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

15 CBS Broadcasting Inc.,
16 Plaintiff,
17 v.
18 American Broadcasting Companies Inc.,
19 et al.,
20 Defendants.

CASE NO. 2:12-CV-04073 GAF (JEMx)

**CBS'S EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND AN ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 65**

[Memorandum of Points and Authorities;
Declaration of Scott A. Edelman filed
concurrently herewith; [Proposed] Order
lodged concurrently herewith]

Hearing:

Date: None set
Time: None set
Place: Courtroom No. 740
Judge: Hon. Gary A. Feess

26
27 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

28 PLEASE TAKE NOTICE THAT on June 7, 2012 or as soon thereafter as may

1 be heard before the Honorable Judge Feess, located at the Edward R. Roybal Federal
2 Building & U.S. Courthouse, 255 E. Temple St., Los Angeles, California 90012, Room
3 740, Plaintiff CBS Broadcasting Inc. (“CBS”), by and through its counsel of record
4 and pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, will and hereby
5 does move the Court for a Temporary Restraining Order (“TRO”) directing Defendants
6 to immediately (1) return all confidential, proprietary materials related to *Big Brother*
7 that are in their possession; (2) cease production of, and refrain from broadcasting, the
8 show *Glass House* until the trial of this matter in order to prevent (a) the continued in-
9 fringement of CBS’s exclusive rights under the Copyright Act to reproduce, prepare
10 derivative works of, distribute, perform, and display copies of *Big Brother* and (b) the
11 ongoing misappropriation of CBS’s trade secrets; and (3) cease further destroying doc-
12 uments that are relevant to the parties’ claims or defenses or likely to lead to the dis-
13 covery of admissible evidence. If the Court is not willing to order Defendants to cease
14 production of *Glass House* at this time, CBS respectfully requests that, at a minimum,
15 the Court order Defendants to produce the first taped episode of *Glass House* by June
16 15, 2012 to allow CBS’s counsel to evaluate its contents, and to allow the parties to
17 address it in any further briefing regarding CBS’s request for a preliminary injunction.

18 CBS further requests that the Court issue an Order to Show Cause (“OSC”)
19 Why a Preliminary Injunction Should Not Issue directing Defendants to immediately
20 (1) return all confidential, proprietary materials related to *Big Brother* in their posses-
21 sion; (2) cease production of, and refrain from broadcasting, the show *Glass House* in
22 order to prevent (a) the continued infringement of CBS’s exclusive rights under the
23 Copyright Act to reproduce, prepare derivative works of, distribute, perform, and dis-
24 play copies of *Big Brother* and (b) the ongoing misappropriation of CBS’s trade secrets
25 until the trial of this matter; and (3) cease further destroying documents that are rele-
26 vant to the parties’ claims or defenses or likely to lead to the discovery of admissible
27 evidence. In light of the June 18 broadcast of *Glass House*, CBS respectfully requests
28 that the Court set a hearing and briefing schedule on CBS’s requested OSC and prelim-

1 inary injunction, with Defendants' opposition to be filed by 12:00 P.M. on June 11,
2 2012, CBS's reply to be filed by 12:00 P.M. on June 12, 2012, and a hearing to be
3 scheduled no later than June 15, 2012.

4 Local Rule 7-3 of the United States District Court for the Central District of Cal-
5 ifornia does not require that a party conduct a conference of counsel prior to filing a
6 motion for a preliminary injunction. However, CBS notified Defendants of its intent to
7 seek a TRO in advance of this filing.

8 This motion is based on this Notice and Ex Parte Application; the accompanying
9 Memorandum of Points and Authorities; the attached Declarations of Scott A. Edel-
10 man, Jeff Rovin, Don Wollman, and Jennifer Bresnan, and any exhibits attached there-
11 to; any supplemental memoranda that may be filed by the parties; all pleadings, rec-
12 ords, and papers filed in this action; the argument of counsel; and further evidence as
13 the Court may consider at or before the hearing of this Application or the contemplated
14 hearing regarding the OSC and preliminary injunction requested herein.

15 Dated: June 7, 2012

16 GIBSON, DUNN & CRUTCHER LLP

17
18 By: /s/ Scott A. Edelman
19 Scott A. Edelman

20 Attorneys for CBS Broadcasting Inc.
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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 CBS Broadcasting Inc.,
16 Plaintiff,
17 v.
18 American Broadcasting Companies Inc.,
19 et al.,
20 Defendants.

CASE NO. 2:12-CV-04073 GAF (JEMx)

**CBS'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF ITS EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER AND AN ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE
PURSUANT TO FEDERAL RULE OF
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[Ex Parte Application; Declaration of
Scott A. Edelman; and [Proposed] Order
filed concurrently]

Hearing:

Date: None set
Time: None set
Place: Courtroom No. 740
Judge: Hon. Gary A. Feess

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I. INTRODUCTION

1
2 This case is like none that has come before it. A copycat show (*Glass House*)
3 has poached more than half of its staff from an established competitor (*Big Brother*), a
4 number one show that CBS has been broadcasting for 13 seasons. *Glass House*'s
5 Show Runner¹ (who himself used to work in a senior position on *Big Brother*) has ad-
6 mitted under oath that (a) for months, he consulted *Big Brother*'s confidential materials
7 in designing key aspects of the upstart show; (b) he told his *Glass House* staffer to
8 "type up" at least 50 pages' worth of *Big Brother*'s confidential materials and trade se-
9 crets, which then were plagiarized into *Glass House*'s internal materials; (c) while de-
10 veloping the upstart show, he watched old episodes of *Big Brother* to remind himself
11 how *Big Brother*'s stories were told; and (d) after the lawsuit began, he destroyed doc-
12 uments pertaining to the suit. Eleven days from now, on June 18, *Glass House* will air.
13 And by all accounts—even its Show Runner's—it will replicate virtually every ele-
14 ment from *Big Brother*.

15 The similarities between *Glass House* and *Big Brother* are not coincidence.
16 They are voluminous and constitute outright theft.

17 As CBS's expert has explained, *Glass House* "has replicated the expression cre-
18 ated by *Big Brother* from top to bottom," and it is clear that "the producers of *Glass*
19 *House* . . . [intended] to replicate as closely as possible the exact expression that was
20 created for, and has come to define, *Big Brother*." (Ex. B at 26.) Until now, *Big*
21 *Brother* was the only reality television program set entirely in a house on a sound
22 stage; where its 12-14 contestants are cut off from the outside world; where the con-
23 testants compete with each other to avoid being kicked off the program; where approx-
24 imately 50 cameras and multiple microphones monitor and record every second of
25 their lives, around the clock; where live internet streams make these contestants avail-

26
27
28 ¹ A Show Runner is the person responsible for the day-to-day operation of a televi-
sion series, commonly credited as an executive producer.

1 able to the viewing public even when the program is not airing on television; where in-
2 stead of waiting for the competition to run its entire course before airing, each week a
3 new show or shows airs without anyone knowing what the ultimate “result” will be;
4 and where the last person remaining is awarded a six-figure cash prize.

