

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FuboTV, Inc., and FuboTV Media, Inc.,

Plaintiffs,

No. 1:24-cv-01363-MMG

v.

The Walt Disney Company, et al.,

Defendants.

**JOINT PRE-HEARING
SUBMISSION**

Hon. Margaret M. Garnett, United States District Judge:

Plaintiffs FuboTV, Inc. and FuboTV Media, Inc. (“Fubo”) and Defendants The Walt Disney Company, ESPN, Inc., ESPN Enterprises, Inc., Fox Corporation and Warner Bros. Discovery, Inc. (collectively, “Defendants”) jointly submit the following witness list, designation synopses, exhibit list and deposition designations in accordance with the Court’s Joint Pre-Hearing Stipulation (Dkt. 220).

i. WITNESS LIST

The following is a list of all hearing witnesses, including the expected order of their testimony and the approximate estimated duration of direct and cross examination for each witness.

Witness Name	Party Calling	Estimated Direct	Estimated Cross
James Trautman	Fubo	30	20
David Gandler	Fubo	30	45
Todd Mathers	Fubo	30	30
Ben Grad	Fubo	15	15
Sal Marchesano	Fubo	15	15
Gary Schanman	Fubo	20	15
John Nallen	Fubo	45	35
Jimmy Pitaro	Both	45	45
Alberto Horihuela	Fubo	45	30
John Janedis	Fubo	30	25
Jon Orszag	Fubo	60	60

Witness Name	Party Calling	Estimated Direct	Estimated Cross
Ed Desser	Defendants	35	25
David Espinosa	Defendants	45	30
Bruce Campbell	Defendants	30	20
Justin Connolly	Defendants	40	30
Sean Breen	Defendants	10	10
Scott Miller	Defendants	20	20
Tony Petitti (May Call)	Defendants	15	15
Mike Whinston	Defendants	80	45-60

ii. DESIGNATION SYNOPSES

1. **Dan Fox:** Mr. Fox is Executive Vice President of Domestic Corporate Development at WBD and will testify by designation about why WBD decided to enter into the JV, how the JV is not expected to increase cord-cutting, and WBD's financial incentives with respect to the JV and other MVPDs.

2. **Ameet Padte:** Mr. Padte is Fubo's Vice President of Financial Planning & Analysis, Corporate Development and Investor Relations and will testify by designation about how Fubo prepared its JV impact analysis using subscriber outlook assumptions prepared by its marketing team, other subscriber outlook projections prepared by Fubo and third party analysts, and Fubo's ability to replace subscribers and the cost of doing so.

3. **Paul Cheesbrough:** Mr. Cheesbrough is the CEO of Tubi Media Group and oversees technology and digital strategy for all of Fox. He was involved in the development and negotiation of the JV. Mr. Cheesbrough's deposition testimony explains: (1) the anticipated pricing and features that may make the JV a differentiated offering; (2) his understanding of the JV's market positioning; and (3) studies conducted by the JV partners to assess consumer demand for a skinny, sports-centric offering. Mr. Cheesbrough also testifies about a document that he authored that outlines Mr. Cheesbrough's thoughts on the goals for the JV, the risks associated

with launching the JV, and potential considerations with respect to ensuring the JV's future success.

4. **Pete Distad:** Mr. Distad was hired to serve as the CEO of Venu. His testimony concerns: (1) his employment agreement and his incentive-based bonus; (2) the launch price of the JV, which at the time of his deposition was projected to be \$39.99, with a free trial; (3) the draft marketing materials for the JV and other draft documents that Venu was reviewing at the time of his deposition; and (4) the target market for the JV.

5. **Robert Iger:** Mr. Iger is the CEO of The Walt Disney Company. He first served in that role from 2005 to 2020 and returned as CEO in 2020. The topics of Mr. Iger's designated testimony include: (1) the future of Disney's streaming business; (2) Raptor's market positioning vis-à-vis the "big fat bundle" and other MVPDs; (3) the value of ESPN's sports programming; (4) Raptor's licensing of major national sports content; (5) Raptor's potential cannibalization of vMVPD and MVPD subscribers and its impact on Disney; and (6) Disney's licensing and bundling practices.

6. **Justin Lancer:** Mr. Lancer is the Executive Vice President of Corporate Development at Fox and, per the direction provided by John Nallen and other executives, was the lead Fox negotiator for the joint venture. His testimony explains that: (1) the JV represents the first time that FOX is unbundling its networks, (2) other MVPDs and vMVPDs may want to replicate Venu Sports and seek to unbundle Defendants' networks; (3) Venu Sports would be a skinny sports bundle and there currently are no other skinny sports bundles available in the U.S. market; (4) the JV would create "strategic alignment" among Defendants in certain respects; and (5) Defendants conducted research to help assess consumer demand and interest in a skinny sports

bundle. His testimony also discusses the potential that the JV may capture consumers who currently subscribe to Fubo and other vMVPDs.

7. **Justin Warbrooke:** Mr. Warbrooke is the Head of Corporate Development at The Walt Disney Company and reports to CFO Hugh Johnston. He was the lead negotiator for Disney with Fox and Warner Brothers with respect to JV agreements. His designated testimony explains that: (1) Disney conducted analysis that concluded there is no material financial difference for Disney if a consumer subscribes to Raptor instead of an MVPD or vMVPD; (2) Disney's ABC and ESPN networks are the most desirable Disney content and Hulu + Live TV's top five channels (NBC, ABC, CBS, FOX, and ESPN) all have live sports content; (3) Defendants' market research confirmed demand for a skinny sports bundle.

iii. EXHIBIT LIST

Please see attached Exhibit A.

iv. DEPOSITION DESIGNATIONS

Please see attached Exhibit B for the page and line numbers for the parties' affirmative and counter deposition designations. Pursuant to the Court's July 24th Order, the parties will submit the deposition designation videos to the Court via a link to a secure file-sharing site. The parties will also provide the complete deposition transcripts with color-coded highlighting with the designated testimony.

Dated: August 1, 2024

Respectfully submitted,

/s/ Joshua Hafenbrack

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