorneys for Defendants,

14 Omniverse One World Television, Inc. and

15 Jason M. Demeo