5 It may be rare that a court enjoins a television show from proceeding, *cf.*
6 *Moonrunners Ltd. P’Ship v. Time Warner Inc.*, No. CV 05-1362, 2005 U.S. Dist. LEX-
7 IS 41244 (June 17, 2007) (enjoining film as an unauthorized derivative work), but if
8 ever there were a time to do so, this is it. No previous case features what this one
9 does—a strategic mass poaching of employees by a competitor and admitted copying
10 of the competitor’s internal documents with destruction of the defendants’ documents,
11 all as a prelude to two virtually identical shows. *Cf. TMTV Corp. v. Mass Productions,*
12 *Inc.*, 645 F.3d 464 (1st Cir. 2011) (television show infringed where similarities were
13 “striking” and defendant had access to original scripts and recruited actors from origi-
14 nal show). ABC’s new show *Glass House* is simply stealing from *Big Brother*. With
15 every passing day, ABC is profiting from *Big Brother*’s hard work by misappropriating
16 (and permanently devaluing) the trade secrets that *Big Brother* internally developed
17 over its 13-season run. And while side-by-side comparison of *Big Brother* and *Glass*
18 *House* would no doubt be ideal for evaluating a copyright infringement claim, Defend-
19 ants claim that the first *Glass House* episode will not be substantially completed until
20 two days before it airs, on June 18, and by then it would be too late for CBS to seek a
21 TRO. But after Defendant Kenny Rosen’s deposition, it is now clear that Defendants’
22 misappropriation is ongoing, and that *Glass House* is therefore on a “collision course”
23 to knockoff *Big Brother*’s copyrighted work and dilute the franchise irreparably. *See*
24 *McGraw-Hill Co. v. Ingenium Techs. Corp.*, 375 F. Supp. 2d, 252, 257 (S.D.N.Y.
25 2005) (claim ripe where “it is abundantly clear that the two parties are on a collision
26 course that has already framed the essential disputes in plain terms”). In light of this
27 irreparable harm, injunctive relief is plainly warranted. *See Alliant Ins. Servs., Inc. v.*
28 *Gaddy*, 159 Cal.App.4th 1292 (2008); *02 Micro Int’l Ltd. v. Monolithic Power Sys.*,

1 *Inc.*, 399 F. Supp. 2d 1064, 1070 (N.D. Cal. 2005).

2 CBS therefore requests that this Court issue a TRO and an OSC why a prelimi-
3 nary injunction should not issue directing Defendants to immediately (1) return all
4 confidential, proprietary *Big Brother* related materials in their possession; (2) cease
5 production of, and refrain from broadcasting, the show *Glass House* in order to prevent
6 (a) the continued infringement of CBS’s exclusive rights under the Copyright Act to
7 reproduce, prepare derivative works of, distribute, perform, and display copies of *Big*
8 *Brother* and (b) the ongoing misappropriation of CBS’s trade secrets until the trial of
9 this matter; and (3) cease further destroying documents that are relevant to the parties’
10 claims or defenses or likely to lead to the discovery of admissible evidence.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. CBS’s Hit Series *Big Brother* and ABC’s New Show *Glass House*, a**
13 **“Knock[] Off” of *Big Brother***

14 **Big Brother**: *Big Brother* is an enormously successful reality television show
15 that CBS has been broadcasting as the exclusive U.S. licensee since 2000. (Ex. E,
16 Decl. of Jennifer Bresnan (“Bresnan Decl.”) ¶ 7.) The *Big Brother* franchise involves
17 around 14 contestants living together in a large house, isolated from the outside world,
18 where they are filmed continuously by approximately 50 cameras throughout the
19 house. The contestants engage in tasks and competitions, and are periodically “evict-
20 ed” from the house through voting by their co-contestants or, in the first season, by
21 viewers. (Ex. B at 7.)²

22 The premise behind *Big Brother* is “unlike anything else on television”: The
23 show allows outside viewers to watch the unscripted interaction of its cast members, to
24 witness how contestants interact, strategize, and ally with one another in pressure-filled
25 competitions and evictions, all while these contestants are physically sealed off from
26 the outside world and unhindered in how they act towards each other, hence the name

27 _____
28 ² All exhibits are to the accompanying Declaration of Scott A. Edelman.

1 “*Big Brother*.” (Ex. B at 8.) What is unique about *Big Brother* is the combination of
2 these elements; while other reality television shows might have cast members live in a
3 house (e.g., *Real World*), or might have cast members competing in a competition who
4 happen to live together in a house (e.g., *Top Chef*; *American Idol*), or might simply
5 have cast members competing with one another (e.g., *Dancing with the Stars*), *Big*
6 *Brother* is fundamentally a “house reality” show where the competition and the drama
7 occur in the house itself. (Ex. B at 7-8.)

8 A critical element of *Big Brother*’s unique take on realism and privacy in televi-
9 sion is the format it is broadcast in: Unlike other reality shows (e.g., *Hell’s Kitchen*),
10 whose entire seasons are recorded and then later edited for broadcast once the outcome
11 is known, *Big Brother* records, edits, and broadcasts episodes *during* the competi-
12 tion—a technique that provides a level of heightened suspense and reality that other
13 shows cannot match. (Bresnan Decl. ¶ 8; Ex. D, Decl. of Don Wollman (“Wollman
14 Decl.”) ¶ 9.) Moreover, *Big Brother* breaks down the wall between viewer and con-
15 testant through such techniques as the use of “diary room” confessions (where contest-
16 ants can explain their thought processes directly to the viewer) and the use of minimal
17 narration where unscripted, entirely improvised interactions between contestants can
18 be presented unaltered, without external commentary. (Ex. B at 10.) *Big Brother* also
19 typically broadcasts daily updates in the evening (on Showtime), and viewers also can
20 watch an around-the-clock feed on the web. The “story” *Big Brother* tells is therefore
21 developed as it broadcasts, rather than at the end of the season once the winner of the
22 competition is known, which is fundamentally different from all other reality television
23 series which are, or have been, on the air. (Ex. B at 2-3.)

24 **Glass House**: *Glass House* is a reality show developed by ABC, which will
25 begin streaming live to the internet on June 12, 2012, and will broadcast on June 18,
26 2012. (Ex. A at 153:2-4, 15-16.) Although Defendants make much ado about the fact
27 that the show has not yet aired, *Glass House* is *far* more than just a “concept” or a
28 “treatment.” *Glass House* exists right now in many fixed forms, including in episode

1 outlines (Ex. F), series outlines (Ex. G), diagrams of its format (Ex. H), photos of the
2 competition space (Ex. I), detailed publicity materials (Ex. J), and the descriptions of
3 its show-runner (Ex. A).

