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DISCOVERY COMMUNICATIONS, LLC

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

16 LMNO CABLE GROUP, INC., a
17 California corporation,

18 Plaintiff,

19 v.

20 DISCOVERY COMMUNICATIONS,
21 LLC, a Delaware limited liability
company,

22 Defendant.

CASE NO. 2:16-cv-4543-JAK-SK

**DISCOVERY COMMUNICATIONS,
LLC'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION FOR
WRIT OF POSSESSION**

**[REFERRED TO MAGISTRATE
JUDGE STEVE KIM PER
GENERAL ORDER NO. 05-07]**

Date: October 12, 2016

Time: 10:00 a.m.

Courtroom: No. 24

1 DISCOVERY COMMUNICATIONS,
2 LLC, a Delaware limited liability
company,

3 Counterclaim
4 Plaintiff,

5 v.

6 LMNO CABLE GROUP, INC., a
California corporation, LMNO
7 ENTERTAINMENT GROUP, LLC, a
California limited liability company,

8 Counterclaim
9 Defendants.


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1 Counterclaim Plaintiff Discovery Communications, LLC (“Discovery”)
2 submits the following Memorandum of Points and Authorities in support of its
3 Application for Writ of Possession.

4 INTRODUCTION

5 Through the provisional remedy of a writ of possession available under
6 applicable California law, Discovery seeks the immediate possession—before
7 judgment in this action—of specific Program Deliverables (defined and identified
8 below) that are currently being wrongfully withheld by Counterclaim Defendant
9 LMNO Cable Group, Inc. (“LMNO”). These Program Deliverables consist of
10 production materials relating to season two of the television program “*7 Little*
11 *Johnstons*” (the “Program”).

12 The ultimate issue here is simple: Discovery is contractually and equitably
13 entitled to the Program Deliverables for *7 Little Johnstons*, for which it has paid
14 LMNO in full. Discovery lawfully terminated all of its contractual dealings with
15 LMNO on June 17, 2016, and in what appears to be a retributive act for such
16 lawful termination, LMNO is holding the Program Deliverables for *7 Little*
17 *Johnstons* hostage, demanding that Discovery pay it hundreds of thousands of
18 dollars more before it will release these materials. Discovery should not have to
19 pay a ransom for materials it already owns and that LMNO is unlawfully retaining.

20 *7 Little Johnstons* was produced pursuant to a “commission” arrangement,
21 under which Discovery commissioned LMNO to produce the Program for
22 Discovery. Therefore, from the outset, Discovery has always retained, and will
23 continue to retain, all rights in *7 Little Johnstons*, including the underlying
24 copyright and the possessory right as to the Program Deliverables for that Program.
25 Moreover, as more fully discussed below, the relevant contracts between
26 Discovery and LMNO unambiguously provide Discovery with an immediate right
27 to possession of the Program Deliverables for *7 Little Johnstons* upon termination.
28

1 Discovery's Counterclaims detail that in late 2015, Discovery learned from a
2 whistleblower that LMNO was, and has been for years, systematically defrauding
3 Discovery. Triggered by the whistleblower, Discovery undertook to determine the
4 scope of the betrayal and the damage LMNO, and its affiliated entity LMNO
5 Entertainment Group, LLC ("LEG"),¹ inflicted on Discovery. Among the steps
6 Discovery undertook was to reach out to LMNO to obtain more information and to
7 seek to conduct audits of books and records relating to programs LMNO produced
8 for Discovery. Rather than cooperate with Discovery on the audits (as
9 contractually required) or seek to quell Discovery's serious concerns, LMNO
10 stonewalled, delayed, and frustrated Discovery's efforts. In the midst of
11 Discovery's efforts to investigate the full breadth of LMNO's fraudulent scheme,
12 Discovery was contacted by the Federal Bureau of Investigation in March 2016
13 seeking information in connection with what Discovery learned was an ongoing
14 federal criminal investigation into LMNO's business practices.

