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December 10, 2024

VIA CM/ECF

Honorable Margaret M. Garnett
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007

Re: *fuboTV Inc. v. The Walt Disney Company*, No. 1:24-cv-01363 (MMG)

Dear Judge Garnett:

On behalf of defendant Fox Corporation, we write in connection with the Court's order regarding additional topics that the parties should be prepared to discuss during Friday's hearing on Fox's Motion to Sever Claims and Transfer Venue. *See* Dkt. 361.

The Court has asked the parties to be prepared to discuss "the import of California law" on the interpretation of the contract. *Id.* at 1. Regarding that request, we submit the following authority in advance of the hearing: (A) *Khan v. Shim*, 7 Cal. App. 5th 49, 59, 61 (Cal. Ct. App. 2016) (explaining that the words of a contract are to be understood in their "ordinary and popular sense," and that the word "concerning" is ordinarily understood to mean "relating to: regarding, respecting, about" (citations omitted)); and (B) *Cal-State Bus. Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1676-77 (Cal. Ct. App. 1993) (detailing the "expansiveness of the scope to be accorded" choice-of-law and choice-of-forum clauses between sophisticated entities under California law). These cases are attached as Exhibits A and B, respectively.

The Court has also asked the parties to be prepared to discuss "the significance of enforcement of a forum selection clause by a non-signatory to a contract." Dkt. 361 at 1. In connection with that request, we submit the following authority: (C) *Lu v. Dryclean-U.S.A. of Cal., Inc.*, 11 Cal. App. 4th 1490, 1494 (Cal. Ct. App. 1992) (explaining that a "range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses," and holding that clause applied to signatory's corporate parent and grandparent (citation omitted)); and (D) *Bugna v. Fike*, 80 Cal. App. 4th 229, 233 (Cal. Ct. App. 2000) (holding that non-signatory parties "closely related" to a contractual relationship can enforce a contract's forum-selection clause). These cases are attached as Exhibits C and D, respectively.

Fox may reference the foregoing authority during the hearing and respectfully submits them in advance to the parties and the Court.



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Respectfully submitted,

/s/ Andrew J. Levander
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