4 It is clear from ABC's public statements and the limited discovery CBS has re-
5 ceived that *Glass House* is a complete knockoff of *Big Brother*. That is no surprise.
6 When CBS sued, CBS underestimated that *Glass House* was being produced by 19
7 former *Big Brother* employees (Compl. ¶ 4) — [REDACTED]

8 [REDACTED] The industry press noted the striking
9 similarities between *Glass House* and *Big Brother*, with one source calling *Glass*
10 *House* a "*Big Brother*-like reality series" and another quipping, "Let's give them credit
11 for using a different name. Hey, they could have called it *Bigger Brother*."³

12 If there were any doubts that *Glass House* is a calculated attempt by a rival net-
13 work to steal from *Big Brother*, the description of *Glass House*'s own Executive Pro-
14 ducer, Kenny Rosen, puts them to rest. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 _____
25 ³ <http://www.cinemablend.com/television/Look-Glass-House-ABC-Upcoming-Reality-Show-43186.html>; <http://www.hollywood.com/news/Is-ABCs-The-Glass-House-a-Big-Brother-Ripoff/26360452>.
26

27 ⁴ Contrary to Defendants' prior papers (*see* Dkt. 24 at 4), Rosen testified that *Hell's Kitchen*, a show on which he worked, does not employ the technique of broadcast-
28 ing shows while the competition is ongoing (Ex. A at 23-24).

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[REDACTED]

Perhaps more revealing is what Rosen strained to identify as the *differences* between the two shows, which are plainly trivial. [REDACTED]

[REDACTED]

[REDACTED] In addition, while *Big Brother* uses a “narrator” who relays the rules for the challenges “in a simplified form for the viewers,” Rosen testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵

Defendants have continually downplayed these similarities by asserting that *Glass House* differs from *Big Brother* because it incorporates greater “viewer control.” But Rosen’s testimony makes clear that this is a fictional, post hoc distinction. Rosen first testified that the “concept” of *Glass House* was based on the book *The Hunger Games* and that “the main concept and the driving force behind the creative” was “to

⁵ [REDACTED]

1 come up with a way that the viewers had complete control over the game.” (Ex. A at
2 27:16-21, 39:20-24.) When pressed, however, to explain how *Glass House* was sup-
3 posedly based on *The Hunger Games* (a dystopian teenage fiction series not involving
4 any public voting or a house or periodic evictions, but just teenagers chosen by lot to
5 compete in a contest where they must kill each other), [REDACTED]

6 [REDACTED]
7 [REDACTED] So where does Defendants’ supposed
8 “viewer control” concept really come from? As Rosen himself acknowledged, it was
9 based on Season 8 of *Big Brother*— [REDACTED]⁶
10 Rosen’s testimony thus reveals that *Glass House* reflects the same creative expression
11 that he and his cohorts developed at *Big Brother*.

12 **B. *Big Brother’s* and *Glass House’s* Production**

13 **1. *Big Brother* Develops Proprietary Production Techniques for Its**
14 **Unique, Fast Turnaround Show Format**

15 Part of *Big Brother’s* unique success—and key to its heightened suspense and
16 realistic feel—is its broadcast schedule, which involves recording, editing, and broad-
17 casting episodes *during* the competition, within 48 hours of the events actually happen-
18 ing. This is a schedule that no one else in television has duplicated; to pull it off, *Big*
19 *Brother* has had to develop, over the course of 13 seasons, filming, editing, and pro-
20 duction procedures that enable *Big Brother* to contemporaneously record stories using
21 some 50 cameras and quickly digest and edit the show for a fast turnaround. (Woll-
22 man Decl. ¶ 9; Bresnan Decl. ¶ 8.)

23 Some of the key features enabling such a fast turnaround are the following: [REDACTED]
24 [REDACTED]

25
26
27 ⁶ That season, *Big Brother* viewers were given direct control over a contestant called
28 “America’s Player,” where, through online votes, viewers determined everything
from which contestant America’s Player should share his feelings with, which con-
testant he should kiss, and whom he should vote for eviction. (Ex. B at 14-15.)

1 [REDACTED]
2 [REDACTED] (Bresnan Decl. ¶ 16.) [REDACTED]

3 [REDACTED]
4 [REDACTED]

5 [REDACTED] (Wollman Decl. ¶ 11.) [REDACTED]
6 [REDACTED]

7 [REDACTED]
8 [REDACTED] (Bresnan Decl. ¶
9 15.) [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED] (Bresnan Decl. ¶ 16; Wollman Decl. ¶¶ 10-12.)

16 So elaborate are *Big Brother*'s internal workings that the show has two confi-
17 dential and proprietary internal training manuals—a “Producer’s Binder” or “Story
18 Producers Handbook” and the “HouseGuest Manual”—spanning over 600 pages. The
19 production manuals give a full account of all the behind-the-scenes processes for pro-
20 ducing *Big Brother* (for example, how many production teams there need to be and
21 when their shifts should begin and end), and the HouseGuest manual covers an array of
22 topics [REDACTED]

23 [REDACTED] (Ex. C at 13, 47.) Big Brother
24 staffers—including all of the Individual Defendants here—must sign nondisclosure
25 agreements, committing them to never “publish, reveal, disseminate, disclose, or cause
26 to be published, revealed, disseminated or disclosed . . . any Confidential Information.”
27 (Wollman Decl. ¶ 17.)

28 For 13 seasons, none of CBS’s competitors have been able to replicate the con-

1 confidential, proprietary processes of CBS’s trade secrets (*see* Appendix A)—that is, until
2 ABC hired almost 30 former *Big Brother* staff to divulge those secrets.

3 **2. Glass House Poaches Key Big Brother Staff to Use Big Brother’s Same**
4 **Production Techniques, and Rosen Authorizes the Copying of Big**
5 **Brother’s Confidential Materials**

6 Starting this year,⁷ *Glass House* conducted what can only be described as a sys-
7 tematic mass poaching targeting approximately 30 then-current and former *Big Broth-*
8 *er* staffers. (Ex. A at 257-60.) While production personnel change shows from time to
9 time, the circumstances here were anything but routine. The people targeted by *Glass*
10 *House* included those critical to running every aspect of *Big Brother*’s proprietary pro-
11 cesses—namely, *Big Brother*’s Lead Switchers and a Lead Shader, along with other
12 lead members of *Big Brother*’s editing and story-production teams and those responsi-
13 ble for creating *Big Brother*’s challenges and competitions. (Wollman Decl. ¶¶ 13-14.)

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] It is highly unusual (to

18 say the least) for a competitor to hire such a large number of people to get them to

19 leave a number-one show for a startup competing show, which airs during the same

20 time of year (summer). (Wollman Decl. ¶ 8.) [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] (See Ex. A

24 _____

25 ⁷ According to Rosen, *Glass House* has been in development at ABC for approxi-
26 mately two years (Ex. A at 31-32), a time-frame that appears to coincide with when
27 Defendant Corie Henson, a former *Big Brother* Supervising Producer left CBS to
28 join ABC as its Vice President of Alternative Programming. It also appears to co-
incide with when Henson and another ABC senior executive, Tim Bock, asked for
and received a tour of the *Big Brother* set. (Wollman Decl. ¶ 20.)

1 at 283-85.)