15 In addition to cooperating with the federal authorities, Discovery continued
16 its efforts to attempt to obtain information from LMNO—to which it was
17 contractually entitled via its audit rights—that only LMNO had access to and
18 controlled. Yet LMNO's limited response to those efforts and the limited material
19 shown to Discovery during the audit process actually heightened Discovery's
20 concerns and confirmed some of the wrongful conduct the whistleblower had
21 identified. In addition, LMNO failed to cure the various material breaches
22 Discovery identified in its communications to LMNO. Therefore, Discovery,
23 acting pursuant to its contractual rights, sent notices of termination to LMNO for
24

25 _____
26 ¹ LEG is also a defendant in this action, but it is not a party to the contracts at issue
27 with respect to Discovery's Writ application, nor did it receive payment from
28 Discovery in connection with the Program Deliverables for *7 Little Johnstons*.

1 several programs, including *7 Little Johnstons*, and also sought the immediate
2 delivery of all Program Deliverables in LMNO's possession relating to that
3 Program.

4 Despite Discovery's contractual right to, and multiple requests that LMNO
5 immediately deliver, all Program Deliverables for *7 Little Johnstons*, LMNO is
6 wrongfully detaining them and attempting to extract a ransom. By holding the
7 Program Deliverables hostage, LMNO is inhibiting Discovery from utilizing
8 materials that Discovery has paid for and is fully entitled to, as the contracts
9 expressly provide that such materials must be delivered to Discovery post-
10 termination. Further, given that the majority of the Program Deliverables consist
11 of the footage shot for season two of *7 Little Johnstons*, by wrongfully withholding
12 the Program Deliverables, LMNO is preventing Discovery from finalizing the
13 footage for broadcast to Discovery's viewers. Accordingly, Discovery seeks entry
14 of a Writ of Possession and an Order requiring LMNO to surrender possession of
15 the identified, wrongfully withheld Program Deliverables.

16 STATEMENT OF FACTS

17 **I. LMNO AND DISCOVERY'S BUSINESS RELATIONSHIP AND** 18 **CONTRACTUAL AGREEMENT FOR *7 LITTLE JOHNSTONS***

19 Over the course of their long-standing relationship, Discovery and LMNO
20 entered into various agreements governing LMNO's production of programs for
21 Discovery. Declaration of Savalle Sims ("Sims Decl.") ¶ 3. LMNO produced
22 programs for Discovery primarily under either a "commission" or a "co-
23 production" basis. *Id.* at ¶ 4. Under a "commission" arrangement, Discovery paid
24 the full costs of production and owned all intellectual property—both underlying
25 and resulting—and other rights in the resulting program and all elements thereof.
26 *Id.* Under a "co-production" arrangement, Discovery and LMNO both shared
27
28

1 contractual obligations to contribute to the production costs and intellectual
2 property rights in the resulting programs. *Id.*

3 LMNO's production of *7 Little Johnstons* for Discovery is governed by a
4 Master Commission Agreement dated January 28, 2004 (the "January 28, 2004
5 Master"). *See* Sims Decl. Exhibit ("Ex.") A. The January 28, 2004 Master
6 provides that Discovery has 100% ownership of each element of each program that
7 is subject to that agreement. Specifically, Section 2.1 to Exhibit A of the January
8 28, 2004 Master expressly provides that Discovery is the "sole and exclusive"
9 owner of "the Program *and all elements thereof and relating thereto, including*
10 *without limitation, outtakes, research and publicity materials.*" *Id.* (emphasis
11 added).

12 Discovery and LMNO entered into a Commission Attachment for New
13 Program, dated November 10, 2014 (together with any exhibits thereto, the "7
14 *Little Johnstons Attachment*") that relates specifically to the *7 Little Johnstons*
15 Program. Sims Decl. ¶ 6. The *7 Little Johnstons Attachment* makes plain that it is
16 an attachment to the January 28, 2004 Master. *Id.* Section III of the *7 Little*
17 *Johnstons Attachment* reiterates that Discovery owns all rights in the program *7*
18 *Little Johnstons* and all elements thereof. Sims Decl. Ex. B at § III. In addition,
19 starting in January 2015, the parties entered into amendments to the *7 Little*
20 *Johnstons Attachment* relating to the production of *7 Little Johnstons* (collectively,
21 and together with any exhibits thereto, the "7 Little Johnstons Amendments").
22 Sims Decl. ¶ 8.

