

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC,	§	
	§	
Plaintiffs,	§	
	§	284 th JUDICIAL DISTRICT
v	§	
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER,	§	
	§	
Defendants.	§	MONTGOMERY COUNTY, TEXAS
	§	

**DEFENDANTS' MOTION TO OVERRULE OBJECTIONS AND COMPEL
RESPONSES TO DISCOVERY REGARDING PERSONAL JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendants Voltage Pictures, LLC ("Voltage") and Nicolas Chartier ("Chartier") (collectively, the "Defendants") specially appear pursuant to TEX. R. CIV. P.120a and file this their Motion to Overrule Objections and Compel Responses to Discovery Regarding Personal Jurisdiction and in support thereof show as follows:

I. EVIDENCE IN SUPPORT OF MOTION

1. Defendants offer the following evidence, attached hereto and incorporated herein by reference as if set forth in full, in support of this Motion:

DESCRIPTION	EXHIBIT NO.
Defendants' Special Appearance	1
Plaintiffs' First Amended Original Petition	2
Plaintiffs' Answers and Objections to Defendants' First Set of Interrogatories	3
Plaintiffs' Responses and Objections to Plaintiff's First Requests for	4

Production	
Plaintiffs' Responses and Objections to Plaintiff's First Request for Admissions	5
Correspondence attempting to meet and confer	6

2. All the exhibits set forth herein are true and correct copies and incorporated by reference herein the same as if fully copied and set forth at length for all purposes. See **EXHIBITS 1 through 6**.

II. BACKGROUND

A. Facts

3. Defendants are citizens and residents of the State of California, with their principal place of business located in the State of California. Defendants have never resided or been domiciled in the State of Texas, nor do Defendants conduct business in the State of Texas. Indeed, no aspect of this case is remotely related to Texas, as none of the purported transactions or agreements at issue in this action were negotiated in, executed or required performance in the State of Texas.

4. In addition, Defendants have had no meaningful contacts with the State of Texas, let alone the requisite minimum contacts with the State of Texas necessary for the Court to exercise specific jurisdiction over the Defendants in this case. This Court does not have general or specific personal jurisdiction over Defendants.

B. Litigation

5. Plaintiffs filed their original petition on June 12, 2015. Defendants filed a Special Appearance on December 7, 2015. See *Defendants' Special Appearance* attached hereto as **EXHIBIT 1** and incorporated herein by reference the same as if fully copied and set forth at length

for all purposes. Defendants Special Appearance is set for oral hearing on October 27, 2016 after which the Court will hear *Defendants' Motion to Dismiss for Forum Non Conveniens*.

6. The trial court must resolve a special appearance based on the evidence. See TEX. R. CIV. P. 120(a)(3). At the hearing on a special appearance, the nonresident defendant must disprove jurisdiction by negating all alleged grounds for personal jurisdiction. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002); *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985). If the defendant produces sufficient evidence negating jurisdiction, the burden shifts to the plaintiff to show that the court has jurisdiction over the defendant. *M.G.M. Grand Hotel, Inc. v. Castro*, 8 S.W.3d 403, 408 (Tex. App.—Corpus Christi 1999, no pet.).

7. At the hearing on October 27, 2016, Plaintiffs and Defendants will be admitting evidence in support of their jurisdictional arguments. The parties may engage in discovery before the hearing on the special appearance. See TEX. R. CIV. P. 120a(1). A defendant does not waive its special appearance by engaging in discovery related to the special appearance. Discovery conducted before the special appearance is resolved should be limited to issues related to the special appearance. See *In re Doe*, 444 S.W.3d 603, 608 (Tex.2014) (dicta); *Dawson-Austin v. Austin*, 968 S.W.2d 319, 323-24 (Tex. 1998) (dicta).

C. Discovery

8. Defendants served Plaintiffs with Defendants' First Set of Interrogatories, First Requests for Production, and First Requests for Admission exclusively regarding Plaintiffs' jurisdictional allegations on June 21, 2016.

9. On July 21, 2016, Plaintiffs served Defendants with their objections and responses to Defendants' discovery requests. See *Plaintiffs Objections and Responses to Defendants' First*

Set Of Interrogatories Exclusively Regarding Plaintiffs' Jurisdictional Allegations attached hereto as **EXHIBIT 3** and incorporated herein by reference the same as if fully copied and set forth at length for all purposes; *See Plaintiffs Response to Defendants' First Requests for Production Exclusively Regarding Plaintiffs' Jurisdictional Allegations* attached hereto as **EXHIBIT 4** and incorporated herein by reference the same as if fully copied and set forth at length for all purposes; *See Plaintiffs Response to Defendants' First Requests for Admission Exclusively Regarding Plaintiffs' Jurisdictional Allegations* attached hereto as **EXHIBIT 5** and incorporated herein by reference the same as if fully copied and set forth at length for all purposes.

10. Defendants notified Plaintiffs regarding their defective objections and responses to discovery on Friday July 22, 2016 and again on Monday July 25, 2016. *See* correspondence attempting to meet and confer attached hereto as **EXHIBIT 6** and incorporated herein by reference the same as if fully copied and set forth at length for all purposes. To date, Plaintiffs have not supplemented or amended their discovery responses.

1. Plaintiffs' Defective Objections to Defendants' Discovery Requests

11. Plaintiffs' defective and improper objections to the various discovery requests can be summarized as follows:

a. Objections to Interrogatories:

INTERROGATORY ("ROG")	NUMBER	DEFECTIVE OBJECTION
Identify and describe any alleged agreement between Defendants and Plaintiffs that explicitly states Texas law applies to any dispute between Defendants and Plaintiffs.	ROG 3	Overly broad.
State the factual basis for your contention that Defendants' alleged solicitation of Plaintiffs occurred in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	ROG 4	Overly broad.

INTERROGATORY (“ROG”)	NUMBER	DEFECTIVE OBJECTION
Identify each email and phone call you contend was from Defendants to Plaintiffs in Texas both prior to Defendants allegedly becoming Plaintiffs’ agent and after Defendants allegedly became Plaintiff’s agent as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 5	Overly broad and harassing.
State the factual basis for your contention that Defendants allegedly approached Plaintiffs in Texas to allegedly induce the Plaintiffs to make Voltage Plaintiffs’ foreign sales agent as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 6	Overly broad and harassing.
Identify the misrepresentations you contend Defendants made “all into the state of Texas” after the movie started receiving accolades as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 7	Overly broad.
State the factual basis for your contention that the alleged contract between Plaintiffs and Defendants “was performable, all or in part in Texas” as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 8	Calls for a legal conclusion.
State the factual basis for your contention that Defendants advertise anything other than Dallas Buyer’s Club in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 13	Overly broad.
State the factual basis for your contention that Defendants advertised Dallas Buyer’s Club in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 14	Overly broad.
State the factual basis for your contention that Defendants profit from ticket sales of movies in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 15	Calls for a legal conclusion.

INTERROGATORY (“ROG”)	NUMBER	DEFECTIVE OBJECTION
Please identify the business you allege Defendants solicited in Texas, other than the alleged solicitation of Plaintiffs, as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 16	Calls for a legal conclusion.
State the factual basis for your contention that Defendants “purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law” as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 17	Calls for a legal conclusion.
Identify Defendants’ continuous and systematic contacts in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 19	Calls for a legal conclusion

See EXHIBIT 3.

b. Objections to Requests for Production:

REQUEST FOR PRODUCTION (“RFP”)	NUMBER	DEFECTIVE OBJECTION
Please produce copies of the correspondence between Voltage and Mr. Newcomb that were “received in Texas” as you allege in <i>Plaintiffs’ First Amended Petition</i> .	RFP 6	Overly broad.
Please produce true and correct copies of all documents that support your contention that Defendants alleged misrepresentations were made in the state of Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 11	Overly broad.

See EXHIBIT 4.

c. Objections to Requests for Admissions:

REQUEST FOR ADMISSIONS (“RFA”)	NUMBER	DEFECTIVE OBJECTION
Admit that Defendants are residents of the State of California.	RFA 1	Calls for a legal conclusion.
Admit that Defendants are domiciled in the State of California.	RFA 2	Calls for a legal conclusion.

REQUEST FOR ADMISSIONS ("RFA")	NUMBER	DEFECTIVE OBJECTION
Admit that Defendants' principle place of business is located in Los Angeles, California.	RFA 3	Calls for a legal conclusion.
Admit that Defendants are not residents of the State of Texas.	RFA 4	Calls for a legal conclusion.
Admit that Defendants are not domiciled in the State of Texas.	RFA 5	Calls for a legal conclusion.
Admit that Defendants do not have a principle place of business in the State of Texas.	RFA 6	Calls for a legal conclusion.
Admit that Defendants do not have an office in the State of Texas.	RFA 7	Calls for a legal conclusion.
Admit that Defendant Voltage is organized and operated under the laws of the State of California.	RFA 13	Calls for a legal conclusion.

See **EXHIBIT 5**.

12. Plaintiffs' objections to the foregoing discovery requests should be overruled and Plaintiffs should be compelled to supplement and fully respond to the interrogatories and requests for admission and produce the documents responsive the requests for productions.

2. Plaintiffs' Defective Discovery Responses

13. In addition to lodging invalid objections, Plaintiffs failed to properly respond to discovery requests regarding Plaintiffs' very own jurisdictional allegations set forth in *Plaintiff's First Amended Petition*:

a. Answers to Interrogatories:

INTERROGATORY ("ROG")	NUMBER	DEFECTIVE ANSWER
Identify all persons with knowledge of the issues pertinent to your allegations of personal jurisdiction in Texas. Include in your answer a short statement describing each person's knowledge of the issues, contact information, address, email, and phone number.	ROG 2	"Plaintiff's will supplement when we determine who will testify."

INTERROGATORY (“ROG”)	NUMBER	DEFECTIVE ANSWER
State the factual basis for your contention that Defendants’ alleged solicitation of Plaintiffs occurred in Texas as alleged in Plaintiffs’ First Amended Petition.	ROG 4	Plaintiffs failed to answer.
Identify each email and phone call you contend was from Defendants to Plaintiffs in Texas both prior to Defendants allegedly becoming Plaintiffs’ agent and after Defendants allegedly became Plaintiff’s agent as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 5	Plaintiffs failed to answer.
State the factual basis for your contention that Defendants allegedly approached Plaintiffs in Texas to allegedly induce the Plaintiffs to make Voltage Plaintiffs’ foreign sales agent as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 6	Plaintiffs failed to answer.
Identify the misrepresentations you contend Defendants made “all into the state of Texas” after the movie started receiving accolades as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 7	Plaintiffs failed to answer.
State the factual basis for your contention that the alleged contract between Plaintiffs and Defendants “was performable, all or in part in Texas” as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 8	Plaintiffs failed to answer.
Identify the lawyers you allege Voltage hired to prosecute Dallas Buyer’s Clubs’ anti-piracy claims against Texas citizens in Federal Court in the Southern District of Texas. Include in you answer any Texas lawyer.	ROG 9	“Defendants have that information.”
Provide the style and cause number for each anti-piracy claim you allege Voltage prosecuted against Texas citizens in Texas on behalf of Dallas Buyer’s Club, TX or Dallas Buyer’s Club, CA.	ROG 10	“Defendants have that information.”

INTERROGATORY (“ROG”)	NUMBER	DEFECTIVE ANSWER
Provide the style and cause number for each lawsuit you allege Defendants filed in Texas, “directly or indirectly” on behalf of Plaintiffs or any other person or entity.	ROG 11	“Defendants have that information.”
State the factual basis for your contention that the alleged discussions and correspondence between Voltage and Mr. Newcomb were “received in Texas” as you allege in Plaintiffs’ First Amended Petition.	ROG 12	“Mr. Newcomb received the information from Voltage in Montgomery County, Texas.”
State the factual basis for your contention that Defendants advertise anything other than Dallas Buyer’s Club in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 13	Plaintiffs failed to answer.
State the factual basis for your contention that Defendants advertised Dallas Buyer’s Club in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 14	Plaintiffs failed to answer.
State the factual basis for your contention that Defendants profit from ticket sales of movies in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 15	Plaintiffs failed to answer.
Please identify the business you allege Defendants solicited in Texas, other than the alleged solicitation of Plaintiffs, as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 16	Plaintiffs failed to answer.
State the factual basis for your contention that Defendants “purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law” as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 17	Plaintiffs failed to answer.
Identify the benefits, advantages, and/or profits Defendants have gained from conducting Business in Texas as alleged in Plaintiffs’ First Amended Petition.	ROG 18	“At this point in the discovery process Plaintiff’s can only state that Defendants profited from the movie The Dallas Buyers Club.”

INTERROGATORY (“ROG”)	NUMBER	DEFECTIVE ANSWER
Identify Defendants’ continuous and systematic contacts in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	ROG 19	Plaintiffs failed to answer.

See EXHIBIT 3.

b. Defective Responses to Requests for Production:

REQUEST FOR PRODUCTION (“RFP”)	NUMBER	RESPONSE
Please produce true and correct copies of all documents that you will use at the hearing on Defendants’ Special Appearance to support your allegations that this Court has personal jurisdiction over Defendants in this case.	RFP 1	“Will supplement when discovery is complete”.
Please produce true and correct copies of all documents that you contend support the existence of “minimum contacts” with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.	RFP 2	“Will supplement when discovery is complete.”
Please produce true and correct copies of all documents that you contend support the existence of “systematic” or “continuous” contacts with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.	RFP 3	“Will supplement when discovery is complete.”
Please produce all documents identified in <i>Plaintiffs’ First Amended Petition</i> and/or relied upon in your <i>Plaintiffs’ First Amended Petition</i> that support your personal jurisdiction allegations.	RFP 4	“Will supplement when discovery is complete.”

Please produce true and correct copies of documents relating to any communication of Defendants that you contend support your allegations of personal jurisdiction.	RFP 5	“Will supplement when discovery is complete.”
Please produce copies of the correspondence between Voltage and Mr. Newcomb that were “received in Texas” as you allege in <i>Plaintiffs’ First Amended Petition</i> .	RFP 6	Plaintiff failed to respond.
Please produce documents that support your contention that Defendants solicited business, other than the alleged solicitation of Plaintiffs in the instant litigation, in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 7	“Will supplement when discovery is complete.”
Please produce documents that support your contention that Defendants solicited Plaintiffs in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 8	“Will supplement when discovery is complete.”
Please produce copies of the alleged foreign agreements you allege Defendants entered into as agent for Dallas Buyer’s Club, LLC to act as foreign sales agent as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 9	“In Plaintiff’s possession. Defendants have failed to provide Plaintiffs with copies of the foreign distribution agreements.”
Please produce true and correct copies of all documents that support your contention that Defendants alleged misrepresentations were made in the state of Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 11	Plaintiffs failed to respond.

Please produce a true and correct copy of the alleged contract between Plaintiffs and Defendants which “was performable, all or in part in Texas” as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 12	“Defendants have possession of all contracts.”
Please produce true and correct copies of all documents that support your contention that Defendants prosecuted anti-piracy claims against Texas citizens in Texas on behalf of Plaintiffs in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 13	“Defendants have possession of all contracts.”
Please produce true and correct copies of all documents that support your contention that Defendants filed lawsuits in Texas “directly or indirectly” on behalf of Plaintiffs as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 14	“Defendants have possession of all contracts.”
Please produce true and correct copies of all documents that support your contention that Defendants prosecuted anti-piracy claims against Texas citizens in Texas on behalf of Plaintiffs as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 15	“Defendants have possession of all contracts.”
Please produce true and correct copies of all documents that support your contention that Defendants advertised Dallas Buyer’s Club in Texas as alleged in <i>Plaintiffs’ First Amended Petition</i> .	RFP 16	“Defendants have possession of all contracts.”