2 Rosen also admitted, in the only deposition that CBS has been allowed to take,
3 that his targeting of *Big Brother* personnel was but one element of trying to steal from
4 *Big Brother*. He also confessed to the following:

- 5 • **Telling Others to Outright Copy *Big Brother*'s Manuals:** Before this suit began,
6 Rosen showed the *Big Brother* Houseguest Manual to Tom Friedman (a production
7 coordinator who since quit *Glass House* after this lawsuit began), and asked Fried-
8 man to "type it up" and send it to one of ABC's in-house counsel. (Ex. A at 94:17-
9 19, 98.) Rosen explained that he wanted the manual typed up so he could email it
10 around, but in his deposition was instructed by counsel for ABC not to answer
11 questions as to why he wanted to do so. (*Id.* at 95-105.)
- 12 • **Consulting *Big Brother*'s Master Control Room Schedule:** In March, 2012,
13 Rosen showed *Big Brother*'s Master Control Room schedule to one of the produc-
14 ers of *Glass House*, and he consulted that schedule himself "to figure out how many
15 story positions I would need to hi[re]." (*Id.* at 90:15-19, 94.)
- 16 • **Watching Old *Big Brother* Episodes for Inspiration:** In preparation for *Glass*
17 *House*'s filming, Rosen admitted watching multiple episodes of *Big Brother* over a
18 two-day period in March. When asked why he did so, he said it was to remind
19 himself of how the *Big Brother* story was told and sarcastically remarked that he
20 wanted to "remind himself what a great" producer he was. (*Id.* at 124-25, 126:1-2.)

21 **C. Procedural History, CBS's Limited Discovery, and Defendant Rosen's De-**
22 **struction of Documents**

23 On May 4, 2012, CBS sent letters to ABC, The Walt Disney Company (ABC's
24 parent), and the three Individual Defendants, advising each that their development and
25 production of *Glass House* infringed CBS's copyright and misappropriated CBS's
26 trade secrets, and demanding that Defendants retain documents relevant to the antici-
27 pated litigation. (Edelman Decl. ¶ 2.) CBS received no response until after it filed its
28 May 10, 2012 Complaint. (*Id.*) CBS's Complaint asserts claims for (1) copyright in-
fringement; (2) trade secret misappropriation; (3) unfair and unlawful competition; (4)
breach of contract; (5) breach of fiduciary duty; (6) inducing breach of contract; (7) in-
ducing breach of fiduciary duty; (8) conversion; (9) conspiracy; and (10) aiding and
abetting. (Compl. ¶¶ 73-161.)

Since filing the Complaint, CBS has been allowed to take Rosen's deposition
and has obtained limited discovery of documents reflecting *Glass House*'s format—

1 documents that have been cherry-picked by Defendants and purport to reveal *Glass*
2 *House*'s overall format (without disclosing any previous versions or communications).

3 Meanwhile, Rosen admitted that he deleted critical emails *after* Defendants were
4 required to institute a litigation hold. (Ex. A at 34, 48-49.) When asked whether he
5 understood that CBS had requested that emails relating to *Glass House* be retained, he
6 testified, "no, I did not understand that." (*Id.* at 49:6.) Since Mr. Rosen testified to
7 not knowing how long his emails are retained in a temporary deleted emails folder (*id.*
8 at 84-85), there may be an over-one-month-long period where critical emails could
9 have been destroyed (going back to when Defendants were asked to cease and desist).

10 On May 22, 2012, Defendants suggested they could be in wrongful possession
11 of *Big Brother*'s confidential manuals. Despite repeated requests for return of the ma-
12 terial, Defendants did not return them until June 1, 11 days after CBS's demand.

13 III. ARGUMENT

14 "A plaintiff seeking a preliminary injunction must establish that he is likely to
15 succeed on the merits, that he is likely to suffer irreparable harm in the absence of pre-
16 liminary relief, that the balance of equities tips in his favor, and that an injunction is in
17 the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
18 *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040, 1042 (C.D. Cal. 2011)
19 ("The standards for issuing a [TRO] and a preliminary injunction are 'substantially
20 identical.'"). Even if the plaintiff can only show that there are "serious questions" as
21 to the merits of its claims, a preliminary injunction should still issue if "the balance of
22 hardships [] tips sharply" in plaintiff's favor. *Alliance for the Wild Rockies v. Cottrell*,
23 632 F.3d 1127, 1134-35 (9th Cir. 2011). These standards are plainly met here.

24 A. CBS Will Likely Succeed On The Merits Of Its Copyright Claim.

25 CBS is likely to succeed in its copyright claim, because it can establish both key
26 elements required to show infringement: (1) ownership of a valid copyright, and (2)
27 copying of constituent elements of the work that are original." *Feist Publ'ns, Inc. v.*
28 *Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). Here, ownership is not contested

1 (CBS is the exclusive U.S. licensee of all copyright rights in the show), and copying
2 will be established because CBS can show (a) that Defendants had access to all aspects
3 of CBS's copyrighted work and (b) that the works are substantially similar. *Three*
4 *Boys Music Corp. v. Bolton*, 212 F.3d 477, 481 (9th Cir. 2000). The Copyright Act
5 expressly allows an injunction "on such terms as [the court] may deem reasonable to
6 prevent or restrain infringement of a copyright," 17 U.S.C. § 502(a)-(b), and, as ex-
7 plained below, an injunction is warranted here.

8 **1. Defendants Had Obvious Access to, and Copied from, *Big Brother*.**

9 There can be no doubt that the element of access is met here. [REDACTED]

10 [REDACTED] (Ex. A at 257-60), including crit-
11 ical members of *Big Brother*'s staff (e.g., the Lead Shaders and Switchers) who are
12 now staffed in critical positions on *Glass House* like Executive Producer. Moreover,
13 Rosen confessed that he reviewed several *Big Brother* episodes while developing
14 *Glass House*, and indeed, three of the four people in initial creative meetings for *Glass*
15 *House* previously managed creative expression on *Big Brother*. (*Id.* at 58-59.)

16 "Proof of access is" is also "supported by evidence of [the defendants'] *intent to*
17 *copy*," *Lisa Frank, Inc. v. Impact Intern., Inc.*, 799 F. Supp. 980, 999 (D. Ariz. 1992)
18 (emphasis added), and here, such evidence is ample. (*See* Ex. B at 26 ("[*Glass House*]
19 is essentially a copy, as the exchanges from Mr. Rosen's deposition corroborate. This
20 similarity extends not just to the general physical conception and narrative but to the
21 conduct of the production crew themselves.") Not only did *Glass House* engage in a
22 mass hiring of former *Big Brother* staff, it did so with less than six months to go before
23 the show aired, suggesting that they *needed Big Brother* personnel to be able to pull
24 their show off at all. That is only underscored by Rosen's confession that he instructed
25 a *Glass House* employee (who has since quit the show after the filing of this lawsuit)
26 to "type up" *Big Brother*'s HouseGuest Manual—a revelation that is itself "substantial
27 evidence of *direct* intentional copying [which is] sufficient to carry[] [CBS's] burden"
28 to show copying. *Original Appalachian Artworks, Inc. v. Topps Chewing Gum, Inc.*,

1 642 F. Supp. 1031, 1033 (N.D. Ga. 1986) (emphasis added); *see also, e.g., Meredith*
2 *Corp. v. Harper & Row, Publishers, Inc.*, 378 F.Supp. 686, 691 (S.D.N.Y. 1974)
3 (granting a preliminary injunction, in part because the plaintiff made the “clearest
4 showing” of both “intent to copy” and “extensive copying”). A comparison shows that
5 the *Glass House* instruction sheet is undoubtedly based on the *Big Brother* Manual:



26 **2. *Glass House* and *Big Brother* Are Substantially Similar**

27 The unprecedented poaching of about 30 members of *Big Brother*'s production
28 team goes far in making CBS's infringement case here; where such “a high degree of

1 access is shown, [courts] require a lower standard of proof of substantial similari-
2 ty.” *Swirsky v. Carey*, 376 F.3d 841, 844 (9th Cir. 2004); *see also Metcalf v. Bochco*,
3 294 F.3d 1069, 1074 (9th Cir. 2002) (plaintiffs’ “case is strengthened considerably by
4 [defendant]’s concession of access to their works”).