23 Pursuant to the January 28, 2004 Master, the *7 Little Johnstons Attachment*,
24 and the *7 Little Johnstons Amendments* (collectively, the "7 Little Johnstons
25 Agreement"), LMNO produced a pilot episode, season 1, season 1B, and one
26 special of *7 Little Johnstons* for Discovery. *Id.* at ¶ 9. The pilot episode of *7 Little*
27 *Johnstons* produced by LMNO first premiered on TLC, one of Discovery's cable
28

1 television networks, on January 6, 2015. *Id.* In total, Discovery paid LMNO
2 millions of dollars for its work in connection with the pilot episode, season 1,
3 season 1B, and one special of *7 Little Johnstons*. *Id.*

4 Discovery then exercised its contractual option to commission season two of
5 the *7 Little Johnstons* in early February 2016. *Id.* at ¶ 10. Although Discovery and
6 LMNO had begun negotiating and drafting an Amendment for season two, given
7 the serious allegations raised relating to LMNO's conduct at that same time, as
8 well as LMNO's attempt to substitute LEG as the production company instead of
9 LMNO without providing any reasonable justification for the proposed change or
10 any details about how such change would impact the relationship between the
11 parties, Discovery refused to enter into a similar Amendment for season two of *7*
12 *Little Johnstons*. *Id.* at ¶ 11. Instead, the parties agreed that Discovery would pay
13 LMNO direct out of pocket costs for its work on season two. *Id.* At all times, the
14 parties understood that *7 Little Johnstons* was a commission arrangement and that
15 LMNO was producing season two under the general terms of the governing
16 January 28, 2004 Master and the *7 Little Johnstons* Attachment. *Id.* and Ex. C
17 (Feb. 10, 2016 e-mail from LMNO counsel to Alysha Rajnarine, Discovery's
18 Senior Director, Business & Legal Affairs, stating that "it would make sense to
19 keep [Season 2 of *7 Little Johnstons*] under the [January 28, 2004] Master but
20 provide for the right to assign [to LMNO sister company LMNO Entertainment
21 Group, LLC].")

22 Over the following months, LMNO submitted every few weeks a schedule
23 containing cost assumptions for production of season two for the next several-week
24 period. Sims Decl. Ex. D. Discovery paid LMNO in full according to each of
25 those schedules, and LMNO accepted Discovery's payments. Sims Decl. ¶ 14. On
26 or around May 26, 2016, LMNO submitted a schedule itemizing cash expenditures
27 needed to produce the Program from May 22, 2016 through July 1, 2016, which
28

1 Discovery subsequently paid in full. *Id.* That was the last schedule submitted by
2 LMNO, as Discovery's termination of LMNO's production of *7 Little Johnstons*
3 became effective as of July 2, 2016. *Id.*

4 In total, Discovery has paid LMNO \$2,007,950.90, which includes direct
5 costs and production fees, for the work LMNO has performed on season two of *7*
6 *Little Johnstons*, as LMNO has acknowledged. *Id.* at ¶ 15; see [Complaint, Dkt.](#)
7 [No. 1, at ¶ 106](#). This amount represents all that LMNO is owed for the work in
8 question relating to the season two Program Deliverables for *7 Little Johnstons*
9 Discovery seeks through this Writ.

10 **II. DISCOVERY LEARNS OF LMNO'S MISCONDUCT**

11 In late 2015, Discovery received a call via its ethics hotline from a
12 whistleblower concerning allegations that LMNO had been repeatedly engaging in
13 fraudulent conduct relating to LMNO's production of various programs for
14 Discovery. Sims Decl. ¶ 16. Prior to receiving this message, Discovery was
15 wholly unaware of any allegations that LMNO was secretly defrauding Discovery
16 and violating its contracts. *Id.* According to the whistleblower, LMNO was,
17 among other things, creating fraudulent production costs and budgets; keeping
18 inaccurate, fraudulent records to conceal its scheme; systematically failing to pay
19 its contractually required share of production costs for certain programs that it was
20 producing for Discovery; and not properly sharing with Discovery tax credits
21 LMNO received on productions, as it was contractually obligated to do. *Id.*