Please produce true and correct copies of all documents that support your contention that Defendants advertised anything other than Dallas Buyer's Club in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 17	"Defendants have possession of all contracts."
Please produce true and correct copies of all documents that support your contention that Defendants profit from ticket sales of movies in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 18	"Defendants have possession of all contracts."
Please produce true and correct copies of all documents that support your contention that Defendants profit from ticket sales of movies in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 19	"Defendants have possession of all contracts."
Please produce true and correct copies of all documents that support your contention that Defendants "purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law" as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 20	"Will supplement when discovery is complete."
Please produce true and correct copies of all documents that support your contention that Defendants gained a benefit, advantage, and/or profit from conducting business in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 21	"Will supplement when discovery is complete."

Please produce true and correct copies of all documents that support your contention that Defendants have continuous and systematic contacts in Texas as alleged in <i>Plaintiffs' First Amended Petition</i> .	RFP 22	"Will supplement when discovery is complete."
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See EXHIBIT 4.

C. Defective Responses to Requests for Admissions:

REQUEST FOR ADMISSION ("RFA")	NUMBER	RESPONSE
Admit that Defendants are residents of the State of California.	RFA 1	Plaintiffs failed to respond.
Admit that Defendants are domiciled in the State of California.	RFA 2	Plaintiffs failed to respond.
Admit that Defendants' principle place of business is located in Los Angeles, California.	RFA 3	Plaintiffs failed to respond.
Admit that Defendants are not residents of the State of Texas.	RFA 4	Plaintiffs failed to respond.
Admit that Defendants are not domiciled in the State of Texas.	RFA 5	Plaintiffs failed to respond.
Admit that Defendants do not have a principal place of business in the State of Texas.	RFA 6	Plaintiffs failed to respond.
Admit that Defendants do not have an office in the State of Texas.	RFA 7	Plaintiffs failed to respond.
Admit that Defendant Voltage is organized and operated under the laws of the State of California.	RFA 13	Plaintiffs failed to respond.

See EXHIBIT 5.

14. Each of the foregoing discovery requests seeks discoverable information regarding Plaintiffs' own jurisdictional allegations set forth in *Plaintiffs' First Amended Petition*. See **EXHIBITS 2- 5**. Each of the foregoing responses is defective because they are either non-responsive or the Plaintiffs simply failed to respond based on an invalid objection. See **EXHIBITS 3- 5**.

III. ARGUMENT AND AUTHORITIES

15. The purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed. *Axelson, Inc. v. McIlhan*, 798 S.W.2d 550, 555 (Tex. 1990). Information is discoverable as long as it appears "reasonably calculated to lead to the discovery of admissible evidence." *Id.* The majority of Plaintiffs' objections are boilerplate, insufficient and unresponsive; they are evasive within the meaning of Rule 215.1(c). TEX. R. CIV. P. 215.1(c). Defendants' discovery requests seek discoverable information regarding Plaintiffs' personal jurisdiction allegations set forth in *Plaintiffs' First Amended Petition*. See **EXHIBITS 2- 5**.

16. Plaintiffs lodged almost identical objections to the majority of Defendants' discovery requests. See **EXHIBITS 3, 4**, and **5**. An objecting party is required to have a *good faith factual and legal basis* for the objection at the time it is made. TEX. R. CIV. P. 193.2(c) (emphasis added). Plaintiffs' objections lack sufficient factual and/or legal basis. See **EXHIBITS 3, 4**, and **5**.

17. Moreover, a party must supplement or amend its response to written discovery "reasonably promptly" after the party discovers the need to do so. TEX. R. CIV. P. 193.5(b). Plaintiffs received notice of their defective objections and responses to discovery on July 22, 2016 and again on July 25, 2016. See **EXHIBIT 6**. Despite sufficient notice, Plaintiffs have wholly failed to supplement and amend their responses since July 22, 2016. *Id.*

A. Valid Objections Obscured by Unfounded Objections are Waived.

18. The party resisting discovery must make a specific objection for each item it wants to exclude from discovery. TEX. R. CIV. P. 193.2(a); *see, e.g., In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex.1999) (party's conclusory objections alleging undue burden and harassment were unsuccessful); *see also National Un. Fire Ins. v. Hoffman*, 746 S.W.2d 305, 307 & n.3 (Tex. App.—Dallas 1988, orig. proceeding) (party made general objections by merely reciting particular privileges). Valid objections obscured by unfounded objections are *automatically waived* unless the party shows good cause. TEX. R. CIV. P. 193.2(e) (emphasis added).

19. The responding party must have “a good faith factual and legal basis” for each objection to an interrogatory or a production request “at the time the objection is made.” TEX. R. CIV. P. 193.2(c). The objection's legal or factual basis also must be stated specifically. TEX. R. CIV. P. 193.2(a). Thus, a responding party who objects to an interrogatory or production request because it is overbroad, unduly burdensome, vague, ambiguous, or unreasonably cumulative or duplicative should explain why the discovery request suffers from each asserted malady.

20. The obvious purpose of these discovery statutes is to eliminate what Plaintiffs are doing here: the practice of interposing numerous hypothetical or prophylactic objections to obfuscate what information or material is being withheld or to prevent a waiver of objections.

21. Additionally, in interposing an objection, the responding party, under Texas Rule 193.2(a), must state the extent to which it is refusing to comply with the interrogatory or production request and comply with that part of the discovery request to which there is no objection. TEX. R. CIV. P. 193.2(a).

22. In response to Interrogatories Nos. 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 19, Plaintiffs lodged boilerplate objections alleging the interrogatories are either “overly broad”, “harassing”, and/or “calls for a legal conclusion.” See **EXHIBIT 3**.

23. In response to Requests for Production Nos. 6 and 11, Plaintiffs lodged boilerplate objections alleging the requests for production are “overly broad.” See **EXHIBIT 4**.

24. In response to Request for Admissions Nos. 1, 2, 3, 4, 5, 6, 7, and 13, Plaintiffs lodged boilerplate objections alleging the request for admissions “calls for a legal conclusion.” See **EXHIBIT 5**.

25. There is nothing valid about these objections. The discovery seeks information regarding Plaintiffs’ own jurisdictional allegations directly from *Plaintiffs’ First Amended Petition*. See **EXHIBITS 2 - 5**. There is nothing overly broad or harassing about these discovery requests. Further, none of these discovery requests calls for a legal conclusion.

B. Plaintiffs’ Objections that the Discovery Requests are Overly Broad should be Overruled.

26. A party may ask for protection from a discovery request that is overly broad. Generally, an overly broad request for documents is merely a fishing expedition into the other party’s files, which is prohibited. *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998); *Dillard Dept. Stores v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995); *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). A central consideration in determining over breadth is whether the request could have been more narrowly tailored to avoid including information and still obtain the necessary, pertinent information. See *In re CSX Corporation*, 124 S.W.3d at 152; *In re American Optical*, 988 S.W.2d at 713. Requests that are limited to time, place, and/or subject matter are not overly broad. *Texaco v. Sanders*, 898 S.W.2d 813, 815 (Tex. 1995).

27. Defendants' discovery requests are not overly broad because they are limited to requesting discoverable information regarding Plaintiffs' own jurisdictional allegations. A careful review of the following discovery requests demonstrates that they are not overly broad in that they are limited to time, place, and/or subject matter. Plaintiffs' objections that the following interrogatories are overly broad should be overruled:

- a) **Interrogatory No. 3:** Identify and describe any alleged agreement between Defendants and Plaintiffs that explicitly states Texas law applies to any dispute between Defendants and Plaintiffs.
- b) **Interrogatory No. 4:** State the factual basis for your contention that Defendants' alleged solicitation of Plaintiffs occurred in Texas as alleged in *Plaintiffs' First Amended Petition*.
- c) **Interrogatory No. 5:** Identify each email and phone call you contend was from Defendants to Plaintiffs in Texas both prior to Defendants allegedly becoming Plaintiffs' agent and after Defendants allegedly became Plaintiff's agent as alleged in *Plaintiffs' First Amended Petition*.
- d) **Interrogatory No. 6:** State the factual basis for your contention that Defendants allegedly approached Plaintiffs in Texas to allegedly induce the Plaintiffs to make Voltage Plaintiffs' foreign sales agent as alleged in *Plaintiffs' First Amended Petition*.
- e) **Interrogatory No. 7:** Identify the misrepresentations you contend Defendants made "all into the state of Texas" after the movie started receiving accolades as alleged in *Plaintiffs' First Amended Petition*.
- f) **Interrogatory No. 13:** State the factual basis for your contention that Defendants advertise anything other than Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.
- g) **Interrogatory No. 14:** State the factual basis for your contention that Defendants advertised Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.

See EXHIBIT 3.

28. The foregoing interrogatories are limited to time, place, and/or subject matter because they are seeking information limited to Plaintiffs' own jurisdictional allegations and are

not overly broad. *Id.* Defendants respectfully request the Court to overrule Plaintiffs' objections to the foregoing interrogatories and sign an order compelling Plaintiffs to answer the interrogatories.

29. Plaintiffs' objections that the following requests for production are overly broad should be overruled:

- a) **Request for Production No. 6:** Please produce copies of the correspondence between Voltage and Mr. Newcomb that were "received in Texas" as you allege in *Plaintiffs' First Amended Petition*.
- b) **Request for Production No. 11:** Please produce true and correct copies of all documents that support your contention that Defendants alleged misrepresentations were made in the state of Texas as alleged in *Plaintiffs' First Amended Petition*.

See **EXHIBIT 4**.

30. The foregoing requests for production are limited to time, place, and/or subject matter because they are seeking information limited to Plaintiffs' own jurisdictional allegations and are *not* overly broad. *Id.* Defendants respectfully request the Court to overrule Plaintiffs' objections to the foregoing requests for production and compel Plaintiffs to produce the responsive documents.

31. For the foregoing reasons, each of Plaintiffs' objections to Defendants' interrogatories and requests for production asserting they are overly broad should be overruled.

C. Plaintiffs' Objections that the Discovery Requests are Harassing should be Overruled.

32. A person may ask for protection from a discovery request that is harassing. Tex. R. Civ. P. 192.6(b). "Harassment" is defined as "[w]ords, conduct, or action (usu. Repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose" BLACKS LAW DICTIONARY 93,

1689 (9th ed. 2009) at 784; *accord* MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 36, 1304 (10th ed. 1997) at 529 (defining “harass” as “to annoy persistently”). A discovery request that seeks information or documents that are relevant or reasonably calculated to lead to the discovery of admissible evidence generally cannot be harassing. *ISK Biotech Corp. v. Lindsay*, 933 S.W.2d 565, 568 (Tex. App.—Houston [1st Dist.] 1996, orig. proceeding).

33. Even if a discovery request that seeks information or documents that are relevant or reasonably calculated to lead to the discovery of admissible evidence may be improper because it is unduly burdensome, unnecessarily expensive, or unreasonably cumulative or duplicative of other discovery. *See* Tex. R. Civ. P. 192.6(b); *In re Alford-Chevrolet-Gro*, 997 S.W.2d 173, 180-81 (Tex. 1999); *In re Am. Home Assur. Co.*, 88 S.W.3d 370, 372-73 (Tex. App.—Texarkana 2002, orig. proceeding). Thus, even if the responding party believes that an interrogatory’s or production request’s sole purpose is to “harass”, such an objection will be denied unless the discovery request seeks information or documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, unnecessarily expensive, or unreasonably cumulative or duplicative. *ISK Biotech Corp. v. Lindsay*, 933 S.W.2d 565, 568 (Tex. App.—Houston [1st Dist.] 1996, orig. proceeding). And, it is those objections, rather than a harassment objection, that should be interposed. As the Amarillo Court of Appeals explained: “[W]e have already concluded, however, that these discovery requests were reasonably calculated to lead to the discovery of admissible evidence; a request that meets that criterion is manifestly not . . . ‘sought solely for the purposes of harassment.’” *Id.*

34. Further, the responding party must have “a good faith factual and legal basis” for each objection to an interrogatory or a production request “at the time the objection is made.”

TEX. R. CIV. P. 193.2(c). The objection's legal or factual basis also must be stated specifically.

TEX. R. CIV. P. 193.2(a).

35. Plaintiffs have failed to state any legal or factual basis why the discovery requests regarding their own jurisdiction allegations annoy, alarm, cause substantial emotional distress, serve no legitimate purpose, are not relevant nor reasonably calculated to lead to the discovery of admissible evidence, are unduly burdensome, unnecessarily expensive, unreasonably cumulative or duplicative.

36. Plaintiffs' objections that the following interrogatories are harassing should be overruled:

- a) **Interrogatory No. 5:** Identify each email and phone call you contend was from Defendants to Plaintiffs in Texas both prior to Defendants allegedly becoming Plaintiffs' agent and after Defendants allegedly became Plaintiff's agent as alleged in *Plaintiffs' First Amended Petition*.
- b) **Interrogatory No. 6:** State the factual basis for your contention that Defendants allegedly approached Plaintiffs in Texas to allegedly induce the Plaintiffs to make Voltage Plaintiffs' foreign sales agent as alleged in *Plaintiffs' First Amended Petition*.

See EXHIBIT 3.

37. The foregoing interrogatories are clearly relevant and reasonably calculated to lead to the discovery of admissible evidence. The interrogatories are clearly not unduly burdensome, unnecessarily expensive, unreasonably cumulative or duplicative. Further, the interrogatories clearly do not annoy, alarm, cause substantial emotional distress or serve no legitimate purpose. Moreover, Plaintiffs failed to state any factual or legal basis to the contrary explaining specifically why the interrogatories are "harassing." *Id.* Accordingly, Defendants respectfully request the Court to overrule Plaintiffs' objections to the foregoing interrogatories asserting they are "harassing" and compel Plaintiffs to answer the interrogatories.

D. Plaintiffs' Objections that the following Discovery Requests Call for a Legal Conclusion should be Overruled.

38. An objection alleging legal-conclusion is without merit because Texas Rule 197.1 specifically permits a party to ask its opponent if it makes a “specific legal ... contention” and to apply law to fact. TEX. R. CIV. P. 197.1. Moreover, the interrogatories are simply requesting Plaintiffs to either state the factual basis for their contentions of their jurisdictional allegations or identify discoverable information from their jurisdictional allegations in *Plaintiffs' First Amended Petition*. See **EXHIBITS 2-3**. The requests for admissions simply address matters about which there is no real controversy, are factual in nature, contain terms of common usage, and are sufficiently specific. See **EXHIBIT 5**.

39. There are two basic types of interrogatories: identification and contention interrogatories. Plaintiffs incorrectly allege several of Defendants' contention and identification interrogatories “calls for a legal conclusion.”

40. Texas Rule of Civil Procedure 197.1 specifically allows contention interrogatories—those that ask “whether a party makes a specific legal or factual contention” or “ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses.” See TEX. R. CIV. P. 197.1. Contention interrogatories, similar to special exceptions, serve to require parties to supplement the barebones information that notice pleadings provide. See TEX. R. CIV. P. 91; See *Tilton v. Marshall*, 925 S.W.2d 672 (Tex. 1996) (orig. proceeding) (the Supreme Court referred to a situation in which either special exceptions or interrogatories would appropriately clarify issues so that the court could determine whether the suit violated the defendant's free exercise rights. 925 S.W.2d 672, 680 (Tex. 1996) (orig. proceeding)).

41. Identification interrogatories call for factual information, such as the identity of documents, tangible things, persons with knowledge of relevant facts, or communications.