5 The key “articulable similarities” between *Glass House* and *Big Brother* are the
6 “plot, themes, dialogue, mood, setting, pace, characters, and sequence of events”
7 *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). In fact, *Glass*
8 *House* has copied nearly every feature of *Big Brother*’s unique expression in all these
9 areas. (See Ex. B at 23-25 (comparing these areas).) Both shows are reality (unscript-
10 ed) television competitions in which approximately a dozen individuals live in a large
11 studio-bound “house,” physically cut off from the outside world but visible to it. In
12 each show: (1) the occupants are monitored around the clock by multiple cameras and
13 microphones; (2) the occupants compete at challenges—often forming strategic alli-
14 ances—that earn them privileges or sanctions (e.g., eviction votes); (3) the narratives
15 are an unfolding dramatic story; (4) contestants can be temporarily “benched” or ex-
16 pelled from the house; (5) the competitors vote each other off the show (in *Big Broth-*
17 *er*, the contestants have the final say, although the audience previously did in Season
18 One; [REDACTED]
19 [REDACTED]); (6) the last contestant remaining in each show wins
20 a six-figure prize; and (7) viewer input online and via text message impacts each
21 show’s unpredictable, constantly evolving narrative. As CBS’s expert has explained,
22 “[t]his expression did not exist before *Big Brother* and was not replicated in toto until
23 *Glass House*.” (Ex. B at 2.) Indeed, if *Glass House* and *Big Brother* were not substan-
24 tially similar, Rosen would have no need for his farfetched claim that *Glass House* is
25 derived from the teenage novel *The Hunger Games*, a post-apocalyptic fictional series
26 where the contestants kill each other—[REDACTED]
27 [REDACTED]
28 [REDACTED]

And given the substantial number of extrinsic similar-

1 ities, CBS will prevail in showing that the two works are “intrinsic[ally] similar” shar-
2 ing the same “total concept and feel.” *Litchfield v. Spielberg*, 736 F.2d 1352, 1357
3 (9th Cir. 1984); see Ex. B at 25 (“any reasonable audience will find the concept and
4 feel of [*Big Brother* and *Glass House*] to be substantially similar”).

5 Regardless whether the individual elements of *Big Brother* are protectable ex-
6 pression or not, they are indisputably protected if they are “selected, coordinated, or
7 arranged . . . in an original way.” *Feist Pub’lns, Inc.*, 499 U.S. at 362 (emphasis add-
8 ed); see also *Metcalf*, 294 F.3d at 1074; *Barris/Fraser Enters. v. Goodson-Todman En-*
9 *ters., Ltd.*, No. 86 Civ. 5037(EW), 1988 WL 3013, at *5 (S.D.N.Y. Jan. 4, 1988)
10 (“[E]ven though a television game show is made up entirely of stock devices, an origi-
11 nal selection, organization, and presentation of such devices can nevertheless be pro-
12 tected . . .”). Here, in addition to copying *all* of the elements above, *Glass House* in-
13 disputably rips off the total “concept and feel” of the work by purloining the very
14 premise behind *Big Brother*: that there is something distinct about a “house reality”
15 show that seals off its cast members from the outside world and captures every un-
16 scripted interaction of its cast members, including how they interact, strategize, and al-
17 ly with one another in pressure-filled situations (competitions and evictions), where the
18 competition happens in the house itself—and where viewers get to watch it with mini-
19 mal alteration or narration. Moreover, *Big Brother*’s *method* of story-telling—where
20 the action occurs virtually in real time, unlike other reality shows where an entire sea-
21 son is filmed before the show airs—is itself a form of protectable expression, particu-
22 larly as it is specifically designed to enhance the voyeuristic feel of *Big Brother*.

23 In a closely analogous case, *TMTV Corp., v. Mass Productions, Inc.*, 645 F.3d
24 464 (1st Cir. 2011) (Boudin, J., joined by Souter, J., sitting by designation, and Selya,
25 J.), the defendant began as the lead actor on the plaintiffs’ sitcom, but then joined a ri-
26 val production company, starting a new, similar show. The First Circuit held that the
27 defendant’s show was an infringing, unauthorized derivative work; copying was “not
28 in doubt,” since the defendant “obviously had access to the original scripts and based

1 [the new show] upon them” and had brought with him a number of actors from the
2 original show. *Id.* at 470. The court also found the similarities between the shows
3 “striking,” as the key elements were “almost identical.” *Id.* at 471. And crucially, the
4 court explained that this “ensemble” could “be protected by copyright . . . even though
5 it may itself contain non-copyrightable elements.” *Id.* at 471 n.4.

6 The arguments Defendants have advanced to date against CBS’s copyright claim
7 are simply unpersuasive. First, while it may be true that some courts have failed to
8 find infringement of other reality shows, no previous case involved the same level of
9 similarity and copying as this one, including the hiring of former *Big Brother* employ-
10 ees and admitted copying of *Big Brother* materials. *Cf. id.* at 470 . In some of these
11 cases, the plaintiff’s work was only a concept or treatment for a reality show. *See Mi-*
12 *lano v. NBC Univ., Inc.*, 584 F.Supp.2d 1288 (C.D. Cal. 2008); *Bethea v. Burnett*, No.
13 CV04-7690, 2005 WL 1720631 (C.D. Cal. June 28, 2005).⁸ Here, by contrast, *Big*
14 *Brother* is a highly successful show on the air for thirteen seasons.

15 Second, infringement has occurred even though *Glass House* is not yet a final-
16 ized product. A defendant can infringe the right to prepare derivative works, even if
17 the allegedly infringing work is not yet fixed. *See Lewis Galoob Toys, Inc. v. Nintendo*
18 *of Am., Inc.*, 964 F.2d 965, 968 (9th Cir. 1992) (“A derivative work must be fixed to be
19 *protected* under the Act . . . but not to *infringe*.”). In any event, *Glass House* is already
20 fixed in various documents—like episode outlines, photographs, and other material—
21 only some of which has been produced to CBS. Thus, there is no need to wait for it to

22
23 ⁸ This case is nothing like *Milano*. The plaintiff there had a *treatment* for a reality
24 television show that the plaintiff claimed NBC had infringed. This Court held that
25 the plaintiff could not assert copyright protection over the treatment because it was
26 only an “idea,” not expression protected by the Copyright Act. *Id.* at 1291. Here,
27 by contrast, CBS is asserting protection over *Big Brother*, an actual show that has
28 been running for 13 seasons. And *Glass House* is already in production, ABC has
begun advertising the show, and it is set to air in a few short weeks. Moreover, *Mi-*
lano in fact acknowledged all of the foregoing legal standards—that a lower stand-
ard of proof is required where a high degree of access is shown, *id.* at 1294, and
that a compilation of unprotectable elements may gain protection through selection
and arrangement, *id.* *See also Metcalf*, 294 F.3d at 1074.

