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 10

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12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION
 15

16 CBS Broadcasting Inc.,
 17 Plaintiff,
 18 v.
 19 American Broadcasting Companies Inc.,
 et al.,
 20 Defendants.
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Case No. 2:12-CV-04073 GAF-JEM
 DEFENDANTS' SUBMISSION IN
 RESPONSE TO COURT'S
 REQUEST FOR SCHEDULING
 PROPOSALS ON CBS'S
 REMAINING DISCOVERY
 DISPUTES FROM MAY 31, 2012
 EX PARTE MOTION

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1 Defendants object to CBS's efforts to insert over-the-top, inaccurate merits
2 briefing under the guise of a scheduling proposal as procedurally improper and
3 wholly inappropriate. Defendants understood from the Court that today's
4 submission was to establish a reasonable schedule for briefing the remaining
5 discovery disputes from CBS's *ex parte motion*. The Court ordered that if the
6 parties could not agree on a schedule, they were to submit alternative schedules.
7 The Court would then decide which schedule gave the parties "adequate time to
8 address their disputes, but less than ordinarily provided under the [local] rules."
9 Docket No. 29. Defendants object to what is in essence another *ex parte* brief
10 provided by CBS to Defendants less than an hour before today's 4:00 p.m. filing
11 deadline. Because Defendants did not have time to incorporate CBS's extensive
12 submission with Defendants' schedule by 4:00 p.m. as per the Court's request,
13 Defendants elected to submit their proposed schedule separately.¹

14 In response to this Court's instruction at the June 1, 2012 telephonic hearing,
15 Defendants hereby submit a schedule for the remaining trade secret issues that are
16 still unresolved by the Court from the May 31 *Ex Parte* Motion. Defendants met
17 and conferred with CBS's counsel and were unable to agree on a schedule.
18 Therefore, Defendants propose the following schedule, which would shorten the
19 normal 28 days under the local rules by up to 18 days, depending on when the
20 Court is available for a hearing. *See* Defendants' Exhibit A (chart comparing
21 CBS's proposal, Defendants' proposal, and the Local Rules standard schedule).
22 This is a substantially expedited schedule in light of CBS's concerns, but it allows
23 Defendants adequate time to consider the May 31, 2012 purported trade secret
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25 ¹ Defendants believe that CBS's submission is a violation of this Court's order asking the parties
26 to submit alternative scheduling proposals if, after meet and confer, they could not agree on a
27 schedule. If this Court would like a response to CBS's brief provided to Defendants less than an
28 hour ago, Defendants respectfully request time to read their brief and prepare a response to this
Court. (Defendants do submit that the proposed schedule below should provide the most orderly
and appropriate means for briefing this discovery dispute).

1 disclosure -- which Defendants were only able to show their clients today, due to a
2 dispute over the Protective Order that has now been resolved. It would be unfair to
3 require Defendants to address the inadequacy of the trade secret disclosure
4 tomorrow with only a day to consult with their clients about the disclosure. (CBS
5 puts the further requirement on Defendants that the trade secret disclosure can only
6 be shown to the individuals *in counsel's office*, which will slow down our process
7 of consulting with our clients on the contents of that proposal.)

8 Specifically, Defendants propose the following schedule:

- 9 • **June 5:** CBS Provides Section of Joint Stipulation and All
10 Supporting Documents to Defendants Pursuant to Local Rule
11 37-2.2.
- 12 • **June 11:** Defendants Provide Their Section of Joint
13 Stipulation and All Supporting Documents and Declarations to
14 Plaintiff
- 15 • **June 12:** Sections of Joint Stipulation Combined and Filed
16 With Court
- 17 • **June 15:** Parties File Supplemental Memorandum Pursuant
18 to Local Rule 37-2.3
- 19 • **June 18+:** Hearing on a date of the Court's convenience.

20 Further, Defendants propose that if CBS submits a revised trade secret
21 disclosure (as they have done twice now within 24 hours of Defendants'
22 oppositions being due), then that would require adjustment of the schedule to allow
23 Defendants time to review and consider the supplemental disclosure.

24 Defendants further object to, and disagree with, CBS's characterization of
25 Kenny Rosen's deposition testimony and the evidence in this case. It is misleading,
26 inaccurate, and wrong. For example, it is misleading – and frankly irrelevant to the
27 legal claims – that Mr. Rosen said he hired more than twenty people with prior
28 experience on *Big Brother*. What CBS does not tell this Court is that Mr. Rosen
also testified that the vast majority of these people worked with Mr. Rosen more
recently on a different reality show, *Hell's Kitchen*, that has nothing to do with *Big*
Brother. It is true that Mr. Rosen hires people with whom he has experience

1 working on reality shows; there is nothing improper about that. California
2 embraces employees' ability to change jobs, to work for people and employers of
3 their choice, and to move freely in hopes of developing their careers and earning a
4 living. CBS also mischaracterizes the master control room schedule. It is
5 preposterous for CBS to argue that a one page outdated master control room
6 schedule from an old season of *Big Brother* is a trade secret. Moreover, it is simply
7 untrue that Mr. Rosen used the master control room schedule to decide how many
8 people to hire for *Glass House*. Mr. Rosen testified that he looked at an old master
9 control room schedule when assessing how many story editors to hire at *Glass*
10 *House*, that it "didn't help [him] a whole lot," that he ultimately determined the
11 number of story editors based on the budget available to him on *Glass House*, and
12 that the number of story editors on *Glass House* was less than half of the number of
13 story editors on *Big Brother*. This evidence hardly shows misappropriation of a
14 trade secret, nor does it justify the frenzied and improper discovery requests
15 articulated by CBS.

16 Defendants further note, for the Court's background, that CBS's counsel was
17 to be limited to copyright related discovery in his seven hour deposition of Mr.
18 Rosen on Sunday. This was the Court's clear instruction. Instead of focusing on
19 what the *Glass House* show would be, CBS's counsel spent the majority of the
20 deposition asking questions about trade secret issues and Mr. Rosen's recruitment
21 of other employees. Indeed, CBS's counsel did not use as exhibits, or ask Mr.
22 Rosen about, any of the documents Defendants produced on Friday that related to
23 the specific episode outlines or upcoming *Glass House* challenges. CBS's counsel
24 appeared uninterested in what *Glass House* would actually be as a show – a highly
25 relevant inquiry for their copyright claims. Defense counsel objected to the
26 continuance of this questioning, but did not seek the Court's intervention.

27 Throughout this weeks-old litigation, CBS has proceeded with a strategy of
28 filing emergency motion after emergency motion, giving Defendants only hours to

1 respond, usually in the middle of the night. They are doing it again here. It is
2 unfair to Defendants and an unreasonable way to proceed with litigation. If CBS
3 thinks after Mr. Rosen's deposition that they have a basis to enjoin the *Glass*
4 *House*, they should file their preliminary injunction motion today and work with
5 Defendants on a reasonable expedited schedule for that motion to be fully briefed
6 and heard by Judge Feess.

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8 DATED: June 4, 2012

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