42. Plaintiffs' objections that the following interrogatories "calls for a legal conclusion" should be overruled:

- a) **Interrogatory No. 8:** State the factual basis for your contention that the alleged contract between Plaintiffs and Defendants "was performable, all or in part in Texas" as alleged in *Plaintiffs' First Amended Petition*.
- b) **Interrogatory No. 15:** State the factual basis for your contention that Defendants profit from ticket sales of movies in Texas as alleged in *Plaintiffs' First Amended Petition*.
- c) **Interrogatory No. 16:** Please identify the business you allege Defendants solicited in Texas, other than the alleged solicitation of Plaintiffs, as alleged in *Plaintiffs' First Amended Petition*.
- d) **Interrogatory No. 17:** State the factual basis for your contention that Defendants "purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law" as alleged in *Plaintiffs' First Amended Petition*.
- e) **Interrogatory No. 19:** Identify Defendants' continuous and systematic contacts in Texas as alleged in *Plaintiffs' First Amended Petition*.

See EXHIBIT 3.

43. The foregoing contention and identification interrogatories clearly do not call for a legal conclusion and Plaintiffs have failed to state the legal or factual basis for their objection alleging "calls for a legal conclusion." Accordingly, Defendants respectfully request the Court overrule Plaintiffs' objections to the foregoing interrogatories and compel Plaintiffs to answer the interrogatories.

44. Requests for admission may address "any matter within the scope of discovery," including statements of fact, opinions, the application of law to fact, and the genuineness of documents. TEX. R. CIV. P. 198.1. Requests for admission concerning "legal contentions" are

proper under Texas Rule 198 because Texas Rule 192.3(j) expressly includes such legal contentions within the scope of permissible discovery. TEX. R. CIV. P. 192.3(j). Any relevant, nonprivileged matter reasonably calculated to lead to the discovery of admissible evidence is proper for a request for admission. TEX. R. CIV. P. 192.3.

45. The following requests for admission simply address matters about which there is no real controversy, are factual in nature, contain terms of common usage, and are sufficiently specific.

46. Further, Plaintiffs failed to state the specific basis for the objections that the following requests for admission “calls for a legal conclusion.” Plaintiffs’ objections that the following requests for admissions “calls for a legal conclusion” should be overruled and the following Requests for Admissions should be deemed admitted:

- a) **Request for Admission No. 1:** Admit that Defendants are residents of the State of California.
- b) **Request for Admission No. 2:** Admit that Defendants are domiciled in the State of California.
- c) **Request for Admission No. 3:** Admit that Defendants’ principle place of business is located in Los Angeles, California.
- d) **Request for Admission No. 4:** Admit that Defendants are not residents of the State of Texas.
- e) **Request for Admission No. 5:** Admit that Defendants are not domiciled in the State of Texas.
- f) **Request for Admission No. 6:** Admit that Defendants do not have a principle place of business in the State of Texas.
- g) **Request for Admission No. 7:** Admit that Defendants do not have an office in the State of Texas.

- h) **Request for Admission No. 13:** Admit that Defendant Voltage is organized and operated under the laws of the State of California.

See **EXHIBIT 5**.

47. Requests for admission are “written discovery,” as defined by Texas Rule 192.7(a). TEX. R. CIV. P. 192.7(a). Thus, the Texas Rule 193 procedures for making objections apply. TEX. R. CIV. P. 193.2 and TEX. R. CIV. P. 193.3. Accordingly, the objection must “state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request” and must comply with “as much of the request to which the party has made no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection.” TEX. R. CIV. P. 193.2(a), (b); *Cf. Reynolds v. Murphy*, 188 S.W.3d 252 (Tex. App.,--Fort Worth 2006, pet. Denied, cert denied, 127 S.Ct. 1839 (2007)). A quick review of Plaintiffs’ objections reveals Plaintiffs’ failure to state the legal or factual basis for the objection. See **EXHIBIT 5**.

48. When a party fails to serve a timely response, the request is “considered admitted without the necessity of a court order.” TEX. R. CIV. P. 198.2. Plaintiffs’ responses are not timely. Plaintiffs’ responses were due on July 21, 2016. Plaintiffs served their responses and chose not to serve proper responses despite sufficient notice. See **EXHIBIT 6**.

49. The foregoing Requests for Admission clearly do not call for a legal conclusion. Accordingly, Defendants respectfully request the Court to overrule Plaintiffs’ objections that the foregoing Requests for Admission “calls for a legal conclusion” and deem the Requests for Admissions admitted.

E. Plaintiffs should be Compelled to Supplement their Discovery Responses.

50. It is well settled that Defendants have a right to conduct discovery regarding Plaintiffs’ personal jurisdictional allegations to obtain further evidence in support of Defendants’

Special Appearance, of which Defendants have the burden of proof. A party must supplement or amend its response to written discovery “reasonably promptly” after the party discovers the need to do so. Tex. R. Civ. P. 193.5(b). Despite sufficient notice, Plaintiffs have failed to supplement their defective and insufficient discovery responses since July 22, 2016. See **EXHIBIT 6**.

51. Plaintiffs’ defective and insufficient discovery responses can be categorized as follows:

- a. Plaintiffs’ response is non-responsive statement;
- b. Plaintiffs’ response states “Defendants have that information.” ;
- c. Plaintiffs’ response states “Will supplement when discovery is complete.”; and/or
- d. Plaintiffs completely fail to answer.

1. Plaintiffs’ responses to the following discovery requests are defective and insufficient because they are non-responsive.

52. Plaintiffs’ answers to the Interrogatory Nos. 2, 12, and 18 fail to properly respond to the question asked:

53. Interrogatory No. 2 and Plaintiffs’ Defective Response:

- a) **Interrogatory No. 2:** Identify all persons with knowledge of the issues pertinent to your allegations of personal jurisdiction in Texas. Include in your answer a short statement describing each person’s knowledge of the issues, contact information, address, email, and phone number.

Plaintiffs’ non-responsive answer:

“Plaintiffs will supplement when we determine who will testify.”

See **EXHIBIT 3**.

54. Plaintiffs’ answer is non-responsive because the interrogatory asks for the identification of persons with knowledge of Plaintiffs’ jurisdictional allegations. *Id.* The interrogatory does not ask about the identity of persons who will testify. *Id.* Interrogatory No. 2

simply requests discoverable information regarding Plaintiffs' own allegations in *Plaintiffs' First Amended Petition. Id.*, EXHIBIT 2. Specifically, Plaintiffs' First Amended Petition alleges:

7. Venue is proper in Montgomery County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs.

See EXHIBIT 2, paragraph 7, page 2.

§ 24.007. Both Defendants are doing business in Texas and thus are subject to personal jurisdiction in Texas under the Texas long arm statute. This court has both general and specific jurisdiction.

9. The following show a non-exhaustive list of Defendants' doing business in Texas and minimum contacts with Texas.

Id., paragraphs 8-9, page 2.

55. Defendants' Interrogatory No. 2 simply requests discoverable information regarding Plaintiffs' jurisdictional allegations from *Plaintiffs' First Amended Petition. See EXHIBIT 3 and 2*. Specifically, Interrogatory No. 2 requests the "[identify of] all persons with knowledge" of Plaintiffs' jurisdictional allegations along with a short statement of their respective knowledge and contact information. *Id.* Accordingly, Defendants respectfully request the Court to compel Plaintiffs to supplement this answer and properly answer Interrogatory No. 2.

56. Interrogatory No. 12 and Plaintiffs' Defective Response:

- b) **Interrogatory No. 12:** State the factual basis for your contention that the alleged discussions and correspondence between Voltage and Mr. Newcomb were "received in Texas" as you allege in *Plaintiffs' First Amended Petition*.

Plaintiffs' non-responsive answer:

“Mr. Newcomb received the information from Voltage in Montgomery County, Texas.”

Id.

57. Plaintiffs’ answer is non-responsive because the interrogatory asks for Plaintiffs’ factual basis for Plaintiffs’ own contention made in *Plaintiffs’ First Amended Petition. Id.*, **EXHIBIT 2**. Defendants’ answer merely repeated the allegation to which the Defendants seek the factual basis. *Id. Plaintiffs’ First Amended Petition* states:

Defendants approached Owners about the possibility of providing additional financing and acting as the foreign sales agent for the movie. All communication was in the form of email, phone calls, and additional correspondence received in Texas. Voltage and Chartier explicitly solicited the

See **EXHIBIT 2**, paragraph 10, page 2.

attorney but was told by Voltage they needed to protect the copyright and Voltage would lose money if Mr. Newcomb did not agree. All of those discussions and correspondence were received

in Texas. Voltage clearly was soliciting the business of a Texas company so that it could make

Id., paragraph 11, pages 3-4.

58. Defendants’ Interrogatory No. 12 simply requests the factual bases for Plaintiffs’ very own allegations that “communications”, “discussions and correspondence” were “received in Texas.” See **EXHIBITS 3 and 2**. Plaintiffs’ answer only repeats their very own allegation of which Defendants seek their factual basis. See **EXHIBIT 3**. Accordingly, Defendants respectfully request the Court to compel Plaintiffs to supplement and properly answer Interrogatory No. 12.

59. Interrogatory No. 18 and Plaintiffs’ Defective Response:

- a) **Interrogatory No. 18:** Identify the benefits, advantages, and/or profits Defendants have gained from conducting Business in Texas as alleged in *Plaintiffs’ First Amended Petition*.

Plaintiffs’ non-responsive answer:

“At this point in the discovery process Plaintiff’s can only state that Defendants profited from the movie The Dallas Buyers Club.”

See EXHIBIT 3.

60. Plaintiffs’ answer is non-responsive because the interrogatory asks Plaintiffs to “identify the benefits, advantages, and/or profits” Plaintiffs allege Defendants gained from conducting business in Texas. See EXHIBITS 3 and 2. Plaintiffs’ answer merely repeats their own allegation that Defendants gained a profit. See EXHIBITS 3. The interrogatory asks Plaintiffs to identify those profits. *Id.* Specifically, *Plaintiffs’ First Amended Petition* states:

19. Defendants have purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law. Defendants have gained a benefit, advantage and/or profit from conducting business in Texas such that Defendants could have reasonably anticipated being called into a Texas Court.

See EXHIBIT 2, paragraph 19, page 5.

representations into Texas to induce the Texas Owners of the movie for Voltage to become the foreign sales agent. Voltage has profited greatly from the movie, all as a result of a movie owned by a Texas company. After the movie started receiving accolades, Defendants continued their

Id., paragraph 10, page 3.

were asked to do and any damages suffered necessarily would occur in Texas. Defendants have committed these torts in Texas. Defendants have made hundreds of thousands of dollars as foreign sales agent for the Dallas Buyers Club.

Id., paragraph 10, page 3.

local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of claims against the Texas citizens for tens of thousands of dollars. Voltage has profited from those lawsuits filed against Texas citizens in Texas federal court.

Id., paragraph 11, page 4.

15. Defendants directly or indirectly profit from ticket sales of movies in Texas.

Id., paragraph 15, page 4.

61. Defendants' Interrogatory No. 18 simply requests Plaintiffs to identify the "benefits, advantages, and/or profits" *Plaintiffs' First Amended Petition* alleges Defendants gained from conducting business in Texas. See **EXHIBITS 3 and 2**. *Plaintiffs' First Amended Petition* states Defendants' profited at least 5 times. See **EXHIBIT 2**. Plaintiffs answer to Interrogatory No. 18 only repeats their very own allegation that Defendant gained a profit and fails to identify that profit in their answer. See **EXHIBITS 3 and 2**. Accordingly, Defendants respectfully request the Court to compel Plaintiffs to supplement and properly answer Interrogatory No. 18.

2. Plaintiffs Responses to the Following Discovery Requests are Defective and Insufficient Because they Improperly State Defendants Possess The Information Sought in the Discovery Requests and are Non-Responsive.

62. Plaintiffs improperly responded to Interrogatory Nos. 9, 10, and 11 and Requests for Production Nos. 9, 12, 13, 14, 15, 16, 17, 18, and 19 stating either:

- a) "Defendants have that information";
- b) "In Plaintiffs possession"; or
- c) "Defendants have possession of all contracts."

See **EXHIBIT 3**.

63. These responses stating Defendants possess discoverable information requested are improper because the requesting party is entitled to ascertain what information and documents the responding party has and to review the responsive information and documents to

determine if they are the same as those in its possession and whether they have any notes or other markings on them. Further, the requesting party is entitled to determine whether the information and documents requested actually exist. See *In re Ochoa*, No. 12-04-00163-CV, 2004 Tex. App. LEXIS 486, at *5 (Tex. App.—Tyler May 28, 2004, orig. proceeding) (mem. op.).

64. Interrogatory No. 9 and Plaintiffs' Defective Response:

- a) **Interrogatory No. 9:** Identify the lawyers you allege Voltage hired to prosecute Dallas Buyer's Clubs' anti-piracy claims against Texas citizens in Federal Court in the Southern District of Texas. Include in you answer any Texas lawyer.

Plaintiffs' defective answer:

"Defendants have that information."

See EXHIBIT 3.

65. Interrogatory No. 9 simply requests Plaintiffs to identify the lawyers Plaintiffs allege Defendant Voltage hired in *Plaintiffs' First Amended Petition*. See EXHIBITS 3 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

Agreement, Voltage hired lawyers to prosecute the Dallas Buyers Club anti-piracy claims against a number of Texas citizens in Federal Court in the Southern District of Texas. Voltage hired a local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of claims against the Texas citizens for tens of thousands of dollars. Voltage has profited from those lawsuits filed against Texas citizens in Texas federal court.

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

See EXHIBIT 2, paragraphs 11-12, page. 4.

66. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and properly answer Interrogatory No. 9.

67. Interrogatory No. 10 and Plaintiffs' Defective Response:

- a) **Interrogatory No. 10:** Provide the style and cause number for each anti-piracy claim you allege Voltage prosecuted against Texas citizens in Texas on behalf of Dallas Buyer's Club, TX or Dallas Buyer's Club, CA.

Plaintiffs' defective answer:

"Defendants have that information."

See EXHIBIT 3.

68. Interrogatory No. 10 simply requests Plaintiffs to provide the style and cause number for each anti-piracy claim Plaintiffs allege Defendant Voltage prosecuted against Texas citizens on behalf of Plaintiff Dallas Buyer's Club in *Plaintiffs' First Amended Petition*. See EXHIBITS 3 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

Agreement, Voltage hired lawyers to prosecute the Dallas Buyers Club anti-piracy claims against a number of Texas citizens in Federal Court in the Southern District of Texas. Voltage hired a local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of

See EXHIBIT 2, paragraph 11, page. 4.

69. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and properly answer Interrogatory No. 10.

70. Interrogatory No. 11 and Plaintiffs' Defective Response:

- a) **Interrogatory No. 11:** Provide the style and cause number for each lawsuit you allege Defendants filed in Texas, "directly or indirectly" on behalf of Plaintiffs or any other person or entity.

Plaintiff's defective answer:

"Defendants have that information."

See EXHIBIT 3.

71. Interrogatory No. 11 simply requests Plaintiffs to provide the style and cause number for each law suit Plaintiffs allege Defendant Voltage filed "directly or indirectly in the

State of Texas” in *Plaintiffs’ First Amended Petition*. See **EXHIBITS 3 and 2**. Specifically, *Plaintiffs’ First Amended Petition* states:

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

See **EXHIBIT 2**, paragraph 12, page. 4.

72. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and properly answer Interrogatory No. 11.

73. Plaintiffs’ Responses to Requests for Production Nos. 9, 12, 13, 14, 15, 16, 17, 18, and 19 are defective and insufficient. See **EXHIBIT 4**.

