

# The Media-Content Deal

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED FEDERATION OF CHURCHES LLC  
d/b/a THE SATANIC TEMPLE,

Plaintiff,

-against-

NETFLIX, INC. and  
WARNER BROS. ENTERTAINMENT INC.,

Defendants.

Index No. 1:18-cv-10372

**COMPLAINT AND JURY  
DEMAND**

Plaintiff, United Federation of Churches LLC d/b/a The Satanic Temple (“Plaintiff” or “TST”), by its attorneys, D’Agostino, Levine, Landesman & Lederman, LLP, for its complaint (the “Complaint”) against defendant, Netflix, Inc. (“Netflix”), and defendant, Warner Bros. Entertainment Inc. (“Warner Bros.”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement, false designation of original, false description; and forbidden dilution under trademark dilution under 15 USC § 1125, and Injury to Business reputation dilution under New York General Business Law § 360-l, all arising out of Warner Bros.’s production and Netflix’s distribution of the original Netflix television series known as the *Chilling Adventures of Sabrina* (the “Sabrina Series”), and advertisements thereof, which prominently feature, benefit from and defame TST’s unique original expression (the “TST Baphomet with Children”) of the historic Baphomet, an androgynous goat-headed deity. Copies of images of the TST Baphomet with Children in its original plater cast form and current bronze casted form are annexed as Exhibits A-1 through A-4 and Exhibit B.

2. This case presents, among other things, a textbook example of the hornbook explanation of copyright protection that copyright law protects unique expressions, but not the ideas themselves. What makes this case particularly striking and significant is that it arises in the context of Defendants who are highly sophisticated media production and distribution companies which blatantly misappropriated Plaintiff's unique expression of an idea even though they have a long history of vigorously protecting their own intellectual property. For example, one of the leading Second Circuit Court of Appeals dealing with copyright protection is *Warner Bros, Inc. v. Gay Toys, Inc.*, 724 F.2d 327 (1983)(involving among other things, Warner Bros.'s objections to "General Lee" symbols on toy cars and the Dukes of Hazard movie). Copies of side by side images of the TST Baphomet with Children and a Netflix scene featuring its copy thereof are annexed as Exhibit C. Copies of screenshots of promotions for the Sabrina Series from YouTube and its Instagram account are annexed as Exhibits D-1 and D-2. Exhibit D-1 is a screenshot from the official trailer of the Sabrina Series entitled "Chilling Adventures of Sabrina | Featurette: Inside the World of Sabrina Spellman [HD] | Netflix. See <https://www.youtube.com/watch?v=DLMULIJA0Us>.

3. As explained more fully below, Baphomet is a historical deity which has a complex history, having been associated with accusations of devil worship against the Knight Templar. Baphomet historically involved a goat's head (sometimes known as the "Sabbatic Goat") on a female body associated with Lilith, a figure from Jewish mysticism sometimes considered a goddess of the night. The classic visual representation of idea of Baphomet is an image created in or about 1856 by an occult historian Eliphas Levi (the "1856 Baphomet"), which is notable for its use of a seated figure, with exposed large voluptuous female breasts, androgynous arms, a seeming

male lower body and a Sabbatic Goat's head. *Id.* A copy of the historic Levi drawing of Baphomet is annexed as Exhibit E.

4. TST's original expression of Baphomet, i.e., the TST Baphomet with Children, consists of several modifications from the historic expressions of the deity. Those original modifications are: (1) the placement of human children on either side, forming a triangle where (a) the children are male and female, respectively; (b) the children are a young male of African descent and young girl of Anglo-Saxon descent, respectively; (c) the human children are wearing particular clothes, with the girl wearing knee length sleeveless dress with a prominent high waisted sash, and the boy wearing a sports coat, (d) the girl has straight shoulder length hair with exposed ears and the boy has close cropped hair establishing African ancestry, and (2) use of an exposed male chest, instead of exposed large voluptuous female breasts. Importantly, these original expressions are misappropriated through use of an obvious copy which is featured prominently throughout the Sabrina Series and the central focal point of the school in the Sabrina Series which represents evil antagonists.

5. The Sabrina Series depicts the evil antagonists in conformity to the "Satanic Panic" conspiracy theories from the 1980s. See, generally, *Wikipedia* "Satanic ritual abuse" (available at [https://en.wikipedia.org/wiki/Satanic\\_ritual\\_abuse](https://en.wikipedia.org/wiki/Satanic_ritual_abuse)) (last visited November 7, 2018).

6. The Sabrina Series' evil antagonists stand in stark contrast to TST's tenets and beliefs. See "Tenets," at ¶21, below. By misappropriating TST Baphomet with Children (which is a registered copyright and famous mark of TST) to publish this false and defamatory depiction of TST, Defendants have engaged in three classes of wrong: copyright infringement (Claim 1), trademark violation (Claim 2), and injury to business reputation (Claim 3).

### **JURISDICTION AND VENUE**

7. This action arises under the Copyright Act of 1976 (the “Copyright Act”), 17 U.S.C. §§ 101 *et seq.*, and concerns rights in an original work of authorship over which this Court has original and exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), as well as the Lanham Act, 11 U.S.C. § 1125, and also pendent and ancillary claims for Injury to Business Reputation under New York’s General Business Law § 360-l.

8. The Court has personal jurisdiction under New York’s CPLR § 311 over Netflix because it is a foreign corporation registered to do business in the state of New York, and also because it maintains offices at 245 West 17<sup>th</sup> Street, New York, NY.

9. The Court has personal jurisdiction under New York’s CPLR § 311 over Warner Bros. because it is a foreign corporation registered to do business in the state of New York, and also because it maintains offices at 1325 Avenue of the Americas, New York, NY.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a).

11. Prior to commencing this lawsuit, TST complied with all legal prerequisites. TST registered the TST Baphomet with Children with the United States Copyright Office and been granted registrations VA 2-116-092 and VA 0002124601.

### **THE PARTIES**

12. Plaintiff TST is a Massachusetts limited liability company, with its principal place of business located at 64 Bridge Street, Salem, Massachusetts 01970.

13. Upon information and belief, Warner Bros. is, among other things, a production company of motion pictures and television series.

14. Warner Bros. is the producer of the Sabrina Series.

15. Upon information and belief, Netflix is, among other things, an internet distributor of television series.

16. Netflix is the internet distributor of the Sabrina Series.

### **FACTUAL ALLEGATIONS**

#### **A. Historic Background of Baphomet**

17. As indicated above, Baphomet is a goat-headed, angel-winged, hermaphroditic (having both male and female features) deity of antiquity. Baphomet represents a conciliation of opposites. Baphomet is neither human nor beast, neither male nor female, neither angelic nor demonic. Simultaneously, Baphomet is all of these. Baphomet historically was believed to have a Sabbatic Goat's head placed on the body of Lilith, a figure from Jewish mysticism sometimes considered the goddess of the night. Baphomet was first rendered to modern form (See Exhibit E) by Eliphas Levi, an occult historian, in 1856. See *Dogme et Rituel de la Haute Magie* ("Dogma and Rituals of High Magic.") The Knights Templar were falsely accused of worshipping Baphomet and that subsequently became incorporated into various occult and mystical tradition. See, generally, *Wikipedia* "Baphomet" (available at <https://en.wikipedia.org/wiki/Baphomet>) (last visited November 7, 2018). The 1856 Baphomet is notable for its use of exposed large voluptuous female breasts, androgynous arms, and a seeming male lower body.

#### **B. The Satanic Temple**

18. TST is an organization founded and designed to encourage benevolence and empathy among people rejecting tyrannical authority, advocating practical and common-sense justice, and undertaking noble pursuits guided by individual will. Foundational to TST's belief structure is protection of an individual's right to make informed choices of their own free will.

19. TST does not promote evil and instead holds to the basic principle that undue suffering is bad, and that which reduces suffering is good.