22 Taking these allegations very seriously, Discovery met with LMNO,
23 including its CEO, on February 10, 2016. *Id.* at ¶ 18. Discovery set forth its
24 concerns in detail, including with respect to *7 Little Johnstons*. *Id.* Discovery
25 received wholly unsatisfactory answers. *Id.* at ¶ 19. As a result, Discovery
26 delivered Notice of Preservation and Default letters for several programs, including
27 one with respect to *7 Little Johnstons* (the "*7 Little Johnstons* Notice of Default")
28

1 at the conclusion of the February 10, 2016 meeting, which enumerated various
2 material breaches by LMNO under the relevant contracts. *Id.* at ¶ 19.

3 **III. LMNO BREACHES THE 7 LITTLE JOHNSTONS AGREEMENT,**
4 **DISCOVERY TERMINATES, AND DEMANDS THE DELIVERY OF**
5 **PROGRAM DELIVERABLES.**

6 In the *7 Little Johnstons* Notice of Default, Discovery provided written
7 notice of LMNO's material contractual breaches including, *inter alia*, 1) failing to
8 pay Discovery all tax credits or government subsidies it received for the Program,
9 2) failing to keep fair and accurate books, accounts, and records relating to the
10 Program, and 3) failing to deposit Discovery's contribution to the production costs
11 for the Program in a segregated bank account. *See* Sims Decl. Ex. E. Discovery
12 also expressed its intention to exercise its contractual rights under Section 12.1(i)
13 of Exhibit A to the January 28, 2004 Master to terminate the *7 Little Johnstons*
14 Agreement for cause if LMNO did not cure the identified material breaches. *Id.*
15 Discovery also indicated its rights under Section 12.3 of that same exhibit for the
16 prompt delivery of the Program Deliverables "regardless of the stage of
17 completion" upon Discovery's termination. *Id.*

18 Over the next few months, however, LMNO provided no assurances that its
19 material breaches regarding *7 Little Johnstons* would or could be cured. Sims
20 Decl. ¶ 20. In light of LMNO's refusal to cure the material breaches identified, on
21 June 17, 2016, Discovery lawfully terminated, *inter alia*, the *7 Little Johnstons*
22 Agreement, effective as of July 2, 2016 (the day by which all footage for season
23 two was to be shot). *Id.* at ¶ 21 and Ex. F (the "June 17 Notice of Termination").
24 At the time of Discovery's termination, LMNO had completed shooting footage
25 for season two of *7 Little Johnstons* but had not completed all post-production
26 work. Sims Decl. ¶ 23. As noted above, Discovery has paid LMNO more than \$2
27 million in connection with the work LMNO has already performed in connection
28

1 with season two of the Program. *Id.* at ¶ 15. LMNO, however, has not provided
2 Discovery with any Program Deliverables for season two. *Id.* at ¶ 28.

3 Discovery's June 17 Notice of Termination demanded that LMNO deliver to
4 Discovery all Program Materials, now known as "Program Deliverables," for
5 *7 Little Johnstons* within two business days of July 2, 2016 (collectively, the
6 "*7 Little Johnstons Detained Program Deliverables*"). *See* Sims Decl. Ex. F.
7 Discovery followed up on its demand by letter dated June 23, 2016 (the "June 23
8 Letter"). *See* Sims Decl. Ex. G. The June 23 Letter identified the *7 Little*
9 *Johnstons Detained Program Deliverables* as follows:

- 10 • All source material delivered on drives for seasons one and two of
11 *7 Little Johnstons*;
- 12 • Masters completed through July 2, 2016 for seasons one and two of
13 *7 Little Johnstons*;
- 14 • Rough cuts, fine cuts, and locked cuts completed through July 2, 2016
15 delivered on HDCAM-SR for seasons one and two of *7 Little*
16 *Johnstons*;
- 17 • Graphics master(s) for seasons one and two of *7 Little Johnstons*;
- 18 • Source tape logs for seasons one and two of *7 Little Johnstons*;
- 19 • Music cue sheets for masters for seasons one and two of *7 Little*
20 *Johnstons*;
- 21 • EDL's for uncompleted projects for seasons one and two of *7 Little*
22 *Johnstons*;
- 23 • Any additional program content for seasons one and two of *7 Little*
24 *Johnstons*;
- 25 • The US Labor Report for seasons one and two of *7 Little Johnstons*;
- 26 • The cost report as of July 2, 2016 for seasons one and two of *7 Little*
27 *Johnstons*; and
- 28 • All Program Deliverables identified on Program Deliverables exhibit
as of July 2, 2016 for seasons one and two of *7 Little Johnstons*.

