

1 JENNER & BLOCK LLP
2 JULIE A. SHEPARD (SBN 175538)
3 JShepard@jenner.com
4 ANDREW G. SULLIVAN (SBN 301122)
5 AGSullivan@jenner.com
6 MADELINE P. SKITZKI (SBN 318233)
7 mskitzki@jenner.com
8 KRISTEN GREEN (SBN 328618)
9 kgreen@jenner.com
10 515 S. Flower Street, Suite 3300
11 Los Angeles, CA 90071
12 Telephone: +1 213 239 5100
13 Facsimile: +1 213 239 5199

8 GIANNI P. SERVODIDIO (admitted *pro hac vice*)
9 gps@jenner.com
10 919 Third Avenue
11 New York, NY 10022-3908
12 Telephone: +1 212 891 1600
13 Facsimile: +1 212 891 1699

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-MEMF-GJSx

**PLAINTIFFS' STATEMENT AND
REQUESTS REGARDING CASE
MANAGEMENT ISSUES RELATED
TO DEFENSE COUNSEL'S
MOTION TO WITHDRAW AS
COUNSEL**

Judge: Honorable Maame Ewusi-
Mensah Frimpong
Trial Date: None

Hearing Date: June 30, 2022
Time: 10:00 a.m.
Ctrm: 8B

1 Plaintiffs Columbia Pictures Industries, Inc., Amazon Content Services, LLC,
2 Disney Enterprises, Inc., Paramount Pictures Corporation, Warner Bros.
3 Entertainment Inc., Universal City Studios Productions LLLP, Universal Television
4 LLC, and Universal Content Productions LLC (together, “Plaintiffs”) make the case
5 management requests set forth below in connection with the upcoming hearing
6 concerning Steve Vondran’s motion to withdraw as counsel to Defendant Alejandro
7 Galindo (“Defendant”).

8 Mr. Vondran has been representing Defendant for over two years. His
9 withdrawal as counsel at this juncture creates risk of yet further prejudicial delay in
10 a case that has been stalled for well over a year despite Plaintiffs’ efforts to bring
11 this case to its final resolution. And the fact that Defendant most likely will not
12 appear at the June 30, 2022 hearing in violation of the Court’s order that he do so
13 exacerbates this risk. Accordingly, for the reasons explained herein, Plaintiffs
14 respectfully request that the Court:

- 15 (1) Deny without prejudice, or, alternatively, further postpone the hearing on, Mr.
16 Vondran’s motion to withdraw as counsel for Defendant until an order is
17 issued on Plaintiffs’ Motion for Sanctions (“Sanctions Motion”) [Dkt. 164],
18 which was heard and taken under submission approximately year ago. [Dkts.
19 167, 171];
- 20 (2) Relatedly, withdraw the reference to the Magistrate Judge with respect to
21 Plaintiffs’ Sanctions Motion and decide the Motion itself to facilitate its
22 resolution; and
- 23 (3) Require Mr. Vondran to inform Defendant, in a manner satisfactory to the
24 Court for purposes of notice, that Defendant’s failure to appear on a date
25 certain (to be determined by the Court) will result in Defendant’s Answer
26 being struck, which could result in entry of his default.

1 These case management measures are requested and necessary to mitigate against
2 further prejudicial delay.

3 **I. Mr. Vondran’s Motion Should Be Denied Without Prejudice Or**
4 **Postponed Until An Order Is Issued On Plaintiffs’ Sanctions Motion**

5 As the Court is aware, Plaintiffs’ Sanctions Motion seeks significant sanctions
6 against Defendant, up to and including case-dispositive sanctions. While Plaintiffs
7 to date have refrained from seeking sanctions against Mr. Vondran, virtually all of
8 the conduct underlying the Sanctions Motion (*e.g.*, destruction of evidence, false
9 discovery responses provided under oath, failure to produce a single document, and
10 violation of a court order compelling responses and production) occurred under his
11 watch.¹ [Dkt. 164]. And it is Mr. Vondran who defended Defendant’s actions in his
12 opposition to the Sanctions Motion and who has continued to represent Defendant
13 since then. [Dkts. 165, 195].

14 Plaintiffs have done everything in their power to bring this matter to a
15 conclusion in a manner that vindicates their rights and does not reward Defendant
16 for his gross misconduct and complete disregard for his obligations to this Court.
17 Importantly, these are obligations that Defendant affirmatively opted to take on by
18 choosing to defend against the allegations against him not once, but twice—and
19 always while represented by Mr. Vondran.² Plaintiffs’ efforts to bring this case to
20 its conclusion have been thwarted by, among other things, Defendants’ misconduct
21 underpinning the Sanctions Motion and by the year-long delay in receiving a ruling
22 on that Motion.