1 broadcast and irreparably harm CBS. *See McGraw-Hill*, 375 F. Supp. 2d at 257; Bres-
 2 nan Decl. ¶¶ 18-23.

3 Finally, although Defendants quibble that a handful of elements—such as a dif-
 4 ferent audience voting system—purportedly distinguish the two shows, these differ-
 5 ences are “inconsequentially cosmetic.” (Ex. B at 14.) Like the additional scenes and
 6 variations in character traits in *TMTV*, such “trivial modifications” are “not a defense”
 7 against infringement. 645 F.3d at 471. And Defendants’ invocation of greater “viewer
 8 control” is at best ironic because that device came from Season 8 of *Big Brother*, the
 9 last season Rosen produced—just more evidence that CBS is likely to succeed on its
 10 copyright claim.

11 **B. CBS Will Likely Succeed On The Merits Of Its Trade Secret Misappropria-**
 12 **tion Claim.**

13 Because Defendants have already conceded multiple acts of misappropriation,
 14 CBS easily meets the standard for an injunction here. California’s Uniform Trade
 15 Secret Act (“CUTSA”), Cal. Civ. Code § 3426 *et seq.*, expressly permits injunctive
 16 relief where “[a]ctual or threatened misappropriation” of a trade secret is established.
 17 *Id.* § 3426.2(a). Under the CUTSA, a plaintiff must show that (1) the plaintiff owned
 18 a trade secret and that (2) the defendant acquired, disclosed, or used the plaintiff’s
 19 trade secret through improper means. *Sargent Fletcher, Inc. v. Able Corp.*, 110
 20 Cal.App.4th 1658, 1665 (2003). CBS is likely to succeed on the merits of this claim.

21 **1. CBS’s Confidential Production Processes, Methods, Devices and**
 22 **Compilations Qualify As Trade Secrets.**

23 Under the CUTSA, a plaintiff must show (1) that the information for which
 24 trade secret protection is sought is “information, including a formula, pattern, compila-
 25 tion, program, device, method, technique, or process”; (2) that the information
 26 “[d]erives independent economic value, actual or potential, from not being generally
 27 known to the public or to other persons who can obtain economic value from its dis-
 28 closure or use”; and (3) that the information “[i]s the subject of efforts that are reason-

1 able under the circumstances to maintain its secrecy.” Cal. Civ. Code § 3426.1(d).

2 Each of these requirements is met here.

3 a. CBS has identified “process[es]”; “device[s], method[s], [or] tech-
4 nique[s]”; and/or “compilation[s]” (see Appendix A) that are eligible for trade secret
5 protection. For example, Numbers 2, 3, and 7-11 of CBS’s trade secret disclosure
6 describe confidential production “processes” related to [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 [REDACTED] This type of “technical
12 ‘know-how’ is the quintessential trade secret.” *Whyte v. Schlage Lock Co.*, 101
13 Cal.App.4th 1443, 1456 (2002).

14 Similarly, trade secret Numbers 4-6, 10, 12, and 13 describe the use of devices,
15 methods, and/or techniques unique to *Big Brother* and otherwise unknown in the in-
16 dustry—namely, [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] *See, e.g., Forro Precision, Inc. v. IBM Corp.*, 673 F.2d 1045, 1057 (9th Cir.
21 1982) (engineering drawings, blueprints, and technical specifications).

22 The *Big Brother* manuals (No. 1) themselves are protected “compilations” cat-
23 aloguing the vast logistical considerations concerning filming, editing, and producing
24 a reality television show that tapes around the clock and on *Big Brother*’s unique,
25 fast-paced schedule—all materials compiled based on 13 years of trial-and-error. *See*
26 *By-Buk Co. v. Printed Cellophane Tape Co.*, 163 Cal. App. 2d 157, 166 (Cal. Ct.
27 App. 1958). Similarly, the *Big Brother* production process as a whole (No. 14) is a
28 combination of the trade secrets described here and other processes that enables *Big*

1 *Brother*'s staff to create high-quality reality television content around the clock under
2 unprecedented time pressure and simultaneous viewing by the public. *Id.* And even
3 if none of the other trade secrets are eligible for protection under the CUTSA, the
4 compilations themselves still independently warrant trade secret protection. *See Vt.*
5 *Microsystems, Inc. v. Autodesk, Inc.*, 88 F.3d 142, 147 (2d Cir. 1996) (under Califor-
6 nia law, "combination of characteristics" where "each . . . is in the public domain" is
7 trade secret if "the unified process" affords "a competitive advantage"); *O2 Micro*
8 *Int'l v. Monolithic Power Sys.*, 420 F. Supp. 2d 1070, 1089 (N.D. Cal. 2006) (novel
9 combination of otherwise generally known devices constituted a trade secret).

10 **b.** *Big Brother*'s trade secrets "[d]erive independent economic val-
11 ue . . . from not being generally known." Cal. Civ. Code § 3426.1(d)(1). Here, *Big*
12 *Brother* has expended 13 years in production—an incalculable amount of time, mon-
13 ey, and labor in the development of its trade secrets—and the more difficult the in-
14 formation is to obtain, the more likely it is to constitute a trade secret. *See Morlife v.*
15 *Perry*, 56 Cal. App. 4th 1514, 1521-22 (1997). And *Big Brother*'s information un-
16 doubtedly carries independent economic value because "it provides an actual or po-
17 tential advantage over others who do not possess the information." *Religious Tech.*
18 *Ctr. v. Netcom On-Line Commc'ns Serv.*, 923 F. Supp. 1231, 1252-53 (N.D. Cal.
19 1995). For example, *Big Brother* Co-Executive Producer Don Wollman explains that
20 "[w]ithout knowing how *Big Brother*'s confidential processes work, anyone who
21 seeks to create a show with the same elements will face significant obstacles and will
22 have to expend a considerable amount of money." (Wollman Decl. ¶ 12.) Likewise,
23 CBS's Senior Vice President of Alternative Programming explains that "[w]ithout
24 such knowledge [of *Big Brother*'s trade secrets] one simply cannot be in production
25 24 hours a day and do a similar fast-turnaround house reality show." (Bresnan Decl.
26 ¶ 17.) It is therefore "readily apparent" that this information is economically valua-
27 ble to CBS and its competitors inasmuch as it "would save any [producer] a great
28 deal of time and would provide them with an efficient, polished, and proven" formula

1 for a unique reality TV series that would “short cut” years of development time and
 2 expense, thereby allowing ABC to compete for market share more cheaply. *Vt. Mi-*
 3 *crosystems*, 88 F.3d at 149 (internal quotation marks omitted); *see also Religious*
 4 *Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1090-91 (9th Cir. 1986) (“If an outsider
 5 would obtain a *valuable share of the market* by gaining certain information, then that
 6 information may be a trade secret if it is not known . . .”).⁹