20. Satan, for TST, is a literary figure symbolic of the eternal rebel in opposition, rather than the personalization of evil. To TST, “Satan” is the literary Satan, meant to be a rebel against God’s authority, rather than an evil being, best exemplified by Milton and the Romantic Satanists, from Blake to Shelley to Antole France.

21. TST believes in the pursuit of knowledge and freedom of will, based upon the following seven (7) tenets.

- (a) One should strive to act with compassion and empathy towards all creatures in accordance with reason.
- (b) The struggle for justice is an ongoing and necessary pursuit that should prevail over laws and institutions.
- (c) One’s body is inviolable, subject to one’s own will alone.
- (d) The freedoms of others should be respected including the freedom to offend. To willfully and unjustly encroach upon the freedoms of another is to forgo one’s own.
- (e) Beliefs should conform to one’s best scientific understanding of the world.
- (f) People are fallible. If one makes a mistake, one should do one’s best to rectify it and resolve any harm that might have been caused.
- (g) Every tenet is a guiding principal designed to inspire nobility in action and thought. The spirit of compassion, wisdom and justice should always prevail over the written or spoken word.



22. TST is politically aware and has, among other things, opposed The Westboro Baptist Church, advocated on behalf of children in public schools to abolish corporal punishment, and has applied for equal representation where religious monuments are place on public property.

23. In connection with its mission, TST believes that the First Amendment of the Constitution of the United States mandates that the United States Government treat all religions equally.

24. TST's Baphomet with Children was designed so that after a statue of the Ten Commandments was donated to Oklahoma City by State Representative Mike Reitze, TST could donate its own unique expression of Baphomet.

### **C. The Creation of the TST Baphomet with Children**

25. In or around 2013/2014, TST's members and managers designed and commissioned, at substantial cost and with great effort and attention to detail, the TST Baphomet with Children.

26. Members and managers of TST initially created a sketch (the "Initial Sketch"), showing a figure somewhat similar to the 1856 Baphomet, but which was configured in a triangular arrangement, with a young girl of apparent Anglo-Saxon descent on the left facing Baphomet and a young boy of apparent African descent on the right facing Baphomet. The idea was to have the children looking reverentially at Baphomet. A copy of the initial sketch is attached as Exhibit F.

27. The TST Baphomet with Children was designed to be an answer to religious display on public property and as an assertion of pluralism and equal status in an environment of religious freedom, all key tenets of TST. See also ¶ 21(b), (d).

28. Each element of the TST Baphomet with Children was carefully and specifically developed from the initial sketch with an artist, commissioned on a work-for-hire basis. Among

other things, numerous child models were considered to find a specific expression of bi-racial childlike innocence by children of different races, looking up in reverence at Baphomet. An affirmative decision was made to put the young boy of African descent into a sports jacket instead of the tee-shirt in the initial sketch and to put the young girl in a sleeveless knee length dress with a high waist sash, rather than the dress with covered shoulders and leggings in the original sketch. Additionally, Baphomet's arms, which were originally angled down similar to the 1856 Baphomet, were raised to be a straight and rigid right angles, with prominent muscular biceps. In the 1856 Baphomet, Baphomet's eyes are intense and seem to imply evil; in TST Baphomet with Children, Baphomet's eyes are softened to imply wisdom.

29. TST spent countless number of hours and approximately \$100,000 to develop the actual statue which is the now-famous TST Baphomet with Children.

**D. Extensive publicity which has made the TST Baphomet with Children a famous symbol of TST**

30. The public release of the TST Baphomet with Children has been subject to extensive world-wide publicity and media coverage which has made it a famous symbol of TST.

31. Publicity surrounding the release of the initial drawing, the original plaster cast and the final bronze version, include articles in Time Magazine and The New York Time, as well as pieces on CBS, Fox News, the Colbert Show and Lisa Ling's This is Life on CNN, among others, as follows:

■ January 6, 2014

CBS News and Time Magazine display initial sketch

<https://www.cbsnews.com/news/group-unveils-plans-for-satan-statue-at-okla-capitol/>

<http://nation.time.com/2014/01/07/satanists-unveil-statue-for-oklahoma-capitol/>

■ May 1, 2014

TST releases the first images of the plaster Baphomet still under construction in a piece for Vice Magazine

[https://www.vice.com/en\\_us/article/xd5gjd/heres-the-first-look-at-the-new-satanic-monument-being-built-for-oklahomas-statehouse](https://www.vice.com/en_us/article/xd5gjd/heres-the-first-look-at-the-new-satanic-monument-being-built-for-oklahomas-statehouse)

■ May 6, 2014

Colbert Report

<http://www.cc.com/video-clips/zekn1k/the-colbert-report-satanic-monument-for-the-oklahoma-state-house>

[https://www.huffingtonpost.com/2014/05/07/stephen-colbert-war-on-religion-america\\_n\\_5282574.html](https://www.huffingtonpost.com/2014/05/07/stephen-colbert-war-on-religion-america_n_5282574.html)

■ July 10, 2015

NY Times publishes image of plaster Baphomet (not the first to do so, but a major outlet)

<https://www.nytimes.com/2015/07/11/us/a-mischievous-thorn-in-the-side-of-conservative-christianity.html?login=email&auth=login-email>

■ July 2015

Fox News Video on Detroit unveiling of bronze statue

<https://www.dailymotion.com/video/x30r201>

■ Sept 6, 2015

RT displays plaster Baphomet

<https://www.rt.com/usa/314775-arkansas-capitol-satanic-temple/>

■ November 30, 2015

Lisa Ling, This is Life on CNN (during prime time on Sundays)

<https://www.cnn.com/videos/tv/2015/11/30/satanic-temple-lisa-ling-orig.cnn>

■ November 13, 2015

Raw Story - Plaster Baphomet

<https://www.rawstory.com/2015/11/christians-unwittingly-allowed-satanists-to-ambush-missouris-anti-abortion-laws-heres-how/>

■ August 17, 2016

Arkansas Times - Plaster Baphomet

<https://www.arktimes.com/arkansas/the-devil-is-in-the-details-at-the-arkansas-state-capitol/Content?oid=4538981>

■ November 2, 2016

Boston College student paper - Bronze Baphomet

<http://bcheights.com/2016/11/02/reassessing-world-satanic-temple/>

■ January 25, 2017

Arkansas Times - Plaster Baphomet

<https://www.arktimes.com/ArkansasBlog/archives/2017/01/25/site-plan-approved-for-satanic-temple-monument-public-comment-legislative-approval-hurdles-yet-to-be-cleared>

■ May 2017

Heavy - Plaster Baphomet

Heavy <https://heavy.com/news/2017/05/satanic-temple-monument-statue-salem-tenents-baphomet-abortion/>

■ June 28, 2017

Haute Macabre - Bronze Baphomet

<http://hautemacabre.com/2017/06/never-let-your-activism-be-artless-an-interview-with-lucien-greaves-of-the-satanic-temple/>

32. A YouTube video shows the TST Baphomet with Children as a unique work of art. (See <https://www.youtube.com/watch?v=NrnW6-pjQa0>).

33. In 2015, coinciding with announcement of TST's intention to donate the TST Baphomet with Children to Oklahoma to be placed alongside the Ten Commandments, the Oklahoma Supreme Court overturned the statutory framework which permitted the Oklahoma Ten Commandments monument. See *Prescott v. Okla. Capitol Pres. Comm'n*, 2015 OK 54, 373 P.3d 1032.

34. Following that, TST Baphomet with Children was repurposed to be paired with a then-proposed Ten Commandments monument in Arkansas. Litigation in Arkansas is ongoing. See *Cave v. Martin*, (4:18-cv-00342) (E.D. Ark.).

35. TST's website, at all relevant times, explained that TST's Baphomet with Children was a unique expression, noting that TST Baphomet with Children has a "male chest" and picturing Baphomet with two children, a small boy and small girl, looking up at the Sabbatical Goat head of the statute. TST's website further explains that the TST Baphomet with Children is on display in an art gallery and is being offered to other states where a religious statute appears on publicly-owned land. TST's website explains the relationship of the TST Baphomet with Children to the

First Amendment mission of TST to ensure that government treats all religions equally. A copy of the Baphomet page of TST's website is attached as Exhibit G.