24 *See id.*²

26 ² Only Program Deliverables for season two of *7 Little Johnstons* are at issue, as
27 Discovery has confirmed it possesses sufficient deliverables for the previous
28 season.

1 Despite Discovery’s repeated requests that LMNO deliver the *7 Little*
 2 *Johnstons* Detained Program Deliverables, LMNO has refused to do so. Sims
 3 Decl. ¶ 28. On August 1, 2016, Discovery filed its Counterclaims in this action,³
 4 asserting various Claims for Relief, including a claim for Recovery of Personal
 5 Property/Claim and Delivery for the *7 Little Johnstons* Detained Program
 6 Deliverables. See Dkt. No. 17 at ¶¶ 282-295 (“Fifteenth Claim for Relief”).
 7 Subsequently, by letter dated August 11, 2016, Discovery again demanded that
 8 LMNO deliver the *7 Little Johnstons* Detained Program Deliverables, but LMNO
 9 has failed to do so. Sims Decl. ¶¶ 27-28.

10 ARGUMENT

11 **I. DISCOVERY IS ENTITLED TO A WRIT OF POSSESSION**

12 The Federal Rules of Civil Procedure provide that “[a]t the commencement
 13 of and throughout an action, every remedy is available that, under the law of the
 14 state where the court is located, provides for seizing a person or property to secure
 15 satisfaction of the potential judgment.” See [Fed. R. Civ. P. 64\(a\)](#). The Federal
 16 Rules specifically recognize “replevin” as one such state court remedy.⁴

17 [Section 512.010 of the California Code of Civil Procedure](#) provides that
 18 “[u]pon the filing of the complaint or at any time thereafter,” the plaintiff may
 19 apply for a Writ of Possession. Accordingly, Discovery respectfully seeks a Writ
 20 of Possession under [Section § 512.010\(b\) of the California Code of Civil](#)
 21

22 ³ LMNO had sued Discovery in this Court on June 22, 2016.

23 ⁴ California courts allow for specific recovery of personal property and incidental
 24 damages, but use the term “claim and delivery” rather than “replevin.” [Adler v.](#)
 25 [Taylor, No. CV 04-8472-RGK\(FMOX\), 2005 WL 4658511, at *3 \(C.D. Cal. Feb.](#)
 26 [2, 2005\)](#), *aff’d sub nom. Orkin v. Taylor*, 487 F.3d 734 (9th Cir. 2007). The
 27 provisional remedy of “claim and delivery” is detailed in Sections 511.010 through
 28 516.050 of the California Code of Civil Procedure.

1 Procedure—made applicable to this proceeding pursuant to Fed. R. Civ. P. 64(a)—
2 for immediate possession of the *7 Little Johnstons* Detained Program Deliverables.
3 Section 512.010(b) of the California Code of Civil Procedure sets forth five
4 required components of an application for a Writ of Possession. See Cal. Civ.
5 Proc. Code § 512.010(b)(1-5).⁵ As detailed below, Discovery’s application, which
6 includes two sworn affidavits pursuant to Cal. Civ. Proc. Code § 512.010(c), meets
7 each of these requirements.