7 c. CBS undertakes reasonable efforts to maintain the secrecy of these ma-
 8 terials. Cal. Civ. Code § 3426.1(d)(2). “Reasonable efforts” can include “requiring
 9 employees to sign confidentiality agreements.” *Netcom On-Line Comm’n Servs.*,
 10 923 F. Supp. at 1253. And here, everyone who works on *Big Brother* (including the
 11 Individual Defendants here) were required to sign non-disclosure agreements
 12 (“NDAs”) expressly prohibiting them from disclosing or exploiting CBS’s confiden-
 13 tial information, as a condition of working on the show. (Wollman Decl. ¶ 17.) The
 14 NDAs specifically bar employees from “publish[ing], reveal[ing], disseminat[ing],
 15 disclos[ing], or caus[ing] to be published, revealed, disseminated or disclosed . . . any
 16 Confidential Information.” (*Id.* ¶ 17) Moreover, CBS has vigilantly protected its
 17 trade secrets by not permitting or allowing any confidential or proprietary infor-
 18 mation to be accessed or used by anyone without a duty and obligation to CBS to
 19 maintain the secrecy thereof. (*Id.* ¶¶ 16-19.) *Cf. Courtesy Temp Serv., Inc. v. Leonel*
 20 *Camacho*, 222 Cal.App.3d 1278, 1288 (1990); *Components for Research, Inc. v. Iso-*
 21 *lation Prods., Inc.*, 241 Cal.App.2d 726, 729 (1966). In fact, the *Big Brother* set is
 22 accessible only to authorized personnel, subject to NDAs, by way of key-cards.

23
 24
 25 ⁹ That ABC could *theoretically* develop the information “by their own labor and in-
 26 genuity” does not destroy trade secret status. *By-Buk Co.*, 163 Cal. App. 2d at 166.
 27 Again, *Big Brother* has been broadcasting for 13 seasons, and as of yet, nobody has
 28 independently replicated the secret formula that makes the show indisputably ap-
 pealing to viewers. So long as the information “has not yet been ascertained by
 others in the industry” and gives the owner *some* commercial advantage, it is pro-
 tectable as a trade secret. *See, e.g., San Jose Constr. v. S.B.C.C., Inc.*, 155
 Cal.App.4th 1528, 1537-39 (2007).

1 (Wollman Decl. ¶ 16.)¹⁰

2 **2. Defendants Are Actively Misappropriating CBS's Trade Secrets, and**
 3 **Injunctive Relief is Warranted.**

4 Defendants' acquisition and disclosure of CBS's trade secrets clearly consti-
 5 tutes "misappropriation" as defined under the CUTSA. The trade secrets were ac-
 6 quired "by a person who knows or has reason to know that the trade secret was ac-
 7 quired by improper means," Cal. Civ. Code § 3426.1(b)(1), which is apparent both
 8 from the NDAs the Individual Defendants signed and from basic common sense. *See*
 9 *Am. Loan Corp. v. Cal. Commercial Corp.*, 211 Cal.App.2d 515, 521 (1964). And
 10 ABC, for that matter has "an independent obligation under the [CUTSA] to refrain
 11 from a tortious invasion of [the] plaintiff[s] proprietary rights," *PMC, Inc. v. Kadi-*
 12 *sha*, 78 Cal. App. 4th 1368, 1383 (2000), yet its deliberate hiring of almost 30 former
 13 key *Big Brother* staff undoubtedly evidences "induc[ing] a breach of a duty to main-
 14 tain secrecy" which ABC cannot profit from. Civ. Code, § 3426.1(a). *See also, e.g.,*
 15 *PMC, Inc.*, 78 Cal. App. 4th at 1384-85 (defendant may be held liable under CUTSA
 16 "based on the continued use of the misappropriated information with knowledge of
 17 the wrongdoing, either from the outset of the new venture, or upon receiving notice
 18 of the improper conduct").

19 In producing *Glass House* thus far, the Individual Defendants have undeniably
 20 "[d]isclos[ed] or use[d]" (*id.* § 3426.1(b)(2)) CBS's trade secrets inappropriately.
 21 Rosen has admitted (in what might be the tip of the iceberg) that (a) he consulted *Big*
 22 *Brother's* proprietary Master Control Room Schedule "to figure out how many story

23
 24 ¹⁰ Nor can any of these trade secrets be discovered or "reverse engineered" merely by
 25 watching *Big Brother* or by taking a one-time tour of the set. As Don Wollman ex-
 26 plained, "based on my 44 years in the entertainment industry . . . no one can deci-
 27 pher *Big Brother's* production processes from the observations they are able to
 28 make during a tour. Without an explanation . . . there is no way to tell what roles
 our employees are filling or details about the tasks they are performing." (Wollman
 Decl. ¶ 19.) These production trade secrets can be ascertained only by staff work-
 ing "behind the scenes" on *Big Brother*, and by reference to *Big Brother's* confi-
 dential manuals. (Wollman Decl. ¶¶ 15, 19.)

1 positions I would need to hi[re]” (Ex. A at 90:15-19, 94); and (b) he showed the *Big*
2 *Brother* Houseguest Manual to Tom Friedman, a production coordinator on *Glass*
3 *House* (who since quit after this lawsuit began), and asked Friedman to “type it
4 up”—*i.e.*, copy it—and send it to one of ABC’s in-house counsel (*id.* at 94:17-19,
5 98). And *Glass House*’s use of *Big Brother*’s materials is doubly apparent given the
6 *Glass House* instructional materials’ evident plagiarism of *Big Brother*’s HouseGuest
7 Manual. *See supra*, III.A.1. All of this is sufficient to establish misappropriation,
8 since “[e]mploying the confidential information in manufacturing, production, re-
9 search or development, [or] marketing goods that embody the trade secret . . . all
10 constitute use” which should be enjoined. *PMC, Inc.*, 78 Cal.App.4th at 1383 (citing
11 Rest.3d Unfair Comp. § 40 cmt. c). And even if this direct evidence of misappro-
12 priation were not enough, the wealth of indirect evidence here—Defendants’ conces-
13 sion that they had *Big Brother*’s manuals in their possession; the numerous media ac-
14 counts describing *Glass House* as a knockoff of *Big Brother*; the hiring of 30 strate-
15 gically selected *Big Brother* staffers in the waning months right before debuting said
16 knockoff show—all undoubtedly “raise an inference of improper use” demonstrating
17 misappropriation of trade secrets here. *Sargent Fletcher, Inc.*, 110 Cal.App.4th at
18 1673.