36. Partly due to the extensive broadcasted depictions of TST Baphomet with Children, both bronze-cast and plaster-cast, as well as the efforts of TST to publicize its mission in connection with the TST Baphomet with Children, this statue has become a famous mark which is inextricably linked with TST.

**E. The Sabrina Series**

37. The Sabrina Series is a fictional television series based upon issues of magic and mischief colliding as a half-human, half-witch teenager named Sabrina navigates between two worlds: mortal teen life and her family legacy, the Church of the Night.

38. This series was produced by Warner Bros. and distributed by Netflix. The Sabrina Series was released to the public on October 26, 2018.

39. Shortly prior to airing, featurettes and advertisements were circulated on public media, such as YouTube and Instagram. Upon information and belief, these advertisements included the misappropriated TST Baphomet with Children, such as the image on Exhibits D-1 and D-2.

40. Defendants misappropriated the TST Baphomet Children in ways implying that the monument stands for evil. Among other morally repugnant actions, the Sabrina Series' evil antagonists engage in cannibalism and forced-worship of a patriarchal deity.

41. The TST Baphomet with Children appears in at least 4 of the 10 episodes of the Sabrina Series, and numerous scenes.

42. Defendants feature the TST Baphomet with Children as a central figure for the antagonists. In Episode 2 of the Sabrina Series, TST Baphomet with Children is unveiled as a

foreboding figure and the focal point of the Witches Academy. In the final scene of the series at the end of Episode 10, the main character walks in front of TST Baphomet with Children, rendering it a key element of the season finale.

43. Comparison of the parties' statues, as show in Exhibit C, demonstrates that the unique elements of TST's expression of the idea of Baphomet, and particularly the use of a male chest rather than voluptuous large female breasts, and the configuration with a small boy and small girl looking at the Sabbatic Goat head of the statue, were unquestionably copied by Defendants. The similarities are no coincidence. Also, compare Exhibit A-1 with Exhibit D-1.

44. By notice dated October 26, 2018, Defendants were notified of copyright violations inherent in Netflix's use of the TST Baphomet with Children. Defendants have not responded.

45. Defendants brazenly ignored TST's demands, thereby forcing TST to file suit to protect its intellectual property rights.

46. Defendants' unauthorized reproduction and distribution of the Sabrina Series and advertising thereof has harmed and, if not permanently enjoined, will continue to harm the commercial value of TST's copyrighted work and the rights of ownership and control which TST enjoys in the TST Baphomet with Children.

47. TST seeks, among other things, a permanent injunction barring Defendants from reproducing and distributing the Sabrina Series utilizing images of the TST Baphomet with Children, and TST submits that absent the relief requested herein, Defendants will continue to willfully infringe TST's copyright, trademark and common law rights.

**F. Defendants' cavalier disregard to TST's property rights**

48. TST's objection to the Sabrina Series' blatant misappropriation of the TST Baphomet with Children was, among other places, reported in VICE, a news media organization,

on October 29, 2018. See [https://broadly.vice.com/en\\_us/article/zm9pe3/satanic-temple-claims-netflixs-sabrina-illegally-copied-baphomet-statue](https://broadly.vice.com/en_us/article/zm9pe3/satanic-temple-claims-netflixs-sabrina-illegally-copied-baphomet-statue) (Last visited November 7, 2018). There, Lisa Soper (the production designer for the Sabrina Series) spoke about the statue and falsely stated, “I think that’s kind of a coincidence.” Going further, “When you look at Baphomet, there’s really only a couple of statues of him—which, they have their statue, and we’ve got our statue in the show.” “If you look at Goya paintings, if you look at a lot of the tarot cards, or the Alistair Crowley iterations of him—because there’s hundreds and hundreds of iterations of him, he’s always seen with his people around him and it’s more of like a father figure kind of thing. So depicting his children with him, that kind of stuff, and those kinds of elements are all kind of the same.” Soper further said: “But it’s no different from, in my opinion anyhow... from any other of the mass amounts of iterations of him that have been around.”

49. The above is demonstrably false. Upon information and belief, Baphomet has never been depicted with two children gazing reverentially at the Sabbatic Goat head. Likewise, upon information and belief, Baphomet, prior to TST’s Baphomet with Children depictions generally include large exposed large voluptuous female breasts, not a male chest. The female breasts are a central feature of the traditional depiction of Baphomet, the *hermaphroditic* deity.

50. Ms. Soper’s statement is a bold lie. That lie was designed to further damage TST and promote the Sabrina Series at the expense of TST and its business reputation.

**FIRST CLAIM FOR RELIEF**  
**(Copyright Infringement)**

51. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 50 above as if fully set forth herein.

52. The TST Baphomet with Children is an original work of authorship and is copyrightable under the laws of the United States.

53. TST is the holder of US Copyright registrations VA 2-116-0092 and VA 002124601 for the TST Baphomet with Children.

54. The TST Baphomet with Children is the, “most politically charged sculpture of our time.” See Exhibit G. See also <https://salemartgallery.com/baphomet/>. This puts the public, specifically Defendants, on reasonable notice of intellectual property issues and that the TST Baphomet with Children is a unique work of art that should not be misappropriated as a symbol of evil.

55. Plaintiff has not assigned, licensed, or otherwise transferred any of its exclusive rights to Defendants or made them available for public use.

56. Defendants are unlawfully reproducing, distributing, and selling copies of the Sabrina Series, including advertisements thereof which include unauthorized use of the TST Baphomet with Children, without authorization. This violates Plaintiff’s exclusive intellectual property rights.

57. Defendants are aware that they do not have permission to reproduce, distribute, or sell copies of television series featuring of the TST Baphomet with Children.

58. By failing or refusing to take down the misappropriated imagery, Defendants are willfully infringing upon Plaintiff’s copyright.

59. Based upon the foregoing, Plaintiff is entitled to a judgment against Defendants in an amount to be determined at trial, but believed to be no less than \$50,000,000.00, together with injunctive relief.



**SECOND CLAIM FOR RELIEF**

**(False designation of original, false description;  
and forbidden dilution under trademark dilution under 15 USC 1125)**

60. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 59 above as if fully set forth herein

61. The TST Baphomet with Children is a symbol of TST.

62. The TST Baphomet with Children is a famous mark, within the meaning of 15 USC § 1125 (c).

63. Defendants have used the TST Baphomet with Children in ways that falsely designate its origin and are misleading and false to the extent that the Sabrina Series indicates, impliedly and expressly, that the TST Baphomet with Children is a symbol of evil, associated with forced-devil worship, cannibalism, and murder.

64. Among other things, TST designed and commissioned the TST Baphomet with Children to be a central part of its efforts to promote First Amendment values of separation of church and state and equal protection. Defendants' prominent use of this symbol as the central focal point of the school associated with evil, cannibalism and murder blurs and tarnishes the TST Baphomet with Children as a mark of TST.

65. Defendants have used the TST Baphomet with Children in ways that causes caution by blurring or diluting by tarnishment as a symbol of TST.

66. Defendants' use of the TST Baphomet with Children has injured and continues to injure Plaintiff.

67. Based upon the foregoing, Plaintiff is entitled to a judgment against Defendants in an amount to be determined at trial, but believed to be no less than \$50,000,000.00, together with injunctive relief.

**THIRD CLAIM FOR RELIEF**

**(Injury to Business reputation dilution under New York General Business Law § 360-l)**

68. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 67 above as if fully set forth herein.

69. Defendants have used images of the TST Baphomet with Children in a way that injures the business reputation of TST and dilutes the distinctive quality of the TST Baphomet with Children as a mark of TST in violation of New York's General Business Law Section 360-l.

70. Among other things, TST designed and commissioned the TST Baphomet with Children to be a central part of its efforts to promote First Amendment values of separation of church and state. Defendants' prominent use of it as the central focal point of the school associated with evil, cannibalism and possibly murder is injurious to TST's business.