74. Texas Rule 196.2(b) identifies the language that “must” be in response to a request for production. TEX. R. CIV. P. 196.2(b). In addition to any objections or privilege assertions, the written response must contain one of four specified statements:

- b) First, the party may state that “production, inspection, or other requested action will be permitted as requested.” *Id.* This statement is appropriate when the party is complying with the request at the time and place set forth in the request.
- c) Second, the party may state that “the requested items are being served on the requesting party with the response.” TEX. R. CIV. P. 196.2(b)(1). This statement applies when the responding party serves materials upon the requesting party immediately instead of at the time and place requested.
- d) Third, the party may state that “production, inspection, or other requested action will take place at a specified time and place.” TEX. R. CIV. P. 196.2(b)(3). This statement is appropriate only if the party also has objected under Texas Rule 193.2(b) to the time and place for production identified in the request. TEX. R. CIV. P. 196.2(b).
- e) Lastly, the party may respond that “no items have been identified –after a diligent search—that are responsive to the request.” TEX. R. CIV. P. 196.2(b)(4); see *In re General Elec. Railcar Services Corp.*, 2003 WL 23189458 (Tex. App.—Beaumont 2004, orig. proceeding) (mem. op.) (holding that appropriate response

to discovery request is “none” if there are no documents within responding party’s “possession, custody, or control”).

75. Clearly none of Plaintiffs’ responses to Requests for Production Nos. 9, 12, 13, 14, 15, 16, 17, 18, and 19 contains any of the proper statements above. See **EXHIBIT 4**.

76. Request for Production No. 9 and Plaintiffs’ Defective Response:

- a) **Request for Production No. 9:** Please produce copies of the alleged foreign agreements you allege Defendants entered into as agent for Dallas Buyer’s Club, LLC to act as foreign sales agent as alleged in *Plaintiffs’ First Amended Petition*.

Plaintiffs’ defective answer:

“In Plaintiff’s possession. Defendants have failed to provide Plaintiffs with copies of the foreign distribution agreements.”

Id.

77. Request for Production No. 9 simply requests Plaintiffs to provide copies of the alleged foreign agreements Plaintiffs allege Defendants entered into as agent for Plaintiff Dallas Club, LLC to act as foreign sales agent in *Plaintiffs’ First Amended Petition*. See **EXHIBITS 4** and 2. Specifically, *Plaintiffs’ First Amended Petition* states:

and additional correspondence received in Texas. Voltage and Chartier explicitly solicited the Owners, two Texas companies, to act as an agent for the movie owned by them. They not only solicited them, but ultimately they became the exclusive sales agent for Dallas Buyers Club, LLC to enter into Foreign Distribution Agreements around the world. (See copy of Canadian territory agreement Voltage, as agent for Dallas Buyers Club LLC, has with Remstar) As set out earlier,

See **EXHIBIT 2**, paragraph 10, page. 2.

pattern of misrepresentations all into the state of Texas. They also entered into, on behalf of the Texas company, 31 distribution foreign agreements, as “agent for Dallas Buyers Club, LLC” to act as foreign sales agent. Plaintiffs have alleged the Defendants have failed to do the job they

Id., paragraph 10, page 3.

78. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 9.

79. Request for Production No. 12 and Plaintiffs' Defective Response:

- a) **Request for Production No. 12:** Please produce a true and correct copy of the alleged contract between Plaintiffs and Defendants which "was performable, all or in part in Texas" as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective answer:

"Defendants have possession of all contracts."

See EXHIBIT 4.

80. Request for Production No. 12 simply requests Plaintiffs to provide copies of the contracts between Plaintiffs and Defendants that Plaintiffs allege exist and relied upon in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

in the affidavit of Mr. Chartier, there is in fact an agreement directly between Voltage and Dallas Buyers Club, LLC. It is executed by Mr. Chartier on behalf of Voltage and by Mr. Newcomb on behalf of Dallas Buyers Club, LLC, a Texas company. Voltage is being sued in this very lawsuit over this Agreement. Mr. Newcomb was hesitant to allow Voltage to have such a broad power of

See EXHIBIT 2, paragraph 11, page 3.

money off of the ownership rights of a Texas company. Further, the contract was performable, all or in part in Texas. Any funds recovered would necessarily flow to the Texas. Pursuant to this

Id., paragraph 11, page 4.

81. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 12.

82. Request for Production No. 13 and Plaintiffs' Defective Response:

- a) **Request for Production No. 13:** Please produce true and correct copies of all documents that support your contention that Defendants prosecuted anti-piracy claims against Texas citizens in Texas on behalf of Plaintiffs in Texas as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective answer:

"Defendants have possession of all contracts."

See EXHIBIT 4.

83. Request for Production No. 13 simply requests Plaintiffs to provide copies of the documents in support of Plaintiffs' jurisdictional allegation that Defendants prosecuted anti-piracy claims against Texas citizens in Texas on behalf of Plaintiffs as alleged in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

Agreement, Voltage hired lawyers to prosecute the Dallas Buyers Club anti-piracy claims against a number of Texas citizens in Federal Court in the Southern District of Texas. Voltage hired a local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of claims against the Texas citizens for tens of thousands of dollars. Voltage has profited from those lawsuits filed against Texas citizens in Texas federal court.

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

See EXHIBIT 2, paragraphs 11-12, page 4.

84. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 13.

85. Request for Production No. 14 and Plaintiffs' Defective Response:

- a) **Request for Production No. 14:** Please produce true and correct copies of all documents that support your contention that Defendants filed lawsuits in Texas "directly or indirectly" on behalf of Plaintiffs as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective and non-responsive answer:

"Defendants have possession of all contracts."

See EXHIBIT 4.

86. Request for Production No. 14 simply requests Plaintiffs to provide copies of the documents in support of Plaintiffs' jurisdictional allegation that Defendants filed lawsuits "directly or indirectly" on behalf of Plaintiffs as alleged in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

See EXHIBIT 2, paragraphs 12, page 4.

87. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 14.

88. Request for Production No. 16 and Plaintiffs' Defective Response:

- a) **Request for Production No. 16:** Please produce true and correct copies of all documents that support your contention that Defendants advertised Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective and non-responsive answer:

"Defendants have possession of all contracts."

See EXHIBIT 4.

89. Request for Production No. 16 simply requests Plaintiffs to provide copies of the documents in support of Plaintiffs' jurisdictional allegation that Defendants advertised Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

13. Defendants advertise in the State of Texas and has in fact marketed Dallas Buyers Club in the U.S including Texas and has branded this movie with what they describe as its famous distinctive and registered trademark VOLTAGE PICTURES. This name which appears on the

See EXHIBIT 2, paragraphs 13, page 4.

90. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 16.

91. Request for Production No. 17 and Plaintiffs' Defective Response:

- a) **Request for Production No. 17:** Please produce true and correct copies of all documents that support your contention that Defendants advertised anything other than Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective and non-responsive answer:

"Defendants have possession of all contracts."

See EXHIBIT 4.

92. Request for Production No. 17 simply requests Plaintiffs to provide copies of the documents in support of Plaintiffs' jurisdictional allegation that Defendants advertise anything other than Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

13. Defendants advertise in the State of Texas and has in fact marketed Dallas Buyers Club in the U.S including Texas and has branded this movie with what they describe as its famous distinctive and registered trademark VOLTAGE PICTURES. This name which appears on the

See EXHIBIT 2, paragraph 13, page 4.

16. Defendants market themselves in Texas and has solicited business in Texas including solicitations to plaintiffs.

17. Defendants have represented they intend on continuing to produce, finance and sell films throughout the world.

18. Defendants advertise their films in Texas through their website and otherwise.

Id., paragraphs 16 and 18, page 4.

93. Plaintiffs' statements allege Defendants advertise in Texas. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 17.

94. Request for Production No. 18 and Plaintiffs' Defective Response:

- a) **Request for Production No. 18:** Please produce true and correct copies of all documents that support your contention that Defendants profit from ticket sales of movies in Texas as alleged in *Plaintiffs' First Amended Petition*.

Plaintiffs' defective and non-responsive response:

"Defendants have possession of all contracts."

See EXHIBIT 4.

95. Request for Production No. 18 simply requests Plaintiffs to provide copies of the documents in support of Plaintiffs' jurisdictional allegation that Defendants profit from ticket sales of movies in Texas as alleged in *Plaintiffs' First Amended Petition*. See EXHIBITS 4 and 2. Specifically, *Plaintiffs' First Amended Petition* states:

15. Defendants directly or indirectly profit from ticket sales of movies in Texas.

See EXHIBIT 2, paragraph 15, page 4.

96. Defendants respectfully request the honorable Court to compel Plaintiffs to supplement and produce the documents responsive to Request for Production No. 18.

3. Plaintiffs Responses to the Following Discovery Requests are Defective and Insufficient Because they Improperly State “Plaintiffs will supplement when discovery is complete.”

97. A party must supplement or amend its response to written discovery “reasonably promptly” after the party discovers the need to do so. TEX. R. CIV. P. 193.5(b). Despite sufficient notice, Plaintiffs have failed to supplement their defective and insufficient discovery responses since July 22, 2016. See **EXHIBIT 6**.

98. Plaintiffs improperly responded “[w]ill supplement when discovery is complete” in clear violation of Texas Rule 193.5(b) in response to the following Requests for Production.

- a) **Request for Production No. 1:** Please produce true and correct copies of all documents that you will use at the hearing on Defendants’ Special Appearance to support your allegations that this Court has personal jurisdiction over Defendants in this case.
- b) **Request for Production No. 2:** Please produce true and correct copies of all documents that you contend support the existence of “minimum contacts” with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.
- c) **Request for Production No. 3:** Please produce true and correct copies of all documents that you contend support the existence of “systematic” or “continuous” contacts with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.
- d) **Request for Production No. 4:** Please produce all documents identified in *Plaintiffs’ First Amended Petition* and/or relied upon in your *Plaintiffs’ First Amended Petition* that support your personal jurisdiction allegations.
- e) **Request for Production No. 5:** Please produce true and correct copies of documents relating to any communication of Defendants that you contend support your allegations of personal jurisdiction.
- f) **Request for Production No. 7:** Please produce documents that support your contention that Defendants solicited business, other than the alleged solicitation of Plaintiffs in the instant litigation, in Texas as alleged in *Plaintiffs’ First Amended Petition*.

- g) **Request for Production No. 8:** Please produce documents that support your contention that Defendants solicited Plaintiffs in Texas as alleged in *Plaintiffs' First Amended Petition*.
- h) **Request for Production No. 20:** Please produce true and correct copies of all documents that support your contention that Defendants “purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law” as alleged in *Plaintiffs' First Amended Petition*.
- i) **Request for Production No. 21:** Please produce true and correct copies of all documents that support your contention that Defendants gained a benefit, advantage, and/or profit from conducting business in Texas as alleged in *Plaintiffs' First Amended Petition*.
- j) **Request for Production No. 22:** Please produce true and correct copies of all documents that support your contention that Defendants have continuous and systematic contacts in Texas as alleged in *Plaintiffs' First Amended Petition*.

See EXHIBIT 4.

99. Plaintiffs’ responses that they will supplement specifically “when discovery is complete” clearly violate Texas Rule 193.5(b) which imposes an ongoing duty on Plaintiff to supplement “reasonably promptly” and not when discovery is complete. TEX. R. CIV. P. 193.5(b). Accordingly, Defendants request the honorable Court to compel Plaintiffs to supplement and properly respond to the foregoing Requests for Production.

100. The foregoing discovery requests seek information that is relevant, material, and/or reasonably calculated to lead to the discovery of admissible evidence. Further, the discovery requests were derived specifically from Plaintiffs’ own jurisdictional allegations.

101. Under Rule 215.1(b)(3), if a party fails to answer an interrogatory submitted under Rule 197, the discovering party may move for an order compelling an answer or answers or may apply to the Court for any sanction authorized by Rule 215.2(b) without first obtaining a court order compelling such discovery. TEX. R. CIV. P. 215.1(b)(3). A trial court may order the sanctioned party to pay all or a portion of the expenses of discovery, taxable court costs, or both,

and may order the disobeying party or the attorney advising him or her, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure to respond under Rule 215.2(b)(3), (8). TEX. R. CIV. P. 215.2(b)(3), (8).

**IV.
NOTICE OF SUBMISSION**

102. Please take notice that on August 10, 2016 at 9:00am Defendants' Motion to Overrule Objections and Compel Responses to Discovery will be presented to the Court for ruling unless Defendants' Request for an Oral Hearing is granted.

**V.
REQUEST FOR ORAL HEARING**

103. An oral hearing is necessary due to the issues being presented and the discovery required to support Defendants' Amended Special Appearance currently set for oral hearing on October 27, 2016 at 8:30am. Accordingly, Defendants respectfully request on oral hearing on Defendants' Motion to Overrule Objections and Compel Responses to Discovery.

**VI.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that on consideration of this Motion, the Court to enter an order overruling each and every one of Plaintiffs' objections to Defendants' First Set of Interrogatories, First Requests for Production and Defendants' First Set of Interrogatories, and Requests for Disclosure exclusively regarding Plaintiffs' personal jurisdiction allegations. Further, Defendants respectfully request that Plaintiffs be ordered to fully respond to each discovery request, and that the Court award Defendants necessary costs, including reasonable attorney's fees, incurred as a result of the filing

of this Motion. Defendants further request that the Court award to Defendants such other and further relief, both at law and equity, to which Defendants are justly entitled.

Dated: August 1, 2016

Respectfully submitted,

BUCHE & ASSOCIATES, P.C.

/s/ John W. Urquhart

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/s/ John K. Buche

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Local Counsel Attorneys for Specially Appearing
Defendants VOLTAGE PICTURES, LLC and
NICOLAS CHARTIER

LAVELY & SINGER

PROFESSIONAL CORPORATION

MICHAEL D. HOLTZ

ALLISON S. HART

By: /s/ Michael D. Holtz

MICHAEL D. HOLTZ

Attorneys for Specially Appearing Defendants
VOLTAGE PICTURES, LLC and NICOLAS
CHARTIER, *pro hac vice*

CERTIFICATE OF CONFERENCE

I hereby certify that Counsel for Defendants has attempted to confer with Counsel for Plaintiffs Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC in a good faith attempt to resolve this matter. Plaintiffs never responded and are presumed to be opposed to this motion.

/s/ John W. Urquhart

John W. Urquhart

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on opposing counsel in accordance with the Texas Rules of Civil Procedure on this 1st day of August 2016 in accordance with Texas Rule of Civil Procedure 21:

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/s/ John W. Urquhart
John W. Urquhart

DALLAS BUYER’S CLUB, LLC (TX),	§	IN THE DISTRICT COURT
DALLAS BUYER’S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC,	§	
	§	
Plaintiffs,	§	
	§	284 th JUDICIAL DISTRICT
v	§	
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER,	§	
	§	
Defendants.	§	MONTGOMERY COUNTY, TEXAS
	§	

**PROPOSED ORDER GRANTING DEFENDANTS’ MOTION
TO OVERRULE OBJECTIONS AND COMPEL RESPONSES TO
DISCOVERY REQUESTS REGARDING PERSONAL JURISDICTION**

On this day, came on to be heard the Defendants’ Motion to Overrule Objections and Compel Responses to Discovery Requests Regarding Personal Jurisdiction. The Court, after reviewing the pleadings and evidence on file as well as the arguments of counsel finds that Plaintiffs’ objections to Defendants’ discovery requests should be OVERRULED, Defendants’ Motion to Compel Responses to Discovery Requests should be GRANTED, and Defendants’ Requests for Admissions to which Plaintiffs failed to answer are DEEMED ADMITTED.