8 **A. Discovery Has Compiled With The Procedural Requirements Of**
9 **Cal. Civ. Proc. Code § 512.010(b)**

10 *First*, Discovery has demonstrated its entitlement under the *7 Little*
11 *Johnstons* Agreement to possession of the *7 Little Johnstons* Detained Program
12 Deliverables.⁶ The January 28, 2004 Master plainly provides that Discovery is the
13 sole owner of “[*7 Little Johnstons*] and all elements thereof and relating thereto,
14 including without limitation, outtakes, research and publicity materials.” See Sims
15 Decl. Ex. A at § 2.1 (emphasis added). Moreover, as a result of the material
16 breaches detailed above and in Discovery’s Notice of Termination, Discovery

17 _____
18 ⁵ Specifically, the written application must include (i) a showing of the basis of the
19 plaintiff’s claim and that the plaintiff is entitled to possession of the property
20 claimed; (ii) a showing that the property is wrongfully detained by the defendant,
21 of the manner in which the defendant came into possession of the property, and,
22 according to the best knowledge, information, and belief of the plaintiff, of the
23 reason for the detention; (iii) a particular description of the property and a
24 statement of its value; (iv) a statement of the location of the property; and (v) a
25 statement that the property has not been taken for a tax, assessment, or fine,
26 pursuant to a statute; or seized under an execution against the property of the
27 plaintiff; or, if so seized, that it is by statute exempt from such seizure. See Cal.
28 Civ. Proc. Code § 512.010(b)(1-5).

⁶ As per the requirements of Cal. Civ. Proc. Code § 512.010(b)(1), the relevant
contractual instruments are attached to the Sims Declaration and incorporated
within Discovery’s application.

1 exercised its contractual termination rights, thereby triggering Section 12.3 of the
2 January 28, 2004 Master, which provides that “upon termination,” LMNO shall
3 “promptly deliver” the Program Deliverables to Discovery. *See* Sims Decl. Ex. A
4 at § 12.3.

5 Discovery has already paid LMNO \$2,007,950.90 for its work on season
6 two and, thus, has fully paid LMNO for all work LMNO completed with respect to
7 season two of *7 Little Johnstons* that is the subject of this Writ. Sims Decl. ¶ 15.

8 *Second*, Discovery has shown that LMNO is wrongfully detaining the
9 *7 Little Johnstons* Detained Program Deliverables. As an initial matter, there is no
10 dispute that LMNO has continued to maintain possession of the *7 Little Johnstons*
11 Detained Program Deliverables, despite the plain contractual language requiring
12 the materials to be delivered to Discovery, and notwithstanding Discovery’s
13 repeated requests for their delivery. And LMNO has never claimed that any funds
14 remain due and owing for work performed prior to the termination effective as of
15 July 2, 2016. *See id.* at ¶¶ 14-15. Therefore, LMNO has no right, under the
16 agreements or otherwise, to possess these materials.

17 Upon information and belief, LMNO is wrongfully retaining the *7 Little*
18 *Johnstons* Detained Program Deliverables in order to retaliate for Discovery’s
19 lawful termination of its relationship with LMNO and to impede Discovery’s
20 ability to utilize materials that Discovery has paid for and is fully entitled to by
21 contract. *Id.* at ¶ 29. Further, without these Program Deliverables—the majority
22 of which is comprised of footage shot for season two of *7 Little Johnstons*—
23 Discovery will be unable to share with its viewers the real-life events that were
24 captured in that footage during this past year. Declaration of Alon Orstein
25 (“Orstein Decl.”) ¶ 3. For example, Discovery requires the Program Deliverables
26 so that it can finalize the footage in order to convert it into final episodes of *7 Little*
27 *Johnstons* that can be viewed by the Program’s viewers. *Id.*

1 Discovery cannot simply reshoot all of the footage because the footage
2 captures real-life events that have already taken place and cannot be replicated,
3 such as a major surgery, a health scare, and other important milestones in the life
4 of the Johnston family. *Id.* at ¶ 4. Without the Program Deliverables—especially
5 the shot footage—Discovery will be unable to broadcast any aspect of season two
6 of *7 Little Johnstons* as already captured on film, which would result in a “gap” in
7 the lives of the family members appearing in the Program. *Id.* Such a gap could
8 undermine the continuity of the Program. *Id.*

9 *Third*, Discovery has provided a particularized and itemized description of
10 the property LMNO is wrongfully retaining. *See* Sims Decl. Ex. G (June 23
11 Letter); *see also supra* p. 10. Discovery has also provided a statement of value: the
12 *7 Little Johnstons* Detained Program Deliverables are valued at no less than \$2
13 million, based on the amounts Discovery has already paid LMNO for these
14 deliverables. Sims Decl. ¶ 25.