71. Defendants' use of the TST Baphomet with Children has injured and continues to injure Plaintiff.

72. Based upon the foregoing, Plaintiff is entitled to a judgment against Defendants in an amount to be determined at trial, but believed to be no less than \$50,000,000.00, together with injunctive relief.

**DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiff demands the following relief:

(a) An order declaring that Defendants are liable for infringement of TST's copyright in and to the TST Baphomet with Children;

(b) An order declaring that Defendants have willfully infringed Plaintiff's copyright in and to the TST Baphomet with Children;

(c) An order pursuant to 17 U.S.C. § 504, awarding Plaintiff monetary damages for copyright infringement, in an amount to be established at trial but believed to exceed \$50,000,000.00 consisting of: (i) actual damages, in an amount to be determined at trial, along with disgorgement of all of Netflix's profits attributable to sales of the Sabrina Series; or, (ii) in the alternative, statutory damages, in an amount to be determined at trial, arising from Defendants' willful copyright infringement;

(d) An order enjoining Defendants from any future reproduction or distribution of the Sabrina Series with the TST Baphomet with Children and requiring Defendants to digitally remove the TST Baphomet with Children from all future distributions of the Sabrina Series and to cease and desist all marketing of the Sabrina Series which uses the images of the TST Baphomet with Children and to deliver the TST Baphomet with Children to the Plaintiff;

(e) An order pursuant to 17 U.S.C. § 505, awarding Plaintiff the recovery of attorneys' fees, interest and costs;

(f) An order declaring that Defendants are liable for false designation of original, false description and forbidden dilution under trademark dilution under 15 USC § 1125;

(g) An order pursuant to 15 U.S.C. 1125, awarding Plaintiff monetary damages in an amount to be established at trial but believed to exceed \$50,000,000.00 and an injunction for false designation of original, false description and forbidden dilution under trademark dilution;

(h) An order pursuant to New York General Business Law § 360-1 declaring that Defendants are liable for injury to business reputation and dilution of a mark;

(i) An order pursuant to New York General Business Law § 360-1, awarding Plaintiff monetary damages in an amount to be established at trial but believed to exceed \$50,000,000.00 and an injunction for liable for injury to business reputation and dilution of a mark;

(j) Reimbursement of attorneys' fees, costs and disbursements.

(k) Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff demands trial by jury in this action of all issues so triable.

Dated: November 8, 2018

D'Agostino, Levine, Landesman &  
Lederman, LLP

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ORIGINAL

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**FILED**  
Superior Court of California  
County of Los Angeles

**MAR 14 2018**

Sherri R. Carter, Executive Officer/Clerk  
By [Signature] Deputy  
Sherry Bolden

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

**BC 698058**

HOFFLUND/POLONE, a California  
partnership, and GAVIN POLONE, an  
individual,

Plaintiffs,

vs.

WARNER BROTHERS ENTERTAINMENT,  
INC., TIME WARNER ENTERTAINMENT  
COMPANY, L.P.; WARNER BROS.  
TELEVISION PRODUCTION, INC.; WB  
STUDIO ENTERPRISES, INC.; THE WB  
TELEVISION NETWORK PARTNERS, L.P.;  
WB COMMUNICATIONS, INC.; THE CW  
NETWORK, LLC; WARNER BROS.  
ENTERTAINMENT, INC.; TIME WARNER,  
INC.; AND DOES 1-10,

Defendants.

Case No.

**COMPLAINT FOR:**

1. BREACH OF CONTRACT
2. BREACH OF FIDUCIARY DUTY
3. BREACH OF THE COVENANT OF  
GOOD FAITH AND FAIR DEALING
4. FRAUD
5. NEGLIGENT MISREPRESENTATION
6. UNFAIR BUSINESS PRACTICES
7. UNLAWFUL TYING AGREEMENT
8. ACCOUNTING
9. CONSTRUCTIVE TRUST

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Hofflund/Polone and Gavin Polone allege as follows:

2 **INTRODUCTION**

3 1. Television and movie producer Gavin Polone and writer Amy Sherman-Palladino  
4 developed and produced *Gilmore Girls* – a hugely successful television show, both artistically and  
5 financially. The show, produced in conjunction with Warner Bros. Television Production, Inc.,  
6 aired on the WB Network for eight years, and has just recently been reprised with the original cast  
7 on Netflix as *Gilmore Girls: A Year In the Life*. Time Magazine named *Gilmore Girls* one of the  
8 top 100 series of all time.

9 2. Unfortunately, Warner Bros. has not been willing to share the financial benefits  
10 flowing from *Gilmore Girls* and *Gilmore Girls: A Year in the Life* in a fair, equitable, or  
11 contractually-mandated fashion. Indeed, Mr. Polone repeatedly has been forced to take Warner  
12 Bros. and its affiliated companies to court to seek a just distribution of the shows' financial  
13 rewards. After years of stonewalling in response to Mr. Polone's latest efforts at economic and  
14 contractual justice, the Warner Bros. parties have forced Mr. Polone to seek judicial intervention  
15 once more.

16 3. In particular, Defendants Warner Brothers Entertainment, Inc.; Time Warner  
17 Entertainment Company, L.P.; Warner Bros. Television Production, Inc.; WB Studio Enterprises,  
18 Inc.; The WB Television Network Partners, L.P.; WB Communications, Inc.; The CW Network,  
19 LLC; Warner Bros. Entertainment, Inc.; and Time Warner, Inc. (collectively, "Defendants") have  
20 willfully avoided paying Hofflund/Polone and Mr. Polone (together, "Plaintiffs") the full share of  
21 revenues to which they are entitled based on the terms of agreements between Mr. Polone, through  
22 himself and his loan out entity Hofflund/Polone, on the one hand, and Defendants on the other.

23 4. This case is part of a long and troubled line of successful artists of all stripes being  
24 forced to seek recourse in court against a corporate producing partner that manipulates its back  
25 room accounting and distorts the interpretation of its contractual obligations. The victims of this  
26 oppressive behavior are the artists who create the content those corporate producing partners  
27 exploit on television, at the movie theatre, and more recently on-line. Here, Defendants have used  
28 various improper accounting practices to improperly manipulate the profitability of *Gilmore Girls*



1 and *Gilmore Girls: A Year In The Life* by: (1) erroneously applying – sometimes multiple times –  
 2 deductions to gross receipts for items not covered under the parties' agreements, such as video  
 3 expenses, indirect overhead expenses, electronic sell-through, video-on-demand, and subscription  
 4 video-on-demand ("SVOD") distribution fees for first runs of *Gilmore Girls: A Year In The Life*;  
 5 (2) charging production costs attributable to shows other than *Gilmore Girls* or *Gilmore Girls a*  
 6 *Year in the Life*; (3) engaging in self-dealing by overstating production costs payable to affiliated  
 7 entities, resulting in artificially reduced profitability; and (4) deferring and holding back cash  
 8 receipts. By engaging in these willful and wrongful acts, Defendants inflated their own profits by  
 9 diverting to themselves compensation rightfully due to Plaintiffs.

10 5. Defendants have also utilized the anticompetitive practice of "straight-lining" –  
 11 allocating the same portion of the licensing fee to every movie or television show in a package  
 12 without regard to the true value of each television show or film, which deprives profit participants  
 13 of a fair allocation of the licensing fees to which they are entitled – and failing to provide a  
 14 complete reporting for domestic and foreign television sales collections relating to output and  
 15 package sales. These practices constitute breaches of Defendants' contractual obligations and  
 16 their duty to act in good faith towards profit participants.

17 6. When Plaintiffs challenged Defendants' improper practices through their ordinary  
 18 audit process, Defendants resorted to delay, avoidance and misdirection in an effort to conceal  
 19 their misconduct. This action seeks to protect and ensure Plaintiffs' rights to the profits due.