23
24 ¹ Mr. Vondran filed a notice of appearance in the case on April 7, 2020, just a few
25 days after Plaintiffs filed and served their complaint. [Dkts. 1, 9, 20, 164].

26 ² The first time occurred in mid-May 2020 when Defendant insisted that the default
27 entered against him be lifted. [Dkt. 36]. The second occurred in April 2021, just a
28 few short months before the Sanctions Motion was filed when Defendant answered
the Second Amended Complaint. [Dkt. 126].

1 To permit Mr. Vondran to withdraw as counsel before an order is issued on
2 the Sanctions Motion creates substantial risk of further delay and further impeding
3 the conclusion of this case, which is highly and imminently prejudicial to
4 Defendants. Indeed, after Plaintiffs filed their Sanctions Motion, other parties filed
5 suit against Defendant in Texas arising from Defendant’s operation of Nitro TV, the
6 same infringing enterprise at issue here. [Declaration of Julie Shepard (“Shepard
7 Decl.”), Ex. A]. In the Texas matter, Defendant’s default has already been taken,
8 and on June 9, 2022, the District Court in Texas granted the plaintiffs’ motion for
9 default judgment. [*Id.*, Ex. B]. To put a fine point on it, the plaintiffs in the Texas
10 action, who filed suit over a year *after* Plaintiffs filed this action and *after* the
11 Sanctions Motion was filed, have obtained a judgment on the same misconduct at
12 issue here, and are now able to start enforcing their judgment against Defendant
13 while Plaintiffs are still awaiting ruling on the Sanctions Motion. [*Id.*, Exs. A and
14 B].

15 At the same time, Mr. Vondran will suffer no prejudice if he is not permitted
16 to withdraw as counsel at this time. The Sanctions Motion is fully briefed. And Mr.
17 Vondran’s motion has been pending only for only a few months. As a result,
18 Plaintiffs respectfully request that Mr. Vondran’s motion be denied without
19 prejudice or, alternatively, postponed until after an order is issued on the Sanctions
20 Motion.

21 **II. The Reference To The Magistrate Judge Should Be Withdrawn With**
22 **Respect To The Sanctions Motion**

23 To facilitate the issuance of an order on the Sanctions Motion, Plaintiffs
24 request that the reference to the Magistrate Judge with respect to the Sanctions
25 Motion be withdrawn. Plaintiffs have been and remain respectful of the demands
26 placed on the Court, including the Magistrate Judge, during these unprecedented
27 times. Plaintiffs have also been and remain mindful and respectful of the fact that
28

1 these demands on the court system have been exacerbated for the Magistrate Judge
2 by health issues, the specifics of which are unknown to Plaintiffs.

3 At this point, however, Plaintiffs are compelled to request that this Court take
4 up the fully-briefed Sanctions Motion, as it unclear when, if at all, the Magistrate
5 Judge will issue an order on the Sanctions Motion.³ And the adage is true that justice
6 delayed is justice denied. As noted above, other parties who filed their case arising
7 from Defendant’s operation of Nitro TV well over a year after Plaintiffs filed this
8 case have secured a judgment and may commence enforcing it against Defendant at
9 any time.

10 By way of relevant background for this request, Plaintiffs note that the case
11 was referred to the Magistrate Judge for discovery purposes on April 3, 2020. [Dkt.
12 7]. In their Case Management Conference statement filed on June 2, 2021, Plaintiffs
13 requested Judge Wilson’s “guidance at the [then upcoming] Case Management
14 Conference as to whether the Motion for Sanctions should remain noticed before
15 Magistrate Judge Standish to issue a report and recommendation or be heard by this
16 Court in the first instance.” [Dkt. 160] Plaintiffs explained to Judge Wilson that
17 they had recently filed and noticed their Motion for Sanctions to be heard before the
18 Magistrate Judge “because (1) this Court has referred all discovery matters to
19 Magistrate Judge Standish, and (2) Plaintiffs’ Motion for Sanctions is premised, in
20 part, on Defendant Alex Galindo’s discovery abuses and his violation of orders
21 issued by Magistrate Judge Standish.” [Dkts. 127, 160]. The Court, however,
22 vacated and did not reset the Case Management Conference, so the requested
23 guidance was not provided. [Dkt. 163]. Thereafter, Magistrate Judge Standish held
24 a hearing on Plaintiffs’ Sanctions Motion on July 7, 2021, at which time she stated

25 _____
26 ³ Plaintiffs have responded twice to requests from the Magistrate Judge’s chambers
27 for additional copies of the Sanctions Motion and Proposed Findings of Fact and
28 Conclusions of Law (once in September 2021 and again in April 2022), but no ruling
on the Sanctions Motion has been issued.