15 *Fourth*, Discovery provided a statement, upon information and belief, that
16 the Detained Program Deliverables are located at LMNO’s offices⁷ at 15821
17 Ventura Boulevard, Suite 320, Encino, California, 91436. *Id.* at ¶ 30. This is
18 LMNO’s primary place of business, as well as the address for LMNO included in
19 the *7 Little Johnstons* Agreement. Sims Decl. Ex. A; Ex. B.

20
21 ⁷ LEG is a “sister” company of LMNO that may have been involved in aspects of
22 the production of season two of *7 Little Johnstons*. That at least some of the
23 Detained Program Deliverables for *7 Little Johnstons* may be in LEG’s possession
24 does not alter the probable cause analysis. *See 4Wall Las Vegas, Inc. v.*
25 *Triebwasser*, No. 2:12-CV-2746-KJN, 2013 WL 930620, at *6, n.6 (E.D. Cal. Mar.
26 8, 2013) (“The mere possibility that some or all of the Equipment may be rented
27 out and not found at defendants’ place of business at the exact time that a writ is
28 executed is not sufficient to destroy the probable cause that the Equipment is at
defendants’ place of business”). Indeed, LEG shares the same address as LMNO:
15821 Ventura Boulevard, Suite 320, Encino, California, 91436.

1 *Finally*, Discovery has provided a statement that the 7 *Little Johnstons*
 2 Detained Program Deliverables have not been taken for a tax, assessment, or fine,
 3 pursuant to a statute; or seized under an execution against the property of
 4 Discovery. Sims Decl. ¶ 31. Accordingly, Discovery has met each of the
 5 requirements for a Writ of Possession enumerated in [Cal. Civ. Proc. Code](#)
 6 [§ 512.010\(b\)\(1-5\)](#).

7 **B. Discovery Has Compiled With The Requirements Of Cal. Civ.**
 8 **Proc. Code § 512.060**

9 At the hearing on Discovery’s application, Discovery will have established
 10 the “probable validity” of its claim to possession of the property and it can also
 11 satisfy the undertaking requirement in [Cal. Civ. Proc. Code § 515.010](#), or
 12 otherwise show that it is inapplicable here. If both of those requirements are met,
 13 “a writ of possession shall issue.” *See* [Cal. Civ. Proc. Code § 512.060\(a\)](#).⁸

14 **1. Discovery Has Established the Probable Validity of Its**
 15 **Claim**

16 Discovery has “established the probable validity” of its claim to possession
 17 of the wrongfully detained property under [Cal. Civ. Proc. Code § 512.060\(a\)\(1\)](#).
 18 “A claim has ‘probable validity’ where it is *more likely than not* that the plaintiff
 19 will obtain a judgment against the defendant on that claim.” [Cal. Civ. Proc. Code](#)
 20 [§ 511.090](#) (emphasis added). Courts have found that this “probable validity”
 21 standard is the same as the requirement under [Cal. Civ. Proc. Code §](#)
 22 [512.010\(b\)\(1\)](#), discussed above, that a plaintiff demonstrate the “basis” of its claim
 23
 24

25 ⁸ As discussed in *supra* section I.A, Discovery has established there is probable
 26 cause to believe that the 7 *Little Johnstons* Program Deliverables are located at
 27 15821 Ventura Boulevard, Suite 320, Encino, California, 91436. *See* [Cal. Civ.](#)
 28 [Proc. Code § 512.060\(b\)](#).

1 and its “entitlement” to the property at issue. *See* [4Wall Las Vegas, 2013 WL](#)
2 [930620, at *6](#).