A. The Court, after reviewing the pleadings and evidence on file as well as the arguments of counsel finds that Plaintiffs Dallas Buyer’s Club, LLC (TX), Dallas Buyer’s Club, LLC (CA), and Truth Entertainment, LLC objections to *Defendants’ First Set of Interrogatories to Plaintiffs Exclusively Regarding Plaintiffs’ Jurisdictional Allegations*, *Defendants’ First Requests for Production of Documents to Plaintiff Exclusively Regarding Plaintiffs’ Jurisdictional Allegations*, and *Defendants’ First Requests for Admissions to Plaintiffs Exclusively Regarding*

Plaintiffs' Jurisdictional Allegations should be overruled or sustained as follows:

B. Plaintiffs' Objection: OVERLY BROAD:

Defendants' First Set of Interrogatory Nos.:

- 3. _____ **Overruled** _____ **Sustained**
- 4. _____ **Overruled** _____ **Sustained**
- 5. _____ **Overruled** _____ **Sustained**
- 6. _____ **Overruled** _____ **Sustained**
- 7. _____ **Overruled** _____ **Sustained**
- 13. _____ **Overruled** _____ **Sustained**
- 14. _____ **Overruled** _____ **Sustained**

Defendants' First Requests for Production Nos.:

- 6. _____ **Overruled** _____ **Sustained**
- 11. _____ **Overruled** _____ **Sustained**

C. Plaintiffs' Objection: HARASSING:

Defendants' First Set of Interrogatory Nos.:

- 5. _____ **Overruled** _____ **Sustained**
- 6. _____ **Overruled** _____ **Sustained**

D. Plaintiffs' Objection: CALLS FOR A LEGAL CONCLUSION:

Defendants' First Set of Interrogatory Nos.:

- 8. _____ **Overruled** _____ **Sustained**
- 15. _____ **Overruled** _____ **Sustained**
- 16. _____ **Overruled** _____ **Sustained**
- 17. _____ **Overruled** _____ **Sustained**

19. ☐ **Overruled** ☐ **Sustained**

Defendants' Requests for Admission Nos.:

1. ☐ **Overruled** ☐ **Sustained**

2. ☐ **Overruled** ☐ **Sustained**

3. ☐ **Overruled** ☐ **Sustained**

4. ☐ **Overruled** ☐ **Sustained**

5. ☐ **Overruled** ☐ **Sustained**

6. ☐ **Overruled** ☐ **Sustained**

7. ☐ **Overruled** ☐ **Sustained**

13. ☐ **Overruled** ☐ **Sustained**

IT IS FURTHER ORDERED that PLAINTIFFS Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC shall give complete responses to those discovery requests to which their objections have been overruled within seven days from entry of this Order;

E. IT IS FURTHER ORDERED that PLAINTIFFS Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC shall fully answer Defendants' First Set of Interrogatories Nos. 2, 9, 10, 11, 12, and 18.

F. IT IS FURTHER ORDERED that PLAINTIFFS Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC shall produce the documents in response to Defendants' Requests for Production Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22.

G. IT IS FURTHER ORDERED that Defendants' Requests for Admissions Nos. 2, 3, 4, 5, 6, 7, and 13 are deemed admitted.

Signed this _____ day of _____, 2016.

JUDGE PRESIDING

Approved as to Form and Substance:

/s/ John W. Urquhart
John Urquhart

James T. McBride/Douglas R. Drucker

CAUSE NO. 15-06-06049

DALLAS BUYER’S CLUB, LLC (TX),	§	IN THE DISTRICT COURT
DALLAS BUYER’S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC,	§	
	§	
Plaintiffs,	§	
	§	284 th JUDICIAL DISTRICT
v	§	
	§	
VOLTAGE PICTURES, LLC and NICOLAS	§	
CHARTIER,	§	
	§	
Defendants.	§	MONTGOMERY COUNTY, TEXAS
	§	

**DEFENDANTS’ SPECIAL APPEARANCE AND PRAYER TO
 DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendants Voltage Pictures, LLC (“Voltage”) and Nicolas Chartier (“Chartier”) (collectively, the “Defendants”) specially appear pursuant to Tex.R.Civ.Pro. 120a.

I. INTRODUCTION

This lawsuit should be dismissed and is not properly before this Court because there are not sufficient contacts with the forum. Defendants are citizens and residents of the State of California, with their principal place of business located in the State of California. Defendants have never resided or been domiciled in the State of Texas, nor do Defendants conduct business in the State of Texas. *See* the accompanying Declaration of Nicolas Chartier (“Chartier Decl.”), ¶¶ 2-18. Thus, the Court lacks general jurisdiction over the Defendants.

In addition, Defendants have had no meaningful contacts with the State of Texas, let alone the requisite minimum contacts with the State of Texas necessary for the Court to exercise specific jurisdiction over the Defendants in this case.

Plaintiffs' Petition contains no allegations that would justify this Court's exercise of jurisdiction over Defendants. No aspect of this case is meaningfully related to Texas. The sole nexus to Texas is that two of the Plaintiffs are Texas companies. But Plaintiffs do not have contractual privity with Defendants, as Defendants are not even parties to the agreement that is the basis of Plaintiffs' breach of contract claim. Nonetheless, in an effort to rope Defendants into a lawsuit without any legal basis and in a state where Defendants have no minimum contacts, Plaintiffs have artfully drafted a vague Petition and purposefully omitted key facts and exhibits to try to mask the fatal flaws in their claims and the fact that this Court has no jurisdiction over Defendants in this matter.

As discussed in detail below, the Court lacks general jurisdiction over Defendants because neither of them have any substantial, continuous or systematic contacts with Texas. As a matter of law, since Plaintiffs did not allege that Defendants had "continuous and systematic" contacts with Texas, all that is required of Defendants to show that the Court lacks general jurisdiction is to show that Defendants are not Texas residents—which Defendants have easily done. *See* Chartier Decl., ¶¶ 2-18; *Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 658-59 (Tex. 2010) ("If the plaintiff fails to plead facts bringing the defendant within reach of the long-arm statute (i.e., for a tort claim, that the defendant committed tortious acts in Texas), the defendant need only prove that it does not live in Texas to negate jurisdiction."). On this ground alone Defendants' Motion should be granted.

The Court also has no specific jurisdiction over Defendants because (i) Defendants never purposefully directed their alleged activities towards the State of Texas, and (ii) there is no connection between this lawsuit and Defendants' non-existent Texas contacts. In sum, the Petition fails to plead any facts that would remotely establish personal jurisdiction over the

Defendants. Accordingly, Defendants' Motion should be granted and the instant action dismissed for lack of personal jurisdiction.

II. STATEMENT OF RELEVANT FACTS

A. The Petition

Plaintiffs filed the Original Petition in this lawsuit on June 12, 2015 (the "Petition").

The only allegations in the Petition related to jurisdiction are as follows:

- Petition, ¶ 7: "Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limit of this Court as required by law."
- Petition, ¶ 8: "Venue is proper in Montgomery County, Texas....as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs."

B. Neither Chartier Nor Voltage Is A Texas Resident.

As previously stated, Chartier is not a resident or domiciliary of the State of Texas. Chartier Decl., ¶ 2. Voltage is not organized or existing under the laws of the State of Texas, is not qualified to do business in the State of Texas and has no office in the State of Texas. Chartier Decl., ¶¶ 4-5, 12-13. Based on these facts alone, the Court should find that there is no general jurisdiction over Defendants.

C. Chartier Does Not Have Minimum Contacts in Texas.

Chartier is a resident of and domiciled in the State of California. Chartier Decl., ¶ 2; *see also*, Petition, ¶ 6. Chartier has never been domiciled in the State of Texas. *Id.* Chartier is the CEO of Voltage Pictures, LLC, which is also located in California. Chartier Decl., ¶ 4. Voltage is a financing, production and distribution company for motion pictures. *Id.* The sole and principal place of business of Voltage is Los Angeles, California. *Id.*

Chartier does not have any "minimum contacts" with the State of Texas which would

support the valid exercise of personal jurisdiction by this Court over him: Chartier does not own, lease and/or maintain an apartment or any other type of residence in the State of Texas (*Id.* at ¶¶ 3, 6-7); Chartier has never maintained any office or phone number in the State of Texas (*Id.* at ¶ 5); Chartier has never personally owned or possessed any real property in the State of Texas (*Id.* at ¶ 6); Chartier does not maintain any bank account or safe deposit box in the State of Texas (*Id.* at 7); other than local counsel Chartier will have to retain in this lawsuit, Chartier does not have any employees, agents or representatives in the State of Texas, nor any agent for service of process in the State of Texas (*Id.* at ¶ 8); Chartier does not regularly transact business in Texas, and does not advertise in the State of Texas (*Id.* at ¶¶ 3, 5, 9); Chartier does not possess any license to transact business in the State of Texas (*Id.* at ¶ 10); and Chartier does not provide any goods or services in the State of Texas. (*Id.*)

D. Voltage Does Not Have Minimum Contacts in Texas.

Voltage is organized and operated under the laws of the State of California with its principal place of business in Los Angeles, California. Chartier Decl., ¶ 4; Petition, ¶ 5. Voltage does not have any “minimum contacts” with the State of Texas which would support the valid exercise of personal jurisdiction by this Court over it: Voltage does not provide or offer services in Texas, nor solicit or engage in business in Texas (*Id.* at ¶¶ 5, 13); Voltage does not have an office or other place of business, telephone number or employees in Texas (*Id.* at ¶ 14); Voltage is not incorporated or licensed to do business in Texas (*Id.* at ¶¶ 4, 15); Voltage has not designated an agent for service of process in Texas (*Id.* at ¶ 16); and Voltage has never paid taxes in Texas (*Id.* at ¶ 17). Further, other than a passive website that is accessible on the Internet, Voltage does not advertise its services in Texas. *Id.* at ¶ 18.

E. The Alleged Wrongful Conduct Did Not Occur in Texas.

Plaintiffs' Petition alleges four causes of action: (i) breach of fiduciary duty, (ii) fraud, (iii) fraudulent inducement, and (iv) breach of contract. Notwithstanding the foregoing, Plaintiffs fail to allege with any factual support that Defendants' alleged fraudulent actions, breach of contract and/or breach of fiduciary duty **occurred in Texas**. Plaintiffs only make the conclusory allegation that "a substantial portion of the events or omissions giving rise to the claim occurred" in Texas. Petition, ¶ 8. Indeed, Plaintiffs have artfully pled their allegations to hide the critical fact that Defendants and Plaintiffs have never entered into an agreement with one another, let alone an agreement in Texas or an agreement that was to be performed in Texas. Chartier Decl., ¶ 12, Exh. "A" – Distribution Agreement. In order to conceal the fact that Defendants have no connection whatsoever to the State of Texas and no direct connection to Plaintiffs, Plaintiffs conveniently failed to attach a copy of any of the "agreements" at issue because it would then become clear that there was no agreement between Plaintiffs and Defendants.

The agreement that is the subject of Plaintiff's breach of contract claim is a written Distribution License Agreement between Plaintiffs and a third party, Picture Perfect Corporation ("PPC"), pursuant to which Plaintiffs assigned PPC certain rights to distribute the motion picture entitled *Dallas Buyer's Club* (the "Picture"). Defendants are not even a party to that agreement. Chartier Decl., ¶ 12, Exh. "A" – Distribution Agreement. Defendants sole connection to this case is the fact that PPC separately entered into a written Sales Agency Agreement with Voltage, pursuant to which PPC licensed Voltage to exploit the Picture in certain designated territories. Chartier Decl., ¶ 12, Exh. "B" – Sales Agency Agreement. Significantly, however, the Sales Agency Agreement was negotiated and entered into between Voltage, a California company, and PPC, a Luxembourg company, solely within the State of California. *Id.* Moreover, the Sales

Agency Agreement contains a California choice of law provision and mandates that all disputes arising thereunder must be resolved pursuant to binding arbitration before the International Film and Television Alliance (“IFTA”) in the County of Los Angeles, State of California. Chartier Decl., ¶ 12, Exh. “B” – Sales Agency Agreement, ¶ 13(c).

III. LEGAL ARGUMENT

A. Standard of Review Regarding Personal Jurisdiction.

“Non-residents are subject to the personal jurisdiction of Texas courts if: (1) jurisdiction is authorized under the state's long-arm statute; and (2) jurisdiction comports with guarantees of the United States and Texas Constitutions.” *Quality Lease & Rental Holdings, LLC v. Mobley*, No. 13-14-00064-CV, 2014 WL 3738653, at *6 (Tex. App. 2014), petition for review abated (Oct. 17, 2014). Under Texas's long-arm statute, a non-resident defendant is within the court's jurisdiction if the non-resident, among other things, “contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state” or “commits a tort in whole or in part in this state.” *See* Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2). Texas’ long-arm statute extends personal jurisdiction to the full extent allowed by the Due Process Clause. *See Id.* at 795.

Under the Due Process Clause, “[p]ersonal jurisdiction over nonresident defendants is constitutional when two conditions are met: (1) the defendant has established minimum contacts with the forum state, and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice.” *Id.* at 795. Personal jurisdiction exists if the nonresident defendant's minimum contacts give rise to either specific jurisdiction or general jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–14 (1984). Specific jurisdiction is established if the defendant's alleged liability arises from or is related to an activity

conducted within the forum. *See BMC Software Belgium, N.V., v. Marchand*, 83 S.W.3d 789, 795-796 (Tex. 2002). In contrast, general jurisdiction is present when a defendant's contacts in a forum are continuous and systematic so that the forum may exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum state. *See Id.* at 796. “The minimum contacts analysis for specific jurisdiction focuses on the relationship among the defendant, the forum, and the litigation.” *Paternoistro v. Olcott*, No. 05-09-00867-CV, 2010 WL 1346321, at *2 (Tex. App. 2010). “The defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court.” *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

B. Burdens of Proof Regarding Personal Jurisdiction.

“The plaintiff bears the initial burden of pleading sufficient allegations to bring a nonresident defendant within the provisions of the long-arm statute.” *BMC Software*, 83 S.W.3d at 793. Plaintiff has utterly failed to meet that burden. The Petition is virtually devoid of any allegations that, even if true, would confer jurisdiction over Defendants in this case. It has been repeatedly held that **“[w]hen the plaintiff does not plead any jurisdictional allegations, i.e., that the defendant has committed any act in Texas, the defendant can satisfy his burden of negating all bases of personal jurisdiction by simply presenting evidence that he is a nonresident.”** *Siskind v. Villa Found. for Educ., Inc.*, 642 S.W.2d 434, 438 (Tex. 1982)(emphasis added)(holding specially-appearing individual defendants sustained their burden to negate all bases of jurisdiction by presenting evidence of their nonresidence when the plaintiff did not allege any act by them that would have reasonably foreseeable consequences in Texas); *Perna v. Hogan*, 162 S.W.3d 648, 653 (Tex.App.-Houston [14th Dist.] 2005)(“If the plaintiff

does not plead jurisdictional allegations, i.e., that the defendant has committed any act in Texas, the defendant can satisfy its burden of negating all bases of personal jurisdiction by presenting evidence that it is a nonresident at the special appearance hearing.”).

The nonresident defendant “can negate jurisdiction on either a factual or legal basis.” *Kelly*, 301 S.W.3d at 659. To negate jurisdiction on a factual basis, the defendant can produce evidence showing it has no contacts with Texas, disproving the plaintiff's allegations; the plaintiff may respond with its own evidence. *Id.*; *Assurances Générales Banque Nationale v. Dhalla*, 282 S.W.3d 688, 695 (Tex. App.-Dallas 2009, no pet.). To negate jurisdiction on a legal basis, the defendant can establish that even taking the plaintiff's alleged facts as true, “the evidence is legally insufficient to establish jurisdiction; the defendant's contacts with Texas fall short of purposeful availment; for specific jurisdiction, that the claims do not arise from the contacts; or that traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction.” *Kelly*, 301 S.W.3d at 659. Here, there are no factual or legal grounds for the Court to exercise jurisdiction over Defendants.

C. There is No General Jurisdiction Over the Defendants Because Defendants Do Not Have “Continuous and Systematic” Contacts with Texas.

“General jurisdiction requires a showing that the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction.” *Elizondo*, 2009 WL 1617761, at *3; *BMC Software*, 83 S.W.3d at 797 (“General jurisdiction may only be exercised when the nonresident defendant's contacts in a forum are continuous and systematic.”). “In evaluating the existence of general jurisdiction, courts look for proof of a pattern of continuing and systemic activity.” *Elizondo*, 2009 WL 1617761, at *3.