## 20 PARTIES

21 7. Plaintiff Gavin Polone is a successful film and television writer, producer, and  
 22 manager. He is the executive producer of the popular and successful television series *Gilmore*  
 23 *Girls*. Mr. Polone has produced many successful films, including *Panic Room*, *Zombieland*, and *A*  
 24 *Dog's Purpose* and was an executive producer on the HBO television series *Curb Your*  
 25 *Enthusiasm*. Mr. Polone is, and at all times relevant hereto was, an individual residing and doing  
 26 business in the County of Los Angeles, State of California.

1           8.     Plaintiff Hofflund/Polone is a loan out partnership entity, which provides the  
2 professional services of Mr. Polone. Hofflund/Polone is, and at all times relevant hereto was, a  
3 partnership doing business in Los Angeles County, California.

4           9.     Defendants are well-known entertainment companies with a pervasive presence in  
5 the film production and distribution industry.

6           10.    On information and belief, Defendant Warner Brothers Entertainment, Inc. is, and  
7 all times relevant hereto was, a corporation formed under the laws of the State of California and  
8 has its headquarters and principal place of business in the County of Los Angeles, State of  
9 California.

10          11.    On information and belief, defendant Time Warner Entertainment Company, L.P.  
11 is, or was, a limited partnership organized under the laws of the State of Delaware and doing  
12 business in Los Angeles County, California.

13          12.    On information and belief, defendant Warner Bros. Television Production, Inc. is,  
14 or was, a corporation organized under the laws of the State of Delaware and doing business in Los  
15 Angeles County, California. On information and belief, Warner Bros. Television Production, Inc.  
16 is, or was, a successor in interest to Time Warner Entertainment Company, L.P.

17          13.    On information and belief, defendant WB Studio Enterprises, Inc. is, or was, a  
18 corporation organized under the laws of the State of Delaware and doing business in Los Angeles  
19 County, California. On information and belief, WB Studio Enterprises, Inc. is, or was, the  
20 successor in interest to Warner Bros. Television Production, Inc.

21          14.    On information and belief, The WB Television Network Partners, L.P. ("The WB  
22 Network) is, or was, a limited partnership doing business in Los Angeles County, California. On  
23 information and belief, the general partner of The WB Network is, or was, WB Communications,  
24 Inc. ("WB Communications"), a California corporation, and the limited partner is, or was, Tribune  
25 Broadcasting. On information and belief, WB Communications, Inc. was owned by or was a  
26 division of Time Warner Entertainment Company, L.P. until approximately 2003, and thereafter  
27 was a subsidiary of Time Warner, Inc.



1 15. On information and belief, The CW Network, LLC ("The CW Network") is, or  
2 was, a limited liability company organized under the laws of the State of Delaware and doing  
3 business in Los Angeles County, California. On information and belief, The CW Network is the  
4 successor in interest to The WB Network. On information and belief, The CW Network is a joint  
5 venture owned 50% by CBS Corporation and 50% by Warner Bros. Entertainment, Inc.

6 16. On information and belief, some or all of the foregoing entities are, or were, owned  
7 (in whole or in part) or affiliated with defendants Warner Bros. Entertainment, Inc. ("WBE")  
8 and/or Time Warner, Inc. ("Time Warner"). Time Warner is among the largest conglomerates in  
9 the world and bills itself as "a leading media and entertainment company, whose businesses  
10 include interactive services, cable systems, filmed entertainment, television networks and  
11 publishing." On information and belief, defendants Time Warner and WBE are, or were,  
12 corporations organized under the laws of the State of Delaware, and doing business in Los  
13 Angeles County, California.

14 17. Plaintiffs are informed, believe, and thereon allege, that Does 1 through 10,  
15 inclusive, are parents, subsidiaries, sister companies, affiliates, agents or representatives of the  
16 named defendants and that each Doe defendant is responsible in some manner for the actions  
17 herein alleged. The true names and capacities, whether individual, corporate, associate or  
18 otherwise, of defendants Does 1 through 10, inclusive, and each of them, are unknown to Plaintiffs  
19 at this time, and Plaintiffs therefore sue said defendants by such fictitious names. Plaintiffs will  
20 seek leave of court to replace the fictitious names of these entities with their true names when they  
21 are discovered.

#### 22 JURISDICTION AND VENUE

23 18. This Court has jurisdiction over this matter pursuant to the California Constitution,  
24 Article XI, Section 10 and California Code of Civil Procedure §410.10, because Defendants  
25 transacted business and committed the acts complained of herein in California. Defendants are  
26 located in California, and have their principal places of business in and are headquartered in  
27 California.  
28

19. Venue is proper in Los Angeles County pursuant to California Code of Civil Procedure § 395 and because many of the acts complained about occurred in Los Angeles County and Mr. Polone resides in Los Angeles County.

#### STATEMENT OF FACTS

**A. Defendants Have a History of Failing to Make Payments Due to Plaintiffs with Respect to Mr. Polone's Role as Executive Producer of *Gilmore Girls*.**

20. On February 16, 2000, Plaintiffs entered into an agreement (the "Series Agreement") with Defendant Warner Brothers Television Production, Inc. to provide executive producer services for a television project called *Gilmore Girls*. The project became an extremely popular television series that aired on primetime television for seven seasons.

21. The Series Agreement required participation payments to be made to Plaintiffs in the amount of 11 ¼ percent of the modified adjusted gross revenue (the "MAGR") of *Gilmore Girls*. Several disputes have arisen between the parties due to Defendants' failure to make payments to Plaintiffs under the Series Agreement.

22. The first dispute related to the Series Agreement arose due to Defendants wrongfully granting favorable terms to affiliated networks for repeat airings of episodes of *Gilmore Girls*, which resulted in less amounts payable to Plaintiffs. The dispute was settled in October 2002 and resulted in modified terms to the Series Agreement, which were more favorable to Plaintiffs (the "Modification Agreement"). Pursuant to the Modification Agreement, the parties agreed, *inter alia*, to increase Plaintiffs' profit participation percentage from 11 ¼ to 12 ½ percent. The parties also agreed to incorporate the Modification Agreement into the Series Agreement.

23. The second dispute between the parties arose in late 2007 pertaining to payments during the period through June 30, 2006, this time regarding license fees payable under the Series Agreement. This action, LASC Case No. BC404543 (the "Second Dispute"), was settled in or about October 2009 following a forensic audit, which revealed numerous errors and omissions in Defendants' accounting to Plaintiffs and resulted in significant sums due and paid to Plaintiffs.<sup>1</sup>

<sup>1</sup> The Second Dispute alleged claims for breach of fiduciary duty, aiding and abetting breach of



24. On or about July 29, 2014, Plaintiffs performed a second audit for the period of April 1, 2009 through September 30, 2011, the findings of which are reflected in an audit report dated July 29, 2014 (the "2014 Audit Report"). The 2014 Audit Report revealed the following discrepancies, which resulted in gross underreporting of amounts (totaling more than \$1 million) owing to Plaintiffs:

- Unreported income from home video and electronic sell-through receipts;
- improper deductions of home video placement, legal, and guild/union/residual fees, as well as duplicated distribution expenses; and
- interest payable on the underreported amounts.

25. On or about December 21, 2015, given the success of *Gilmore Girls*, Defendants entered into an agreement with Netflix to revive the series with new episodes under the name *Gilmore Girls: A Year in the Life* (the "Subsequent Episodes").

26. For a third time, Plaintiffs were forced to litigate their rights related to the revival of *Gilmore Girls* under the Series Agreement. That dispute, LASC Case No. BC616555 (the "Third Dispute"), was filed on or about April 8, 2016 and settled on or about October 13, 2016.<sup>2</sup> The Third Dispute also resulted in significant additional monies paid to Plaintiffs.

27. The Third Dispute concerned Defendants' refusal to compensate plaintiff in any way for the Subsequent Episodes. Defendants argued that the Subsequent Episodes did not fall under the terms of the Series Agreement, making the absurd claim that the Subsequent Episodes are *derivative* works based on the television series *Gilmore Girls*.<sup>3</sup>

fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing, inducing breach of contract, intentional interference with contract, accounting, and unfair business practices.