3 Here, Discovery has established the probable validity of its entitlement to all
4 of the *7 Little Johnstons* Detained Program Deliverables under the terms of the
5 *7 Little Johnstons* Agreement. As set forth in Section 12.3 of Exhibit A to the
6 January 28, 2004 Master, once Discovery has terminated the *7 Little Johnstons*
7 Agreement, LMNO *must* “promptly deliver to [Discovery] all Program Materials
8 of any kind produced as of the date of termination, as well as all agreements
9 relating thereto, and Company will have all rights under the Agreement in such
10 Program Materials regardless of the stage of completion. Should [LMNO] fail to
11 comply, [Discovery] may enter [LMNO’s] premises to take possession of all or
12 any part of the contracts or Materials not delivered by [LMNO] hereunder.” Sims
13 Decl. Ex. A. Because LMNO has not delivered the *7 Little Johnstons* Detained
14 Program Deliverables, Discovery is entitled to a Writ of Possession.

15 **2. No Undertaking Is Required Because LMNO Has No**
16 **Interest In The Materials At Issue**

17 [Cal. Civ. Proc. Code § 515.010\(a\)](#) requires a plaintiff seeking a Writ of
18 Possession to file an undertaking in an amount not less than twice the value of the
19 defendant’s interest in the property. However, if a court finds that the defendant
20 has no interest in the property, “the court shall waive the requirement of the
21 plaintiff’s undertaking.” *See* [Cal. Civ. Proc. Code § 515.010\(b\)](#). Indeed, some
22 courts have waived the requirement of the plaintiff’s undertaking where, as here,
23 the plaintiff had a right to possession of the personal property due to the
24 defendant’s contractual breach. *See, e.g.,* [4Wall Las Vegas, 2013 WL 930620, at](#)
25 [*7](#) (waiving plaintiff’s undertaking where defendant defaulted in its payments for
26 equipment, triggering plaintiff’s contractual right to possess the equipment).
27
28

1 LMNO lacks any interest in the Program Deliverables for three reasons,
2 each of which is sufficient to establish Discovery's right to the materials without
3 the requirement to post an undertaking. First, LMNO has no interest in the *7 Little*
4 *Johnstons* Detained Program Deliverables because, upon termination, Discovery
5 has an undeniable contractual right to the immediate possession of the *7 Little*
6 *Johnstons* Detained Program Deliverables. *See* Sims Decl. Ex. A.

7 Second, the underlying contracts establish that Discovery exclusively owns
8 the underlying rights to *7 Little Johnstons*. The January 28, 2004 Master provides
9 that Discovery owns all of the rights in the Program, which includes "the sole and
10 exclusive right to exploit" the Materials "in perpetuity." Sims Decl. Ex. A, at
11 § 2.1. And the *7 Little Johnstons* Attachment similarly provides that Discovery
12 "owns all rights (including, without limitation, copyright) in the Program and all
13 elements thereof." Sims Decl. Ex. B at § III.

14 Third, Discovery has paid all of the costs related to the work LMNO has
15 performed in relation to the *7 Little Johnstons* Detained Program Deliverables.
16 Sims Decl. ¶ 15. As LMNO has been fully compensated, it has no remaining
17 interest in these materials.

18 Each of these three facts establishes Discovery's unfettered right to
19 possession of the *7 Little Johnstons* Detained Program Deliverables and LMNO's
20 fundamental lack of interest in them, and each therefore establishes that no
21 undertaking is required.

22 **II. DISCOVERY IS ENTITLED TO A TURNOVER ORDER**

23 In addition to issuing a writ of possession, this Court can also "issue an order
24 directing the defendant to transfer possession of the property to the plaintiff. "[Cal.](#)
25 [Civ. Proc. Code § 512.070](#). A turnover order "is not issued in lieu of a writ but
26 rather *in addition to or in aid of a writ*, permitting the plaintiff to select a more
27 informal and less expensive means of securing possession." [Law Rev. Com.](#)

1 [Comments to Cal. Civ. Proc. Code § 512.070](#) (emphasis added). Given
2 Discovery's clear entitlement to a writ of possession, it also is entitled to a turnover
3 order as an additional means of recovering immediate possession of the *7 Little*
4 *Johnstons* Detained Program Deliverables from LMNO.

5 **CONCLUSION**

6 For all of the above reasons, Discovery respectfully requests that this Court
7 issue an Order of Writ of Possession and a turnover order requiring LMNO to
8 provide Discovery with the *7 Little Johnstons* Detained Program Deliverables.
9

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