Here, Plaintiffs do not and cannot allege that Defendants are subject to general

jurisdiction in Texas because they lack “continuous and systematic” contacts with Texas. In fact, Defendants lack *any* contacts with Texas. Chartier is a resident and citizen of California and has never been a citizen of Texas. Chartier Decl., ¶ 2. Chartier does not own, lease and/or maintain an apartment or any other type of residence in Texas (*Id.* at ¶ 6); Chartier has never maintained any office or phone number in Texas (*Id.*); Chartier has never personally owned or possessed any real property in Texas (*Id.* at ¶7); Chartier does not maintain any bank account or safe deposit box in Texas (*Id.*); other than the attorneys that he has hired to represent him in this lawsuit, Chartier does not have any employees, agents or representatives in Texas, nor any agent for service of process in Texas (*Id.* at ¶ 8); Chartier does not regularly transact business in Texas, and does not advertise or have any authorized agents for service of process in Texas (*Id.* at ¶¶ 3, 5, 9); Chartier does not possess any license to transact business in Texas (*Id.* at ¶ 10); and Chartier does not provide any goods or services in California. (*Id.*)

Likewise, Voltage does not offer services, solicit or engage in business in Texas. (*Id.* at ¶¶ 5, 13). Voltage also (i) does not have an office, telephone number or employees in Texas, (ii) is not incorporated or licensed to do business in Texas, (iii) has not designated an agent for service of process in Texas, and (iv) has never paid taxes in Texas. *See* Chartier Decl., ¶¶ 14-17. Further, other than a passive website that is accessible on the Internet, Voltage does not advertise its services in Texas. (*Id.* at ¶ 18.)

The Supreme Court has explained that general jurisdiction is not limitless and may only be applied when the connections to the forum state render the defendant “essentially at home in the forum state.” *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). There is no question that Defendants’ are not “at home” in Texas. Thus, there is no general jurisdiction here.

D. There is No Specific Jurisdiction Over the Defendants.

- i. No Purposeful Availment: Defendants Did Not Conduct Any Activities in the State of Texas (Nor Do Plaintiffs Allege That They Did).

Defendants are not subject to specific jurisdiction either. Specific jurisdiction focuses on “the defendant, the forum, and the litigation.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). “This analysis requires the court to review whether (1) the defendant purposefully availed itself of the privilege of conducting activities in the forum state, and (2) the facts of the litigation bear a substantial connection to the defendant's contacts with the state.” *RSR Corp. v. Siegmund*, 309 S.W.3d 686, 698 (Tex. App. 2010). There are three aspects to the “purposeful availment” inquiry: (1) only the defendant's contacts with the forum state count, not the unilateral activity of another, (2) the contacts relied upon must be “purposeful,” rather than “random, isolated, or fortuitous,” and (3) the nonresident defendant must “avail” itself of the jurisdiction by seeking some benefit, advantage, or profit. *See Id.*

Here, Plaintiffs have not met and cannot meet their burden of establishing that Defendants are subject to specific jurisdiction in Texas. Plaintiffs only make two conclusory and unsupported jurisdictional allegations in their Petition: (1) “Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limit of this Court as required by law.” (Petition, ¶ 7), and (2) “Venue is proper in Montgomery County, Texas....as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs.” (Petition, ¶ 8). These allegations are grossly insufficient to establish any basis for jurisdiction in this lawsuit.

Plaintiffs’ conclusory allegations are insufficient to show any degree of “purposeful availment” by Defendants, as they fail to identify any Texas-related acts of Defendants that relate

to the (meritless) claims in this case. For example, there are no allegations that Defendants directed any of their actions towards Texas, conducted business in Texas, sent money to or received money from Texas residents, advertised or promoted in Texas, or rendered services in Texas. Plaintiffs have not even alleged that Defendants engaged in any tortious conduct in the State of Texas. On these same grounds, Texas courts have denied to exercise jurisdiction. *See Kelly*, 301 S.W.3d at 661 (dismissing claims for lack of jurisdiction because the plaintiff “has not alleged that the Officers engaged in activities that constitute any presence—let alone a substantial presence—in this state.”). In sum, Plaintiffs do not allege (and cannot allege or provide) any evidence that any part of their claims originate from Defendants’ conduct in Texas.

ii. The Exercise of Jurisdiction Over Defendants Would Offend Traditional Notions of “Fair Play and Substantial Justice.”

In the unlikely event that the Court determines sufficient minimum contacts exist, the Due Process Clause does not allow the exercise of jurisdiction over Defendants because it would offend traditional notions of “fair play and substantial justice.” *See Burger King v. Rudzewicz*, 471 U.S. at 462, 475-76 (1985). “Whether the court's exercise of personal jurisdiction over a nonresident defendant is reasonable depends on several factors, including (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining efficient resolution to controversies; and (5) the shared interest of the several states in furthering substantive social policies.” *RSR Corp.*, 309 S.W.3d at 698.

In this case, Defendants are based in California and have *no* meaningful connection to the State of Texas. With this in mind, and considering that Texas and California are over 1,300 miles from one another, litigating in Texas would be unduly burdensome and expensive for

Defendants. Chartier Decl., ¶ 20. Defendants would have to hire local counsel and travel to and from Texas for hearings, depositions and trial. Further, Texas does not have any compelling interest in this dispute—the parties did not enter into any agreements in Texas (or anywhere, really) and there are no agreements between the parties that require services to be rendered in Texas or by a Texas resident. Moreover, while Plaintiffs have an interest in obtaining relief if they can prove that their claims have merit (which is unlikely), they can obtain such relief in California. Thus, by granting Defendants’ Motion, Plaintiffs will not be deprived of any relief should they choose to file (and prove) their claims in the proper forum. Given these facts, Plaintiffs cannot demonstrate that Texas is an appropriate and fair forum. Accordingly, Defendants’ Motion should be granted and this lawsuit should be dismissed in its entirety.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court dismiss this case for lack of personal jurisdiction.

Dated: December 7, 2015

Respectfully submitted,

BUCHE & ASSOCIATES, P.C.

/s/ JKB

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NICOLAS CHARTIER

LAVELY & SINGER
PROFESSIONAL CORPORATION
MICHAEL D. HOLTZ
ALLISON S. HART

By: /s/ MDH
MICHAEL D. HOLTZ
Attorneys for Specially Appearing Defendants
VOLTAGE PICTURES, LLC and NICOLAS
CHARTIER, *pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DEFENDANTS' SPECIAL APPEARANCE AND PRAYER TO DISMISS FOR LACK OF PERSONAL JURISDICTION was:

DEFENDANTS' SPECIAL APPEARANCE AND PRAYER TO DISMISS FOR LACK OF PERSONAL JURISDICTION

_____ Mailed via certified mail, return receipt requested no. _____
 X Mailed regular U.S. mail;
_____ Sent via facsimile; and/or
_____ Delivered via courier service;
 X Sent via E-mail, PDF to jmcbride@mcbridelawtx.com
 X Delivered via Electronic Filing

to the following counsel on this December 7, 2015:

James T. McBride
2170 Buckthorne Place
The Woodlands, Texas 77380

/s/ JKB
JOHN K. BUCHE

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT OF
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER	§	
<i>Defendants.</i>	§	284th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA) and Truth Entertainment LLC (collectively referred to herein as "Plaintiffs") files this their First Amended Petition against Voltage Pictures, LLC ("Voltage") and Nicolas Chartier ("Chartier"):

DISCOVERY CONTROL PLAN

1. This case is being conducted under Level 2 of Texas Rule of Civil Procedure 190.

PARTIES

2. Truth Entertainment, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas with Texas citizens as its members.
3. Dallas Buyer's Club, LLC is a California Limited Liability Company, with its principal place of business in Montgomery County, Texas with Texas citizens as its members.
4. Dallas Buyer's Club, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas with Texas citizens as members.
5. Voltage Pictures, LLC is a California Limited Liability Company and has filed a Special Appearance objection to personal jurisdiction through its attorney of record.

6. Nicolas Chartier is a California resident and has filed a Special Appearance objection to personal jurisdiction through its attorney of record.

VENUE AND JURISDICTION

7. Venue is proper in Montgomery County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs.

8. Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limits of this Court as required by law. *See* Tex. Const. Art. 5 § 8; Tex. Gov't Code § 24.007. Both Defendants are doing business in Texas and thus are subject to personal jurisdiction in Texas under the Texas long arm statute. This court has both general and specific jurisdiction.

9. The following show a non-exhaustive list of Defendants' doing business in Texas and minimum contacts with Texas.

10. The Owners (Dallas Buyers Club LLC and Truth Entertainment LLC) own the rights to the movie Dallas Buyers Club. In 2012, when the movie was in pre-production, Defendants approached Owners about the possibility of providing additional financing and acting as the foreign sales agent for the movie. All communication was in the form of email, phone calls, and additional correspondence received in Texas. Voltage and Chartier explicitly solicited the Owners, two Texas companies, to act as an agent for the movie owned by them. They not only solicited them, but ultimately they became the exclusive sales agent for Dallas Buyers Club, LLC to enter into Foreign Distribution Agreements around the world. (See copy of Canadian territory agreement Voltage, as agent for Dallas Buyers Club LLC, has with Remstar) As set out earlier, Dallas Buyers Club, LLC (TX) has sued Voltage and/or Chartier for breaching fiduciary duties,

fraud, fraudulent inducement related to their agency relationship with Dallas Buyers Club, LLC. There are hundreds of emails and/or phone calls sent from Voltage to the Owners both before becoming an agent for the Owners and subsequent to that help prove each element of the causes of action alleged. By way of example, Defendants have been sued for fraud and fraudulent inducement. They approached the Owners, who were located in Texas, and made fraudulent representations into Texas to induce the Texas Owners of the movie for Voltage to become the foreign sales agent. Voltage has profited greatly from the movie, all as a result of a movie owned by a Texas company. After the movie started receiving accolades, Defendants continued their pattern of misrepresentations all into the state of Texas. They also entered into, on behalf of the Texas company, 31 distribution foreign agreements, as “agent for Dallas Buyers Club, LLC” to act as foreign sales agent. Plaintiffs have alleged the Defendants have failed to do the job they were asked to do and any damages suffered necessarily would occur in Texas. Defendants have committed these torts in Texas. Defendants have made hundreds of thousands of dollars as foreign sales agent for the Dallas Buyers Club.

11. Further, Dallas Buyers Club, LLC has sued Voltage for breaching an Anti-Internet Piracy Authorisation (sic) giving Voltage a broad power of attorney to prosecute anti-piracy actions around the World, including Texas. (See attached as Exhibit “A”) Despite the statement in the affidavit of Mr. Chartier, there is in fact an agreement directly between Voltage and Dallas Buyers Club, LLC. It is executed by Mr. Chartier on behalf of Voltage and by Mr. Newcomb on behalf of Dallas Buyers Club, LLC, a Texas company. Voltage is being sued in this very lawsuit over this Agreement. Mr. Newcomb was hesitant to allow Voltage to have such a broad power of attorney but was told by Voltage they needed to protect the copyright and Voltage would lose money if Mr. Newcomb did not agree. All of those discussions and correspondence were received

in Texas. Voltage clearly was soliciting the business of a Texas company so that it could make money off of the ownership rights of a Texas company. Further, the contract was performable, all or in part in Texas. Any funds recovered would necessarily flow to the Texas. Pursuant to this Agreement, Voltage hired lawyers to prosecute the Dallas Buyers Club anti-piracy claims against a number of Texas citizens in Federal Court in the Southern District of Texas. Voltage hired a local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of claims against the Texas citizens for tens of thousands of dollars. Voltage has profited from those lawsuits filed against Texas citizens in Texas federal court.

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

13. Defendants advertise in the State of Texas and has in fact marketed Dallas Buyers Club in the U.S including Texas and has branded this movie with what they describe as its famous distinctive and registered trademark VOLTAGE PICTURES. This name which appears on the movie screen each time the movie is shown in Texas and elsewhere.

14. Defendant is a finance, production and distribution company in the movie industry.

15. Defendants directly or indirectly profit from ticket sales of movies in Texas.

16. Defendants market themselves in Texas and has solicited business in Texas including solicitations to plaintiffs.

17. Defendants have represented they intend on continuing to produce, finance and sell films throughout the world.

18. Defendants advertise their films in Texas through their website and otherwise.

19. Defendants have purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law. Defendants have gained a benefit, advantage and/or profit from conducting business in Texas such that Defendants could have reasonably anticipated being called into a Texas Court.

20. Defendants have had continuous and systematic contacts in Texas.

FACTS

A. Introduction

21. Truth Entertainment, LLC (“Truth”) is a Texas movie production company based in The Woodlands, Texas. Joe D. Newcomb is the Chairman and CEO of Truth. Truth and Dallas Buyers Club LLC (TX) are the owners (collectively referred to as “Owners”) of the rights to, and Truth was a producer of, the movie Dallas Buyers Club.

22. Voltage was a producer and was hired as the foreign sales agent for the movie responsible for all foreign sales. Mr. Chartier is the President of Voltage. Voltage entered into over thirty (30) agreements licensing to foreign distribution companies the right to distribute the movie in their respective territory as agents for Dallas Buyers Club, LLC.

B. The Movie

23. Dallas Buyers Club is a biographical movie about Ron Woodruff, (portrayed by Matthew McConaughey) a Dallas man who in 1985 was diagnosed with AIDS and his battle around the system to help get more effective medication for himself and other AIDS patients. He co-starred with Jennifer Garner and Jared Leto. It was met with critical acclaim after premiering at the Toronto Film Festival in 2013. The film was nominated for 6 academy awards including Best Picture and Best Original Screenplay for the 2014 Academy Awards. McConaughey was

nominated for and won the award for Best Actor and Jared Leto won for Best Supporting Actor. The movie had gross box office receipts in the US and Canada that amounted to over \$27,000,000.00 and foreign box office of nearly \$28,000,000 for a total of over \$55,000,000 in worldwide sales, just on box office sales alone.

C. The Movie was Almost Never Made

24. Nearly two decades after the script was originally written and already having passed through multiple studios and potential financiers, money was finally secured to fund the movie. But more bad news came in August of 2012; just 10 weeks before the movie was set to begin production in Louisiana, the financing for the film fell through. The film was thought to be doomed. McConaughey had already lost 35 pounds for the part and had commitments in January that prevented any further delays. The makers of the movie were scrambling. A Hollywood producer approached Mr. Newcomb to see if he had any interest in the movie. He read the script, loved it, and immediately began to raise funding and used his American Express card to pay for a number of the costs of filming the movie because of the huge time crunch. Within a few weeks, Mr. Newcomb and his business partner, formed Dallas Buyers Club, LLC (Texas) (“DBC”) and, through it, raised \$1,600,000.00 from local investors to finance the production of the movie. In return, DBC and its investors were to receive a 15% return on the investment plus 35% of all backend “net proceeds”. Voltage and/or an affiliate was also brought on and invested \$3,000,000 to be a co-producer and company in charge of all foreign sales with an agreed upon 15% return. With the addition of a tax incentive from the State of Louisiana the movie started production on November 11 and was amazingly completed within a mere 25 days within its \$5.6 million budget.

THE DISPUTE

A. The Deception Begins

25. Fast forward to early 2014, after the movie had been released and received its accolades, a statement was issued showing the funds received for the movie. The statement showed that Voltage and/or its affiliated company had been paid back the original \$3,000,000.00 investment plus a 15% agreed upon return on that investment. However, the DBC investors had only been paid back a little over \$1,200,000 of the original \$1,600,000.00 investment nor the agreed upon 20% return on that investment. Needless to say, the investors and Mr. Newcomb were concerned and wanted answers to some basic questions. They were still owed \$720,000.00.