<sup>2</sup> The Third Dispute alleged a breach of contract claim.

<sup>3</sup> The Subsequent Episodes are, and have been widely described in the press as, a "revival" of the series *Gilmore Girls*. The Subsequent Episodes reintroduced the original program's storyline, characters, and locales. They picked up from where the last episode left off, or at some time after that point. Indeed, the Subsequent Episodes have been widely referred to by fans and the media as the eighth season of the series.

28. Defendants also appeared to erroneously believe the Subsequent Episodes are not considered a "television series" because they were being produced for Netflix, rather than a traditional broadcast network.<sup>4</sup>

29. Defendants abandoned their position on the derivative work and Netflix arguments resulting in an agreement that Defendants shall treat participation payments and all contingent compensation for *Gilmore Girls: A Year in the Life* subject to the terms of the Series Agreement.

**B. Defendants' Continued to Engage in Improper Accounting and Business Practices.**

30. This is the *fourth* dispute between the parties relating to the Series Agreement and participation payments due to Plaintiffs for *Gilmore Girls* and *Gilmore Girls: A Year in the Life*, reflecting a pattern of Defendants' continued employment of improper accounting practices, despite having clear notice that they were violating Plaintiffs' rights.

31. On or about January 25, 2018, pursuant to the settlement of the Third Dispute, Defendants began making participation payments to Plaintiffs for receipts generated by the Subsequent Episodes of *Gilmore Girls: A Year in the Life*.

32. Defendants improperly applied to these payments a 10 percent distribution fee on first run pay television SVOD runs of Subsequent Episodes. This distribution fee resulted in a nearly two million dollar decrease in the MAGR, thus reducing profit participation payments due Plaintiffs.

33. The SVOD distribution fee is not an allowable fee under the Series Agreement. The SVOD distribution fee is also not a standard expense taken in the industry and has not been applied between the parties in prior dealings. By applying the SVOD distribution fee, Defendants breached their contractual obligations to Plaintiffs.

34. Additional examples of Defendants' improper accounting practices include:

- Improperly manipulating gross receipts by adding improper deductions; omitting

<sup>4</sup> Netflix describes itself on its website as "the world's leading Internet television network." Netflix series have been eligible to compete in the best television series award categories since as far back as 2008.



deferring, and holding back receipts that should be included; and overstating fees and production costs;

- “straight-lining,” which improperly allocates the same portion of the licensing fee to every movie or television show in a package without regard to whether it was a hit or failure, which deprives profit participants of a fair allocation of the licensing fees to which they are entitled; and
- improperly delaying, avoiding and misdirecting their audit process.

35. Despite being on notice of these improprieties, Defendants have not paid additional monies due and owing to Plaintiffs. Plaintiffs are informed and believe, and thereon allege, that Defendants willfully and knowingly made misrepresentations to Plaintiffs in order to deprive them of payments they were due under the Series Agreement. Defendants are under a duty to disclose to Plaintiffs the correct amounts due and owing to Plaintiffs based on Defendants’ ongoing distribution of *Gilmore Girls* and *Gilmore Girls: A Year in the Life*. Defendants intentionally concealed and suppressed the true amounts due and owing to Plaintiffs.

**C. Defendants Manipulated Gross Receipts to Deprive Plaintiffs of Payments Due.**

36. Defendants also improperly manipulated the MAGR attributable to distribution of *Gilmore Girls* by applying improper deductions, such as the SVOD distribution fees described above, to the MAGR and omitting, deferring, and holding back receipts that should have been included.

37. Defendants supply Plaintiffs with periodic profit participation statements (the “Statements”) as part of their regular business practice. The Statements include clearly erroneous and inaccurate information that Defendants knew was false at the time they prepared the Statements.

38. The Statements and the 2014 Audit Report show that Defendants apply – sometimes more than once – improper deductions, which were not agreed to in the Series Agreement, to the MAGR. Examples of these improper deductions include: (1) a deduction for fees associated with SVOD services, like Netflix; (2) overstated indirect overhead expenses and production costs payable to affiliated entities, resulting in artificially reduced

1 profitability; (3) applying production costs attributable to shows other than *Gilmore Girls* or  
 2 *Gilmore Girls: A Year in the Life*; (4) electronic sell-through expenses; and (5) video-on-demand  
 3 expenses. These expenses greatly reduce the MAGR and falsely underrepresent the bottom line  
 4 number that determines Plaintiffs' profit participation payments, resulting in substantially lower  
 5 profits paid to Plaintiffs.

6 39. The Statements also show that Defendants defer and hold back cash receipts that  
 7 are received and not posted to the Statements in a timely fashion. The delay in posting deprives  
 8 Plaintiffs of monies due for extended periods of time.

9 40. Defendants repeatedly submitted Statements to Plaintiffs that do not accurately  
 10 reflect income generated by and expenses incurred by *Gilmore Girls* and *Gilmore Girls: A Year in*  
 11 *the Life*. For example, Defendants understated income and overstated expenses, which showed,  
 12 that the Subsequent Episodes were incredibly licensed and/or distributed in the same amount as it  
 13 cost to produce the Subsequent Episodes. Defendants' manipulation of revenues and costs  
 14 decreased Plaintiffs' participation in these revenues and constitute breaches of the Series  
 15 Agreement.

16 **D. Defendants Engaged in "Straight-lining" to Avoid Paying Profit Participants.**

17 41. On information and belief, Defendants have engaged in straight-lining by bundling  
 18 *Gilmore Girls* with unprofitable shows to deprive Plaintiffs of participation profits due.

19 42. Straight-lining occurs when a television show or film is distributed along with other  
 20 shows or films for a fee or even for free. Some of the shows and films in a bundle are profitable  
 21 and some are not. The unprofitable shows yield no payouts to profit participants. By bundling  
 22 profitable and unprofitable shows and films in this way, a studio may ascribe each title an equal  
 23 share of the distribution fee and avoid proper allocation of amounts owed to profit participants and  
 24 the additional fees owed to profit participants of the successful titles. Straight-lining reduces  
 25 revenue to profitable titles and lowers the MAGR, which in turn results in a lower fee paid based  
 26 on the negotiated participation percentage.

43. The self-dealing manner in which Defendants allocated revenue to films and television shows included in the bundles resulted in drastic under-allocation of revenues owed to Plaintiffs under the Series Agreement.

**E. Defendants' Payment and Audit Process is Designed to Avoid and Defer Making Full Payments to Profit Participants.**

44. As noted above, this is the fourth dispute regarding payments due under the Series Agreement since it was executed approximately 18 years ago. Each dispute has required Plaintiffs to expend substantial sums of money and time to obtain the amounts they are owed. Each dispute has resulted in settlements requiring Defendants to pay additional amounts to Plaintiffs. Each of the previous disputes resulted in Plaintiffs' being deprived of monies owed to them for significant periods of time while the disputes were pending. This dispute is no different.

45. The Series Agreement allows a profit participant to conduct an audit of Defendants' books and records. The Series Agreement stipulates that the cost of audits of Defendants' books shall be borne by Plaintiffs, the profit participants. The Series Agreement also necessitates particular strictures to which a profit participant must adhere when engaging in an audit. The restrictions include utilizing specialized auditing firms and lists only three pre-approved auditing firms. Audits are restricted to only one each calendar year, and an audit may not last for longer than 30 days. These are standard provisions, which (on information and belief) are contained in all of Defendants' profit participation agreements. These standard restrictions are adhesive in nature and constitute significant barriers to Plaintiffs' (and other profit participants') ability to maintain a proper system of checks and balances on the amounts they are owed.

46. Additionally, Defendants inappropriately and unnecessarily delay access to audits, which are serviced on a first-in, first-out basis.

47. On or about February 7, 2017, Plaintiffs notified Defendants of their request an audit for amounts in dispute dating back to October 2012.

48. Defendants delayed an entire year – until February 12, 2018 – before providing Plaintiffs with an estimated audit date. At that time, Defendants estimated an audit commencement date of late 2019.