19 Defendants’ misappropriation of trade secrets undoubtedly warrants injunctive
20 relief. *O2 Micro*, 399 F. Supp. 2d at 1070 (“Courts impose production injunctions”
21 where “misappropriated trade secrets are inextricably connected to the defendant’s
22 [work]” and “the misappropriator cannot be relied upon to unlearn . . . the misappro-
23 priated technology.”). Regardless whether CBS already has suffered harm by virtue
24 of the disclosure and use of its trade secrets—which it has—it still “may seek injunc-
25 tive relief against threatened infringement of [its] rights.” *Southern Christian Lead-*
26 *ership Conf. v. Al Malaikah Auditorium Co.*, 230 Cal.App.3d 207, 222 (1991). In-
27 deed, courts tend to find the existence of threatened future misconduct when the De-
28 fendant already has engaged in misconduct in the past, *see ReadyLink Healthcare v.*

1 *Cotton*, 126 Cal.App.4th 1006, 1023 (2005), and “[i]njunctive relief is often appro-
2 priate in trade secret cases to insure against *additional harm from further unauthor-*
3 *ized use* of the trade secret and to deprive the defendant of additional benefits from
4 the appropriation,” for such an injunction may be necessary “to remedy any head
5 start or other unfair advantage acquired by the defendant as a result of the appropri-
6 ation,” *DVD Copy Control Ass’n v. Bunner*, 116 Cal. App. 4th 241, 253-54 (2004)
7 (emphasis added). Here, that “head start” and “unfair advantage” is Defendants’ use
8 of 13 years’ worth of CBS’s labor as a shortcut in developing *Glass House*, and to
9 prevent Defendants from reaping the fruits of such an unfair advantage, the Court
10 should immediately enjoin the production of *Glass House*.

11 **C. Defendants’ Unfair Competition And Defendant Rosen’s Spoliation Of Evi-**
12 **dence Also Require The Issuance of TRO.**

13 Even where confidential information does not qualify as a trade secret, a court
14 may still enjoin unfair or deceptive conduct under section 17200 *et seq.* of the Califor-
15 nia Business and Professions Code. *See Courtesy Temp Serv.*, 222 Cal. App. 3d at
16 1291; *Klamath-Orleans Lumber Inc. v. Miller*, 87 Cal. App. 3d 458, 466 (1978).

17 Additionally, the Court should issue a TRO because Rosen admitted to destroy-
18 ing potentially relevant emails, demonstrating that Defendants’ preservation efforts
19 thus far are insufficient to prevent the willful destruction of highly relevant evidence
20 and the resulting irreparable harm. *See, e.g., Advantacare Health Partners v. Access*
21 *IV*, 2004 WL 1837997, at *1 (N.D. Cal. 2004) (granting TRO); *Dodge, Warren & Pe-*
22 *ters Ins. Servs., Inc. v. Riley*, 105 Cal.App.4th 1414, 1420 (2003) (in suit for trade se-
23 cret misappropriation, affirming preliminary injunction to prevent the potential de-
24 struction of evidence pending discovery).¹¹

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28 ¹¹ Given this evidence, CBS may amend its complaint to add a spoliation claim.

1 **D. CBS Will Suffer Irreparable Harm If The Court Does Not Enjoin Defend-**
2 **ants' Conduct, And The Balance Of Hardships And Public Interest Weigh**
3 **In Favor Of A Preliminary Injunction.**

4 Given the strong likelihood of success on CBS's claims, a preliminary injunc-
5 tion should issue because CBS is "likely to suffer irreparable harm in the absence of
6 preliminary relief." *Winter*, 555 U.S. at 20. Such a likelihood exists here since "the
7 threat of injury is imminent and the measure of that injury defies calculation[.]" *Gil-*
8 *der v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991). The misappropriation of
9 *Big Brother's* trade secrets "reduces the value of the trade secret," *JustMed, Inc. v.*
10 *Byce*, 600 F.3d 1118, 1130 (9th Cir. 2010), and accordingly, "[a]n intention to make
11 imminent or continued use of a trade secret . . . will almost always certainly show ir-
12 reparable harm" since the trade secret cannot be unlearned, nor its value replenished.
13 *Pac. Aerospace & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1198 (E.D. Wash.
14 2003). And the infringement of *Big Brother* diminishes the value of the *Big Brother*
15 franchise and harms CBS by (1) siphoning viewers away from *Big Brother*; (2) limit-
16 ing *Big Brother's* ability to pursue certain refinements for fear of looking like a cop-
17 ycat show in the very field it pioneered; and (3) weakening *Big Brother* as a "lead in"
18 for other shows, thereby potentially weakening CBS's entire lineup on nights that
19 *Big Brother* airs. (Bresnan Decl. ¶¶ 18-21.) Most of all, CBS is harmed because its
20 direct competitor, ABC, simply by hiring *Big Brother* staffers, can develop a similar
21 show on a much cheaper budget than had it developed the show from scratch, which
22 allows ABC in turn to spend that money on other programming (e.g., popular script-
23 ed dramas), siphoning more viewers away from CBS. (Bresnan Decl. ¶ 23.)
24 "[T]hreatened loss of prospective customers or goodwill certainly supports a finding
25 of the possibility of irreparable harm," and accordingly injunctive relief is warranted.
26 *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001);
27 *Berster Tech., LLC v. Christmas*, No. S-11-1541, 2012 WL 33031, at *10 (E.D. Cal.,
28 Jan. 6, 2012) (in copyright dispute, "lost or damaged good will," "lost business," and

1 “lost business opportunities” qualify as irreparable harm).

2 Finally, the other equitable factors merit preliminary injunctive relief. The
3 balance of hardships tips decidedly in CBS’s favor since “the only hardship that the
4 defendant will suffer is lost profits from [infringement],” and “such an argument in de-
5 fense merits little equitable consideration.” *Cadence Design Sys, Inc. v. Avant! Corp.*,
6 125 F.3d 824, 830 (9th Cir. 1997). The public interest strongly weighs in favor of
7 granting a TRO and a preliminary injunction because “public policy favors the issu-
8 ance of injunctions in intellectual property infringement lawsuits.” *Nintendo of Am.,*
9 *Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1038 (9th Cir. 1994). Copyright protec-
10 tion is based on “the conviction that encouragement of individual effort by personal
11 gain is the best way to advance public welfare through the talents of authors and inven-
12 tors.” *Eldred v. Ashcroft*, 537 U.S. 186, 212 n.18 (2005). And trade secret law “acts
13 as an incentive for investment in innovation” and “helps maintain ‘standards of com-
14 mercial ethics.’” *DVD Copy Control*, 31 Cal.4th at 880-81. Allowing *Glass House* to
15 air vindicates none of these public interests and Defendants’ conduct should according-
16 ly be enjoined.¹²

17 **IV. CONCLUSION**

18 For these and all of the foregoing reasons, CBS respectfully requests that its Ap-
19 plication for a TRO and an OSC regarding a preliminary injunction be granted.

20 Dated: June 7, 2012

21 By: /s/ Scott A. Edelman
22 Scott A. Edelman
23 Attorneys for CBS Broadcasting Inc.

24
25 ¹² Should an injunction issue, only minimal security should be required. Rule 65(c)
26 requires “security in an amount that the court considers proper to pay the costs and
27 damages sustained by any party found to have been wrongfully enjoined or re-
28 strained.” Because any harm Defendants face from an injunction results from their
decision to infringe CBS’s copyrights and misappropriate CBS’s trade secrets, CBS
respectfully submits that a security in the amount of \$25,000 is appropriate.

APPENDIX A

CBS's Trade Secrets¹³

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¹³ All material cited in Appendix A may be found in Exhibit C to the Declaration of Scott A. Edelman.

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