26. Mr. Newcomb and the investors asked about updates on the foreign box office and requested on a number of occasions copies of the foreign distribution agreements from Mr. Chartier. Mr. Chartier refused to give them copies of the foreign distribution agreements. He refused to give them even basic information about the expectations from foreign sales.

27. When Voltage entered into the licensing agreements with the foreign distribution companies each foreign distribution company was to pay a negotiated minimum amount for the licensed rights to the movie, known as “minimum guarantees.” For example, the Canadian rights were purchased by Remstar for a minimum guarantee of \$400,000.00. In paying the minimum guarantee the foreign companies would directly send the funds to a collection account operated by Fintage Collection Account Management (“Fintage”). Voltage would tell Fintage what the minimum guarantees were and Fintage would account for them when they were paid.

28. In May, after Fintage issued its statement for April, Plaintiffs noticed that nearly \$700,000.00 in minimum guarantees had not been paid that should have been paid. That money should have come in and the DBC investors should already have been paid back all of the

investment. The Plaintiffs asked for a copy of the foreign distribution agreements and an accounting for all of the foreign countries. The response from Mr. Chartier to Mr. Newcomb, the President of Voltage (agent for foreign sales) was the following: [email from Nicolas Chartier dated May 21, 2014]

Joe how many times do we need to explain you? Seriously? We don't do accounting? Fintage does!!! And the buyers in foreign are not sending reports every quarter!!!! Can you please stop asking the same dumb stupid idiotic questions every week???? We keep telling you the same answer, emailing you the same answer, calling you with the same answer!!! Read your emails! Stop! Get a life! Go deal with your partners suing you!!! We told you a thousand times the same thing!!!!!! You're a moron. We got it. Now stop!!!

29. Mr. Chartier refused again to provide copies of the foreign distribution agreements despite Voltage's clear duty to provide information to its principal when asked. That was pointed out to Mr. Chartier, and he continued, and to this day continues to refuse to produce the foreign distribution agreements.

30. When asked about updates on the status of the minimum guarantee collections, why he was not timely responding to requests, and not living up to his own promises it was quite apparent that Voltage was too busy to deal with the Plaintiffs seemingly reasonable requests. Mr. Chartier admitted on a number of occasions that he was dealing with more than 14 movies in production or post production, he had lost staff, he was moving offices etc.... He also had already collected the money Voltage had invested plus a \$450,000.00 return on that investment.

B. The Tip of the Iceberg?

31. Despite the fact that Voltage refused and continues to refuse to provide a copy of the foreign distribution agreements, the Plaintiffs were able to obtain copies of a few of the agreements from other sources. After reviewing these agreements, it is apparent that Mr. Chartier did not want Plaintiffs to see them because they are different than what Mr. Chartier has represented them to be.

32. Voltage and Mr. Chartier misrepresented the amount of minimum guarantees owed.

33. For example, in the Scandinavian agreement governing Norway, Sweden, Denmark and Finland the minimum guarantee should be \$50,000.00 more than represented due to what should have been a charged box office bump.

34. Further, when asked about the status of a \$34,000.00 payment due from the distributor for CIS, Voltage responded that the “last payment was cancelled due to M. McConaughey and J. Leto cancelling their PR trip.” Upon review of the agreement, there is no such language. The \$34,000.00 was due upon execution of the agreement. The agreement was executed in late 2012. Furthermore, the agreement provides that an additional \$30,000.00 is possibly due because the box office numbers in CIS exceeded \$500,000.00.

35. For the country of Italy, Voltage initially represented that the minimum guarantee was \$260,000.00. When asked why only \$130,000.00 had been collected, Mr. Chartier claimed that number was wrong and that it was only \$130,000.00 and therefore no money was due from Italy. When asked for a copy of the agreement, Chartier refused to provide a copy. Plaintiffs have yet to see a copy of that agreement.

36. When asked about the \$30,000.00 minimum guarantee for Hungary, Voltage stated that the distributor defaulted, cancelled and they were trying to resell. However, public reports show that the movie had box office receipts of nearly \$200,000.00 in the first 3 weeks of distribution and the agreement with the distributor provided that an initial payment was to be paid on execution of the agreement and the remainder on delivery of the picture.

37. Chartier also misrepresented the accounting requirements of the foreign distributors. He stated in his May 21 email “And the buyers in foreign are not sending reports every quarter!!!”.

38. They should have been providing reports every month. After obtaining some of the foreign distribution agreements the terms, in the ones Plaintiffs were able to obtain, are crystal clear. “Complete accounting statements for the Picture shall be provided on a monthly basis for the first seven (7) months after the First Theatrical Release in the Territory and thereafter quarterly, and shall be accompanied by payment of any monies then due Licensor.” Mr. Newcomb simply wanted to see these reports when he asked for them back in May. Instead of providing them, Mr. Chartier proceeded to ask Mr. Newcomb to stop asking “dumb, stupid, idiotic question every week.” Not the response Mr. Newcomb expected from his fiduciary who is tact with utmost loyalty and good faith to its principal. Apparently Mr. Chartier either has them but refuses to provide them, or Voltage is not following through on its promises to ensure all monies are timely accounted for and collected.

C. Amazingly, Not One Dollar has been collected on Foreign Video or Pay-per View Sales

39. The most troubling aspect of the failures to provide simple information to the Plaintiffs is the lack of any funds coming from the foreign countries on pay-per-view and video sales. Through the first quarter of 2015, the domestic distributor has reported over \$45,000,000.00 in pay-per-view and video receipts in the United States---\$20,000,000 more than the gross box office in the United States.

40. For example, in Canada, the movie was released for video and pay-per-view sale on the exact same dates as it was in the United States. The Canadian distribution company has not reported a dollar in receipts. It has been nearly 16 months since it was first aired. The US distribution company has reported \$45 million collected--Canada \$0 and not one single accounting. The distribution agreement provides that it is to pay into the Fintage collection account

between 20% and 40% of receipts for video sales depending the type of sale. If the numbers for video are similar to Canada's box office numbers, like in the United States, that means there should have been another roughly \$900,000.00-\$1,800,000.00 deposited into the collection account. Why not? How much is it? Where is that money? The agent for foreign sales should know yet it refuses to answer those questions and provide a copy of most of the agreements and furnish not one accounting. That is just one country. If the United Kingdom, which published reports state the movie made \$8,755,794.00 in box office sales, has similar numbers then another \$3,000,000.00 to \$6,000,000.00 should have been or should be coming into the collection account. The Plaintiffs may be off on the potential numbers but have no way of knowing unless they see the agreements and the accounting statements from Voltage and its distributors. It has been over a year since that first request was made. Voltage should have over 200 statements form its distributors yet claim to have none.

D. Everyone Involved in the Making of Dallas Buyers Club Has Been Harmed by Voltage's and Chartier's Actions

41. The DBC investors has finally recouped the original investment plus the 20% return but not through the collection of foreign receipts but through domestic collections and finally are now receiving back-end distributions as "net proceeds", as is Truth, to the tune of 35% of all net proceeds. McConaughey, Jennifer Garner, Jean Marc Valle, the writers, Craig Borten and Melissa Wallack and a number of other participants in the movie are to receive the remaining 65% of the "net proceeds" . If foreign video/pay per view is in line with the US numbers there should have been or to be collected money in the tens of millions all of which will be distributed to those who are to receive back-end monies.

E. Anti-Piracy Actions

42. DBC entered into an Agreement with Voltage for Voltage to act as its agent to enforce Anti-piracy actions against people who have illegally downloaded or otherwise obtained the ability to watch the movie without paying for the right to watch it. (See attached as Exhibit ‘B’’) The Agreement provides that DBC is to receive updates and assist in enforcing these actions. DBC has received virtually no updates and has not had any input into the actions Voltage is taking around the World. The only updates DBC receives are thorough, mostly negative, media reports about the actions of Voltage around the World. DBC has not received any funds, reports, updates or any information from Voltage on the status numerous lawsuits filed around the World in the name of DBC.

CAUSES OF ACTION

A. Breach of Fiduciary Duty

43. Voltage is the agent for DBC in charge of foreign sales and collection. As such it owes a fiduciary duty to its principal-DBC. Voltage has the duty to act with the utmost good faith, loyalty and care. Voltage has clearly breached this duty. Plaintiffs have been severely damaged by these fiduciary breaches and seeks full monetary and equitable recompense in this Court. It seeks actual and exemplary damages from Voltage. It further seeks fee forfeiture and disgorgement of all compensation and all benefits Voltage received for the years during which it was breaching its fiduciary duties to Plaintiffs. It seeks its attorney’s fees and expenses in the work it has, and had to do to collect the money it is owed. It also seeks an accounting from Voltage for all monies it and its distributors has received from the movie and the imposition of equitable relief.

B. Fraudulent Inducement

44. Defendants represented that it had the requisite experience and staffing to take on the role of foreign sales agent its agency duties had a duty to speak regarding its capacity to follow through on its job as foreign sales agent to collect and account for foreign sales. If Plaintiffs had known that Defendants did not have the requisite man-power to follow through on its job, DBC would not have used them as foreign sales agent.

C. Fraud

45. Defendants made material misrepresentations that were false, and that Defendants knew were false or were made recklessly without regard to their truth. Defendants made such misrepresentations with the intent that Plaintiffs rely on them, and reasonably did reasonably rely on Defendants' misrepresentations. Defendants' fraud caused Plaintiffs harm. Plaintiffs seek recovery from Defendants for its actual damages, exemplary damages, pre-judgment and post-judgment interest, costs of court, and attorneys' fees.

D. Breach of Contract

46. Voltage has breached its Anti-Internet Piracy Agreement whereby Voltage was granted a power of attorney to prosecute copyright infringers in the United States and abroad. DBC has been damaged by this breach and demands its actual damages, pre-judgment and post judgment interest, court costs and attorney's fees as allowed by law.

CONDITIONS PRECEDENT

47. All conditions precedent to Plaintiffs claims for relief against Defendants have been performed or have occurred.

JURY DEMAND

48. Plaintiffs demands a trial by jury on all claims and counterclaims at issue in this action, and has tendered the applicable jury fee, pursuant to Rule 216 of the Texas Rules of Civil Procedure.

PRAYER

Plaintiffs pray that the Court conduct a jury trial on all claims against Voltage and Chartier. Plaintiffs further pray for recovery on their claims and causes of action against Voltage and Chartier, and for all damages, including all actual and special damages, attorneys' fees, pre-judgment and post-judgment interest, costs of court, and exemplary damages – including uncapped exemplary damages where applicable.

Plaintiffs also pray equitable relief as set forth above, disgorgement of all fees and wages paid to or collected by Defendants, disgorgement of all profits that Defendants made as a result of their breaches of fiduciary duty.

Plaintiffs further pray for all other relief, at law or in equity, to which they are entitled.

Respectfully submitted,

MCBRIDE LAW, P.C.

By: /s/ James T. McBride

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that pursuant to the Tex. R. Civ. P. 21, a true and correct copy of the foregoing was served via (hand delivery ____; CMRR ____; fax or efile notification __X__) to the following counsel of record on the 8th of March, 2016.

/s/ James T. McBride

James T. McBride

Attorney for Plaintiffs

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CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT OF
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER	§	
<i>Defendants.</i>	§	284th JUDICIAL DISTRICT

**PLAINTIFFS OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF
INTERROGATORIES EXCLUSIVELY REGARDING PLAINTIFFS'
JURISDICTIONAL ALLEGATIONS**

To: Voltage Pictures, LLC and Nicolas Chartier, by and through their attorney of record, John W. Urquhart, Buche & Associates, P.C., 6363 Woodway, Suite 820, Houston, Texas 77057.

COMES NOW, Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC, Plaintiffs herein, and files their objections and responses to Defendants, Voltage Pictures, LLC and Nicholas Chartier's first set of interrogatories exclusively regarding plaintiffs' jurisdictional allegations.

Respectfully submitted,

Drucker | Hopkins LLP

/s/ Douglas R. Drucker

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CERTIFICATE OF SERVICE

I certify that pursuant to the Texas Rules of Civil Procedure, a true and correct copy of the foregoing was served by fax, e-service, or other electronic transmission on this 21st day of July, 2016.

/s/ Douglas R. Ducker
Douglas R. Ducker

John W. Urquhart
Buche & Associates, P.C.
6363 Woodway, Suite 820
Houston, Texas 77057

INTERROGATORY NO. 1: Identify any witness(es), along with contact information, address, email, and phone numbers of any witness you plan to call in support of your jurisdictional allegations at the hearing on Defendants' Special Appearance.

ANSWER: Plaintiff's will supplement when we determine who will testify.

INTERROGATORY NO. 2: Identify all persons with knowledge of the issues pertinent to your allegations of personal jurisdiction in Texas. Include in your answer a short statement describing each person's knowledge of the issues, contact information, address, email, and phone number.

ANSWER: Plaintiff's will supplement when we determine who will testify.

INTERROGATORY NO. 3: Identify and describe any alleged agreement between Defendants and Plaintiffs that explicitly states Texas law applies to any dispute between Defendants and Plaintiffs.

ANSWER: Objection. Overly broad. There is no written signed agreements.

INTERROGATORY NO. 4: State the factual basis for your contention that Defendants' alleged solicitation of Plaintiffs occurred in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Overly broad.

INTERROGATORY NO. 5: Identify each email and phone call you contend was from Defendants to Plaintiffs in Texas both prior to Defendants allegedly becoming Plaintiff's agent and after Defendants allegedly became Plaintiff's agent as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Overly broad and harassing.

INTERROGATORY NO. 6: State the factual basis for your contention that Defendants allegedly approached Plaintiffs in Texas to allegedly induce the Plaintiffs to make Voltage Plaintiffs' foreign sales agent as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Overly broad and harassing.

INTERROGATORY NO. 7: Identify the misrepresentations you contend Defendants made “all into the state of Texas” after the movie started receiving accolades as alleged in *Plaintiffs’ First Amended Petition*.

ANSWER: Objection. Overly broad.

INTERROGATORY NO. 8: Sate the factual basis for your contention that the alleged contract between Plaintiffs and Defendants “was performable, all or in part in Texas” as alleged in *Plaintiffs’ First Amended Petition*.

ANSWER: Objection, calls for a legal conclusion.

INTERROGATORY NO. 9: Identify the lawyers you allege Voltage hired to prosecute Dallas Buyer’s Clubs’ anti-piracy claims against Texas citizens in Federal Court in the Southern District of Texas. Include in your answer any Texas lawyer.

ANSWER: Defendants have that information.

INTERROGATORY NO. 10: Provide the style and cause number for each anti-piracy claim you allege Voltage prosecuted against Texas citizens in Texas on behalf of Dallas Buyer’s Club, TX or Dallas Buyer’s Club, CA.

ANSWER: Defendants have that information.

INTERROGATORY NO. 11: Provide the style and cause number for each lawsuit you allege Defendants filed in Texas, “directly or indirectly” on behalf of Plaintiffs or any other person or entity.

ANSWER: Defendants have that information.

INTERROGATORY NO. 12: State the factual basis for your contention that the alleged discussions and correspondence between Voltage and Mr. Newcomb were “received in Texas” as you allege in *Plaintiffs’ First Amended Petition*.

ANSWER: Mr. Newcomb received the information from Voltage in Montgomery County, Texas.

INTERROGATORY NO. 13: State the factual basis for your contention that Defendants advertise anything other than Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Overly broad.

INTERROGATORY NO. 14: State the factual basis for your contention that Defendants advertised Dallas Buyer's Club in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Overly broad.

INTERROGATORY NO. 15: State the factual basis for your contention that Defendants profit from ticket sales of movies in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Calls for a legal conclusion.