49. Despite their contractual obligations to act in good faith and provide Plaintiffs with reasonable access to books of accounts that accurately reflect the transactions relating to *Gilmore Girls*, Defendants denied Plaintiffs access to information from October 2012 through the date of this complaint, and denied Plaintiffs the right to audit during these periods.

50. Plaintiffs have already been deprived of payments rightfully due for over six years and, given Defendants' timeline, Plaintiffs will suffer lost profits for at least seven years. As a result, Plaintiffs have filed this action to recover amounts Defendants have wrongfully deprived them of since October 2012.

51. Given the prior disputes and audit delays, the parties entered a tolling agreement that preserved Plaintiffs' rights to challenge the issues alleged herein.

#### **FIRST CAUSE OF ACTION**

##### **(Breach of Contract Against All Defendants)**

52. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

53. By executing the Series Agreement on February 16, 2000, the parties entered into a valid, binding, enforceable contract. The parties incorporated the Modification Agreement and the terms of the settlement agreement from the Third Dispute into the Series Agreement.

54. Plaintiffs fully performed all conditions, covenants, and promises required to be performed under the terms and conditions of the Series Agreement, except for those obligations waived, excused, or prevented by Defendants, its successors in interest, Does 1 through 10, inclusive, and each of them.

55. Defendants have materially breached the Series Agreement by failing to perform their duties under the terms therein (and the terms of the Modification Agreement, to the extent it is incorporated in the Series Agreement). Defendants' failure to perform under the terms of the Termination Agreement include:

- Improperly manipulating gross receipts by adding improper deductions, such as SVOD distribution fees on first run Subsequent Episodes of *Gilmore Girls: A Year in the Life*; omitting deferring, and holding back receipts that should be included; and overstating fees, as described in paragraphs 4, 24, 31-34, 36-40, above;



- “straight-lining,” as described in paragraphs 5, 34, and 41-43, above; and
- improperly delaying, avoiding and misdirecting their audit process as described specifically in paragraphs 6, 34, 44-51, above.

56. As a direct and proximate result of these material breaches of the Series Agreement, Plaintiffs have suffered damages in an amount to be proven at trial, but including without limitation the sum Plaintiffs would have received if they had been paid for *Gilmore Girls* and *Gilmore Girls: A Year in the Life* as provided by the Series Agreement.

## SECOND CAUSE OF ACTION

### (Breach of Fiduciary Duty Against All Defendants)

57. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

58. The relationship between Plaintiffs and Defendants constituted a joint venture as a matter of law because: Plaintiffs and Defendants combined their property, skill, and knowledge in order to carry out a single business undertaking, i.e. *Gilmore Girls*; both Plaintiffs and Defendants have an ownership interest in *Gilmore Girls*; Plaintiffs and Defendants have joint control over *Gilmore Girls*; and Plaintiffs and Defendants agreed to share in the profits and losses of *Gilmore Girls*.

59. By virtue of the joint venture relationship, Defendants owed fiduciary duties to Plaintiffs as a matter of law, including a duty to act with the utmost good faith in the best interests of Plaintiffs.

60. Defendants breached their fiduciary duties by knowingly acting adverse to the interests of Plaintiffs, as set forth above. Defendants also breached their fiduciary duties to Plaintiffs as a result of actions taken by executives employed by Defendants, which were taken solely for personal and not for professional reasons.

61. Plaintiffs are informed and believe and thereon allege that Defendants actively participated in such breaches for the purpose of advancing each of their own interests and financial advantages, including by increasing their reported revenues and profits (and/or decreasing their reported costs) at the expense of Plaintiffs' fair share of profits.

62. As a direct and proximate result of the wrongdoing alleged herein, Plaintiffs have suffered damages as set forth above, in an amount to be determined at trial.

63. By engaging in the misconduct alleged herein, Defendants have acted with malice, oppression and/or fraud, all in willful disregard of Plaintiffs' rights and interests, thus entitling Plaintiffs to an award of punitive or exemplary damages in an amount appropriate to punish or make an example of Defendants, pursuant to Section 3294 of the Civil Code.

### THIRD CAUSE OF ACTION

#### (Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants)

64. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

65. Incorporated into every contract is an implied covenant of good faith and fair dealing, which imposes on each party to the contract an obligation not to take any act or make any omission that would deprive the other party of the benefits and protections of the contract.

66. The Series Agreement contains an implied covenant of good faith and fair dealing prohibiting Defendants from doing anything to deprive Plaintiffs of the benefits and protections therein, specifically from failing to provide accurate and timely earnings reports to Plaintiffs and by failing to act in good faith to maximize payments to Plaintiffs.

67. Defendants breached the implied covenant of good faith and fair dealing in the Series Agreement by willfully and in bad faith failing to abide by the requirement to make accurate Statements and profit participation payments to Plaintiffs for *Gilmore Girls* and *Gilmore Girls: A Year in the Life*. Defendants also failed to maximize the profits due Plaintiffs by self-dealing in its license agreements with affiliated entities and licensing *Gilmore Girls* in packages with less popular projects and not allocating license fees accurately, and licensing films for free but allocating revenues to such projects (i.e., "straight-lining"), which cost Plaintiffs significant revenues. Defendants further breached the implied covenant and acted in bad faith by improperly delaying, avoiding and misdirecting their audit process.

68. By virtue of their conduct, Defendants have deprived Plaintiffs of the benefits of their bargain as set forth in the Series Agreement.



69. As a direct, foreseeable, and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**

**(Fraud Against All Defendants)**

70. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

71. Defendants willfully and knowingly made false representations of material fact to Plaintiffs by intentionally providing Plaintiffs with inaccurate accounts of the production and distribution costs associated with *Gilmore Girls* and *Gilmore Girls: A Year in the Life* and the revenues earned by Defendants' distribution of *Gilmore Girls* and *Gilmore Girls: A Year in the Life*. Defendants are under a duty to disclose to Plaintiffs the correct amounts owing to Plaintiffs from the exploitation of *Gilmore Girls* and *Gilmore Girls: A Year in the Life*, and Defendants repeatedly misrepresented, concealed and suppressed the true amounts owing to Plaintiffs.

72. Defendants also made omissions of material facts by failing to inform Plaintiffs that *Gilmore Girls* would be included in packages when licensed, and that Defendants made internal "adjustments" to the income and expenses attributed to *Gilmore Girls* that do not accurately reflect the financial performance of *Gilmore Girls*. Income derived from *Gilmore Girls* was higher than Defendants reported in the Statements and expenses were lower than those reported, and Defendants were under a duty to disclose the correct information to Plaintiffs. Defendants also fraudulently allocated to *Gilmore Girls* a smaller portion of licenses fees charged for the distribution of television shows and films than *Gilmore Girls* deserved. As a result of these actions, Defendants actively endeavored to keep Plaintiffs uninformed of the true amounts owing to them under the Series Agreement.

73. Defendants made these misrepresentations and omissions for years without Plaintiffs' knowledge. Persons employed by Defendants who misrepresented the financial performance of *Gilmore Girls* and expenses attributed to *Gilmore Girls* are not currently known to

1 Plaintiffs because the entirety of information concerning the methods of accounting for *Gilmore*  
2 *Girls* resides with Defendants.

3 74. Plaintiffs relied on the accuracy of the information represented in the Statements  
4 and other representations made by Defendants. Plaintiffs accepted and relied on Defendants'  
5 representations in participation statements based on the parties' long-standing relationship of trust  
6 and confidence. This reliance on Defendants' years of misrepresentations caused Plaintiffs to  
7 continue their dealings with Defendants to their detriment when they could have ended their  
8 relationship with Defendants and endeavored to work with another studio or sue to enforce their  
9 rights at an earlier date.

10 75. Plaintiffs' active reliance on these false representations was reasonable because  
11 Defendants possessed all the relevant accounting information and it provided no indication that the  
12 dollar amounts it represented as owing to Plaintiffs were inaccurate. The parties are long-time  
13 business partners whose joint venture resulted in the production of the successful and memorable  
14 television show *Gilmore Girls* and whose relationship can be defined as one of trust and  
15 confidence. Defendants violated this trust and Plaintiffs reasonably relied on years of  
16 misrepresentations to their detriment.