1 she would be issuing sanctions against Defendant and ordered Plaintiffs to file
2 proposed findings of fact and conclusions of law, which Plaintiffs filed on July 14,
3 2021. [Dkt. 171, 176]. To date, no order has been issued.

4 Given the present circumstances, including the passage of time without an
5 order on the Sanctions Motion, Mr. Vondran’s request to withdraw as Defendant’s
6 counsel, and the dispositive nature of the relief requested, it would be appropriate
7 and promote efficient case management to withdraw the reference to the Magistrate
8 Judge as it pertains to Plaintiffs’ Sanctions Motion and for this Court to decide the
9 Sanctions Motion.

10 **III. Defendant Should Be Provided Notice By Mr. Vondran That Defendant’s**
11 **Continued Failure To Participate In This Litigation, Including His**
12 **Failure To Appear At Court Hearings, Will Result In The Striking Of**
13 **His Answer To the Second Amended Complaint**

14 The record supports the conclusion that Defendant does not intend to
15 participate in the litigation. Indeed, based on Mr. Vondran’s representations to the
16 Court in connection with his motion to withdraw at the April 7, 2022 hearing (“April
17 Hearing”), Defendant has not been engaged in this litigation for many months. [*See*
18 *also* Dkt. 204 (Mr. Vondran “clarified that he last heard from Galindo on or about
19 December 3, 2021, and that all subsequent attempts to contact him have failed.”)]
20 And, as the Court is aware, Defendant did not appear at the April Hearing despite
21 being ordered to do so, which order Mr. Vondran said he communicated to
22 Defendant via his normal channels of communication with Defendant.

23 Every reason exists to believe that Defendant would not have appeared for the
24 June 2, 2022 hearing if it had gone forward, and that Defendant will not appear at
25 the June 20, 2022 hearing even though he has notice of the hearing. Indeed,
26 Plaintiffs understand that Mr. Vondran made attempts to notify Defendant of the
27 June 2 hearing and the requirement that Defendant attend, and Defendant was not
28 responsive. [Shepard Decl., ¶¶ 4, 5].⁴

⁴ The Court ordered Defendant to appear at a hearing set for June 2, 2022 and ordered

1 To try to prevent Defendant from creating yet more delay and wasting judicial
2 resources, Plaintiffs request that Mr. Vondran be required to inform Defendant, in a
3 manner satisfactory to the Court for purposes of notice, that Defendant's failure to
4 appear on a date certain (to be determined by the Court) will result in Defendant's
5 Answer to the Second Amended Complaint being struck, which could result in entry
6 of his default.

7 Such a warning is appropriate. Indeed, courts have struck defendants'
8 answers and granted default judgments where pro se defendants failed to participate
9 in or defend the litigation. See, e.g., *Warner Bros. Home Ent. Inc. v. Jacek*, 2013
10 WL 12134186, at *3–4 (C.D. Cal. Dec. 20, 2013) (granting default judgment against
11 pro se defendant where defendant filed answer but then failed to defend action);
12 *Microsoft Corp. v. Marturano*, 2009 WL 650589, at *4–6 (E.D. Cal. Mar. 12, 2009)
13 (granting motion to strike answer and entering default judgment against pro se
14 defendant where defendant failed to participate in litigation). And, in connection
15 with doing so, the *Microsoft Corp.* court noted that in a prior order :

16 Defendant was explicitly advised that, **'[f]uture failures to participate**
17 **in this litigation will be looked upon with disfavor. Defendant shall**
18 **keep the court apprised of his address, attend all hearings, and**
19 **respond to all pleadings when appropriate. Failure to do so may**
20 **result in default or default judgment being entered against him.'**
21 (Emphasis in original).

22 2009 WL 650589, at *4. Additionally, the defendant has also been warned in a
23 scheduling conference order "that, '[f]ailure to comply with this order may result
24 in the imposition of sanctions.'" *Id.*

25
26
27 Mr. Vondran to notify Defendant of the Court's order and file a summary of these
28 attempts by May 26, 2022, one week before the hearing. [Dkt. 204].

1 **IV. Conclusion**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court adopt
3 the case management requests set forth above to militate against further delay and
4 the attendant prejudice to Plaintiffs.

5 Dated: June 10, 2022

JENNER & BLOCK LLP

6
7 By:


8 Julie A. Shepard

9 *Attorneys for Plaintiffs*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28