INTERROGATORY NO. 16: Please identify the business you allege Defendants solicited in Texas, other than the alleged solicitation of Plaintiffs, as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Calls for a legal conclusion.

INTERROGATORY NO. 17: State the factual basis for your contention that Defendants "purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law" as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Calls for a legal conclusion.

INTERROGATORY NO. 18: Identify the benefits, advantages, and/or profits Defendants have gained from conducting Business in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: At this point in the discovery process Plaintiff's can only state that Defendants profited from the movie The Dallas Buyers Club.

INTERROGATORY NO. 19: Identify Defendants' continuous and systematic contacts in Texas as alleged in *Plaintiffs' First Amended Petition*.

ANSWER: Objection. Calls for a legal conclusion.

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT OF
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER	§	
<i>Defendants.</i>	§	284th JUDICIAL DISTRICT

**PLAINTIFFS RESPONSE TO DEFENDANTS' FIRST REQUESTS FOR PRODUCTION
EXCLUSIVELY REGARDING PLAINTIFFS' JURISDICTIONAL ALLEGATIONS**

To: Voltage Pictures, LLC and Nicolas Chartier, by and through their attorney of record, John W. Urquhart, Buche & Associates, P.C., 6363 Woodway, Suite 820, Houston, Texas 77057.

COMES NOW, Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC, Plaintiffs herein, and files their response to Defendants, Voltage Pictures, LLC and Nicholas Chartier's first requests for production exclusively regarding plaintiffs' jurisdictional allegations.

Respectfully submitted,

Drucker | Hopkins LLP

/s/ Douglas R. Drucker

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CERTIFICATE OF SERVICE

I certify that pursuant to the Texas Rules of Civil Procedure, a true and correct copy of the foregoing was served by fax, e-service, or other electronic transmission on this 21st day of July, 2016.

/s/ Douglas R. Ducker
Douglas R. Ducker

John W. Urquhart
Buche & Associates, P.C.
6363 Woodway, Suite 820
Houston, Texas 77057

REQUEST FOR PRODUCTION NO. 1: Please produce true and correct copies of all documents that you will use at the hearing on Defendants’ Special Appearance to support your allegations that this Court has personal jurisdiction over Defendants in this case.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 2: Please produce true and correct copies of all documents that you contend support the existence of “minimum contacts” with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 3: Please produce true and correct copies of all documents that you contend support the existence of “systematic” or “continuous” contacts with each of the named Defendants sufficient to establish personal jurisdiction over Defendants for the claims in this case.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents identified in *Plaintiffs’ First Amended Petition* and/or relied upon in your *Plaintiffs’ First Amended Petition* that support your personal jurisdiction allegations.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 5: Please produce true and correct copies of documents relating to any communication of Defendants that you contend support your allegations of personal jurisdiction.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 6: Please produce copies of the correspondence between Voltage and Mr. Newcomb that were “received in Texas” as you allege in *Plaintiffs’ First Amended Petition*.

RESPONSE: Objection. Overly broad.

REQUEST FOR PRODUCTION NO. 7: Please produce documents that support your contention that Defendants solicited business, other than the alleged solicitation of Plaintiffs in the instant litigation, in Texas as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 8: Please produce documents that support your contention that Defendants solicited Plaintiffs in Texas as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of the alleged foreign agreements you allege Defendants entered into as agent for Dallas Buyer's Club, LLC to act as foreign sales agent as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: In Plaintiff's possession. Defendants have failed to provide Plaintiffs with copies of the foreign distribution agreements

REQUEST FOR PRODUCTION NO. 10: Please produce copies of the alleged agreements between Defendants and Plaintiffs that explicitly states Texas law applies to any dispute between Plaintiffs and Defendants.

RESPONSE: No written signed agreements

REQUEST FOR PRODUCTION NO. 11: Please produce true and correct copies of all documents that support your contention that Defendants alleged misrepresentations were made in the state of Texas as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Objection. Overly broad.

REQUEST FOR PRODUCTION NO. 12: Please produce a true and correct copy of the alleged contract between Plaintiffs and Defendants which "was performable, all or in part in Texas" as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 13: Please produce true and correct copies of all documents that support your contention that Defendants prosecuted anti-piracy claims against

Texas citizens in Texas on behalf of Plaintiffs in Texas as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 14: Please produce true and correct copies of all documents that support your contention that Defendants filed lawsuits in Texas “directly or indirectly” on behalf of Plaintiffs as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 15: Please produce true and correct copies of all documents that support your contention that Defendants prosecuted anti-piracy claims against Texas citizens in Texas on behalf of Plaintiffs Texas as alleged in *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 16: Please produce true and correct copies of all documents that support your contention that Defendants advertised Dallas Buyer's Club in Texas as alleged *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 17: Please produce true and correct copies of all documents that support your contention that Defendants advertised anything other than Dallas Buyer's Club in Texas as alleged *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 18: Please produce true and correct copies of all documents that support your contention that Defendants profit from ticket sales of movies in Texas as alleged *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 19: Please produce true and correct copies of all documents that support your contention that Defendants profit from ticket sales of movies in Texas as alleged *Plaintiffs' First Amended Petition*.

RESPONSE: Defendants have possession of all contracts.

REQUEST FOR PRODUCTION NO. 20: Please produce true and correct copies of all documents that support your contention that Defendants “purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law” as alleged *Plaintiffs’ First Amended Petition*.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 21: Please produce true and correct copies of all documents that support your contention that Defendants gained a benefit, advantage, and/or profit from conducting Business in Texas as alleged *Plaintiffs’ First Amended Petition*.

RESPONSE: Will supplement when discovery is complete.

REQUEST FOR PRODUCTION NO. 22: Please produce true and correct copies of all documents that support your contention that Defendants have continuous and systematic contacts in Texas as alleged *Plaintiffs’ First Amended Petition*.

RESPONSE: Will supplement when discovery is complete.

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT OF
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER	§	
<i>Defendants.</i>	§	284th JUDICIAL DISTRICT

**PLAINTIFFS RESPONSE TO DEFENDANTS' FIRST REQUESTS FOR ADMISSION
EXCLUSIVELY REGARDING PLAINTIFFS' JURISDICTIONAL ALLEGATIONS**

To: Voltage Pictures, LLC and Nicolas Chartier, by and through their attorney of record, John W. Urquhart, Buche & Associates, P.C., 6363 Woodway, Suite 820, Houston, Texas 77057.

COMES NOW, Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA), and Truth Entertainment, LLC, Plaintiffs herein, and files their response to Defendants, Voltage Pictures, LLC and Nicholas Chartier's first requests for admission exclusively regarding plaintiffs' jurisdictional allegations.

Respectfully submitted,

Drucker | Hopkins LLP

/s/ Douglas R. Drucker

Douglas R. Drucker
Texas Bar No. 06136100
Kirby D. Hopkins
Texas Bar No. 24034488
21 Waterway Avenue
Suite 300
The Woodlands, Texas 77380
281.362.2863 (phone)

855.558.1745 (fax)
hopkins@druckerhopkins.com (email)
trials@druckerhopkins.com (email)

/s/ James T. McBride
James T. McBride
McBride Law
Texas Bar No. 00787988
2170 Buckthorne
Suite 400
The Woodlands, Texas 77380
281.787.4171
jmcbride@mcbridelawtx.com

CERTIFICATE OF SERVICE

I certify that pursuant to the Texas Rules of Civil Procedure, a true and correct copy of the foregoing was served by fax, e-service, or other electronic transmission on this 21st day of July, 2016.

/s/ Douglas R. Ducker
Douglas R. Ducker

John W. Urquhart
Buche & Associates, P.C.
6363 Woodway, Suite 820
Houston, Texas 77057

REQUEST FOR ADMISSION NO. 1: Admit that Defendants are residents of the State of California.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 2: Admit that Defendants are domiciled in the State of California.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 3: Admit that Defendants' principal place of business is located in Los Angeles, California.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 4: Admit that Defendants are not residents of the State of Texas.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 5: Admit that Defendants are not domiciled in the State of Texas.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 6: Admit that Defendants do not have a principal place of business in the State of Texas.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 7: Admit that Defendants do not have an office in the State of Texas.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 8: Admit that Defendants do not have an address in the State of Texas.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 9: Admit that Defendants do not have a phone number in the State of Texas.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 10: Admit that Defendants do not possess any real property in the State of Texas.

RESPONSE: Can't admit or deny after reasonable inquiry and information, at this time in the discovery process, known by the Plaintiff's is insufficient for it to admit or deny.

REQUEST FOR ADMISSION NO. 11: Admit that Defendants do not have an agent for service of process in the State of Texas.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 12: Admit that Defendants do not advertise in the State of Texas.

RESPONSE: Denied

REQUEST FOR ADMISSION NO. 13: Admit that Defendant Voltage is organized and operated under the laws of the State of California.

RESPONSE: Objection, calls for a legal conclusion.

REQUEST FOR ADMISSION NO. 14: Admit that Defendant Voltage's website is not interactive.

RESPONSE: Denied

REQUEST FOR ADMISSION NO. 15: Admit that Defendant Voltage's website does not allow for the exchange of information.

RESPONSE: Denied

REQUEST FOR ADMISSION NO. 16: Admit that Plaintiffs and Defendants do not have a contract that explicitly states Texas law applies to any dispute between Plaintiffs and Defendants.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 17: Admit that the anti-piracy agreement between Plaintiffs and Defendants attached to Plaintiff's First Amended Petition does not explicitly state Texas law applies to a dispute between Plaintiff and Defendant.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 18: Admit that Defendants do not have a foreign distribution sales agreement with Dallas Buyer's Club, LLC (CA).

RESPONSE: Denied

REQUEST FOR ADMISSION NO. 19: Admit that Defendants do not have a foreign distribution agreement with Dallas Buyer's Club, LLC (TX).

RESPONSE: Denied

REQUEST FOR ADMISSION NO. 20: Admit that Defendants have not prosecuted any lawsuits on behalf of Plaintiffs.

RESPONSE: Denied

July 22, 2016

VIA E-MAIL PDF: jmcbride@mcbridelawtx.com; drucker@druckerhopkins.com

James T. McBride
McBride Law, P.C.
21 Waterway Avenue, Suite 300
The Woodlands, Texas 77380

Douglas R. Drucker
Drucker Hopkins, LLP
21 Waterway Avenue, Suite 300
The Woodlands, Texas 77380

RE: Plaintiffs' Defective Objections and Responses to Defendants' Discovery Requests Regarding Personal Jurisdiction; Cause No. 15-06-06049; Dallas Buyer's Club, LLC (TX), et al v. Voltage Pictures, LLC and Nicolas Chartier; In the 284th District Court of Montgomery County, Texas.

Dear James and Doug:

I am following up regarding your clients' defective objections and responses to Defendants' discovery requests. Please remove your defective objections and amend your defective responses. Specifically,

1. Please remove your defective objections to Defendants' Interrogatories Nos. 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, and 19.
2. Please amend your defective Answers to Defendants' Interrogatories Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.
3. Please remove your defective objections to Defendants' Requests for Production Nos. 6 and 11.
4. Please amend your defective Responses to Defendants' Requests for Production Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 22.
5. Please remove your defective objections to Defendants' Requests for Admissions Nos. 1, 2, 3, 4, 5, 6, 7, and 13.
6. Please amend your defective Responses to Defendants' Requests for Admissions Nos. 1, 2, 3, 4, 5, 6, 7, 10, and 13.

San Diego Office

875 Prospect, Suite 305
La Jolla, California 92037
Tel: (858) 459-9111

Los Angeles Office

2029 Century Park East, STE 400N
Los Angeles, California 90067
Tel: (310) 593-4193

Houston Office

6363 Woodway, Suite 820
Houston, Texas 77057

EXHIBIT ~~16~~: (713) 589-2214

www.buchelaw.com

James McBride and Douglas Drucker

Friday, July 22 15, 2016

Page 2 of 2

As you already know, a responding party must have “a good faith factual and legal basis” for each objection “at the time the objection is made.” TEX. R. CIV. P. 193.2(c). The objection’s legal and factual basis also must be stated specifically. TEX. R. CIV. P. 193.2(a).

In interposing an objection, the responding party, under Texas Rule 193.2(a), must state the extent to which it is refusing to comply with the discovery request and comply with that part of the discovery request to which there is no objection. TEX. R. CIV. P. 193.2(a).

Additionally, some of your objections are not only defective but boilerplate. Valid objections obscured by unfounded objections are automatically waived unless the party shows good cause. TEX. R. CIV. P. 193.2(e).

Many of Plaintiffs’ Answers to Defendants’ Interrogatories, Responses to Requests for Production, and Responses to Requests for Admissions are, among other things, nonresponsive, boilerplate, and/or completely lack any response other than a defective and/or improper objection.

This is an attempt to resolve this unnecessary discovery dispute outside of the Court. Please remove the objections and amend your responses so that we may avoid an unnecessary hearing on a motion to compel. Please remove the objections and amend the responses by **5:00pm Friday July 29, 2016** or we will have no choice but to have an oral hearing on a motion to overrule the objections and compel the responses to discovery.

If you disagree with me then please call me to discuss so that we may avoid an unnecessary hearing and waste of judicial resources.

Sincerely,

BUCHÉ & ASSOCIATES, P.C.

/s/ John W. Urquhart

John W. Urquhart

Cc: John K. Buche and Michael D. Holtz

July 25, 2016

*VIA E-MAIL PDF: jmcbride@mcbridelawtx.com; drucker@druckerhopkins.com
VIA Facsimile: (855) 558-1745*

James T. McBride
McBride Law, P.C.
21 Waterway Avenue, Suite 300
The Woodlands, Texas 77380

Douglas R. Drucker
Drucker Hopkins, LLP
21 Waterway Avenue, Suite 300
The Woodlands, Texas 77380

**RE: Plaintiffs' Defective Objections and Responses to Defendants' Discovery
Requests Regarding Personal Jurisdiction; Cause No. 15-06-06049; Dallas
Buyer's Club, LLC (TX), et al v. Voltage Pictures, LLC and Nicolas
Chartier; In the 284th District Court of Montgomery County, Texas.**

Dear James and Doug:

I am following up regarding my letter I sent you via email on Friday July 22, 2016 regarding your clients' defective/improper objections and responses to Defendants' First Discovery Requests.

I want to make sure you received the letter because I did not receive a read receipt back from you. I received the delivery receipts from both drucker@druckerhopkins.com and jmcbride@mcbridelawtx.com. Please see delivery receipts attached hereto as Exhibit A.

This is an attempt to resolve this unnecessary discovery dispute outside of the Court. Please remove the objections and amend your responses so that we may avoid an unnecessary hearing on a motion to compel.

Please remove the objections and amend the responses by **5:00pm Friday July 29, 2016** or we will have no choice but to have an oral hearing on a motion to overrule the objections and compel the responses to discovery.

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www.buchelaw.com

James McBride and Douglas Drucker
Monday, July 25, 2016
Page 2 of 2

If you disagree with me then please call me to discuss so that we may avoid an unnecessary hearing and waste of judicial resources.

Sincerely,

BUCHE & ASSOCIATES, P.C.

/s/ John W. Urquhart

John W. Urquhart

Cc: John K. Buche and Michael D. Holtz

From: postmaster@buchelaw.com
To: drucker@druckerhopkins.com
Sent: Friday, July 22, 2016 5:02 PM
Subject: Relayed: Message relayed (drucker@druckerhopkins.com)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

drucker@druckerhopkins.com

Subject:

Exhibit A
Page 1 of 2

From: postmaster@buchelaw.com
To: jmcbride@mcbridelawtx.com
Sent: Friday, July 22, 2016 5:02 PM
Subject: Relayed: Message relayed (jmcbride@mcbridelawtx.com)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

jmcbride@mcbridelawtx.com

Subject:

Exhibit A
Page 2 of 2