17 76. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs have  
18 been damaged in an amount to be proven at trial, but which amount is in excess of the minimum  
19 jurisdictional requirements of this Court.

20 77. The aforementioned acts were willful, wanton, malicious, oppressive, fraudulent,  
21 and were undertaken with the intent to frustrate Plaintiffs' rights. Plaintiffs are therefore entitled  
22 to an award of exemplary and punitive damages.

23 **FIFTH CAUSE OF ACTION**

24 **(Negligent Misrepresentation Against All Defendants)**

25 78. Plaintiffs reallege and incorporate herein by reference each and every allegation  
26 contained in the foregoing paragraphs above.

27 79. Defendants made false representations of material fact to Plaintiffs by providing  
28 Plaintiffs with inaccurate accounts of the production and distribution costs associated with

1 *Gilmore Girls* and *Gilmore Girls: A Year in the Life* and the revenues earned by Defendants  
2 distribution of *Gilmore Girls* and *Gilmore Girls: A Year in the Life*.

3 80. Defendants also made omissions of material facts by failing to inform Plaintiffs  
4 that Defendants made internal "adjustments" to the income and expenses attributed to *Gilmore*  
5 *Girls* that do not accurately reflect the financial performance of *Gilmore Girls* and *Gilmore Girls:*  
6 *A Year in the Life*. Income derived from *Gilmore Girls* was higher than Defendants reported in  
7 the Statements and expenses were lower than those reported. Defendants also incorrectly  
8 allocated to *Gilmore Girls* a smaller portion of licenses fees charged for the distribution of  
9 *Gilmore Girls* than it deserved.

10 81. Defendants made these misrepresentations and omissions negligently for years  
11 without Plaintiffs' knowledge. Plaintiffs relied on the accuracy of the information represented in  
12 the Statements, and had Plaintiffs been made aware of the falsity of such representations, they  
13 would have severed the entirety of their business relationship with Defendants and sought  
14 remedies at law and equity immediately. Mr. Polone is an A-list executive producer who has  
15 earned the luxury of choosing the studios with which he does business. Plaintiffs accepted and  
16 relied on Defendants' representations in participation statements based on the parties'  
17 longstanding relationship of trust and confidence. This reliance on Defendants' years of  
18 misrepresentations caused Plaintiffs to continue their dealings with Defendants to their detriment  
19 when they could have ended their relationship with Defendants and endeavored to work with  
20 another studio or sought remedies at law and equity immediately.

21 82. Plaintiffs' active reliance on these false representations was reasonable because  
22 Defendants possessed all the relevant accounting information and it provided no indication that the  
23 dollar amounts it represented as owing to Plaintiffs were inaccurate. The parties are long-time  
24 business partners whose joint venture resulted in the production of the successful and memorable  
25 television show *Gilmore Girls* and whose relationship was one of trust and confidence. Plaintiffs  
26 reasonably relied on years of misrepresentations to their detriment.



1 83. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs have  
 2 been damaged in an amount to be proven at trial, but which amount is in excess of the minimum  
 3 jurisdictional requirements of this Court.

4 **SIXTH CAUSE OF ACTION**

5 **(Unfair Business Practices; Violation of Cal. Bus. & Profs. Code §§ 17200 et seq. Against All**  
 6 **Defendants)**

7 84. Plaintiffs reallege and incorporate herein by reference each and every allegation  
 8 contained in the foregoing paragraphs above.

9 85. Polone asserts this claim against all Defendants on behalf of themselves as well as  
 10 the general public, including other profit participants.

11 86. Defendants have engaged in at least the following unfair and/or fraudulent conduct  
 12 constituting unfair competition under California Business and Professions Code Section 17200:

- 13 a. Defendants willfully and knowingly made misrepresentations in its accountings to  
 14 Plaintiffs in order to avoid paying sums owed to Plaintiffs;
- 15 b. Defendants wrongfully and unlawfully tied the sale of motion pictures produced by  
 16 Plaintiffs to other projects and offered them for sale only as part of packages of television  
 17 shows and films (i.e., "straight-lining"); and
- 18 c. Defendants created false Statements that underreported income derived from certain  
 19 income sources and overreported expenses associated with *Gilmore Girls* and *Gilmore*  
 20 *Girls: A Year in the Life*.

21 87. Plaintiffs are informed and believe and thereon allege that Defendants undertook  
 22 these acts in order to wrongfully deny Plaintiffs monies and credits owed to them under the terms  
 23 of the Series Agreement.

24 88. Plaintiffs are also informed and believe, and on that basis allege, that Defendants  
 25 are engaged in these unfair and fraudulent business practices with respect to other profit  
 26 participants besides Plaintiffs.

27 89. This unfair, fraudulent and self-dealing conduct committed by Defendants has  
 28 resulted in benefit to Defendants, including without limitation Defendant's retention of monies,

1 recognition and reputation gain to which Plaintiffs are entitled. Plaintiffs are therefore entitled to  
 2 the restitution or disgorgement of profits derived from the acts of unfair competition by  
 3 Defendants, and a temporary restraining order, preliminary and permanent injunction all enjoining  
 4 Defendants from engaging in further acts of "straight-lining," improperly accounting for monies  
 5 due to profit participants, and improperly delaying, avoiding and misdirecting their audit process,  
 6 as well as reasonable costs and attorney's fees. Plaintiffs also pray for a preliminary and  
 7 permanent injunction preventing Defendants from engaging in the business practices of "straight-  
 8 lining," fraudulently misreporting income and expenses in their accounting to profit participants,  
 9 and improperly delaying, avoiding and misdirecting their audit process, including those besides  
 10 Plaintiffs, and for costs and attorney's fees in pursuit thereof.

#### 11 SEVENTH CAUSE OF ACTION

#### 12 (Unlawful Tying Agreement; Violation of Cal. Bus. & Profs. Code §§ 16720 et seq. Against 13 All Defendants)

14 90. Plaintiffs reallege and incorporate herein by reference each and every allegation  
 15 contained in the foregoing paragraphs above.

16 91. Defendant engaged in unlawful conduct when it linked the sale of *Gilmore Girls*  
 17 produced by Plaintiffs to the sale of other lesser television shows or films as a necessary  
 18 prerequisite to the purchase thereof (i.e., "straight-lining").

19 92. Defendants have significant power in the television and film distribution industry  
 20 and, as such, have sufficient economic power to coerce the purchase of its packages.

21 93. Defendants effectuated a substantial amount of sales through its unlawful tying of  
 22 television show and film packages.

23 94. As a direct, foreseeable, and proximate cause of Defendants' conduct in tying its  
 24 products as a prerequisite to their sale, Plaintiffs have suffered damages in an amount to be proven  
 25 at trial.

26 95. Defendants' unfair and unlawful conduct as set forth above has caused injury to  
 27 Plaintiffs, and Plaintiffs therefore are entitled to the recovery of treble damages, as well as  
 28 reasonable attorneys' fees and costs.

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**EIGHTH CAUSE OF ACTION**  
**(Accounting Against All Defendants)**

96. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

97. Pursuant to the terms of the Series Agreement, Plaintiffs are entitled to an accounting by Defendants, and Defendants are required to permit audits and cooperate with such audits of the accounting books and records of Defendants.

98. Despite demand therefore, Defendants have failed and refused, and continues to fail and refuse, to provide Plaintiffs with proper, accurate, and complete accountings reflecting all revenues derived from Defendants' distribution of *Gilmore Girls* produced by Mr. Polone, and *Gilmore Girls: A Year in the Life* and has further failed and refused, and continues to fail and refuse, to allow Plaintiffs to inspect the books and records of Defendants.

99. Plaintiffs are entitled to a preliminary and permanent injunction requiring Defendants or its successors in interest to provide a complete and accurate accounting of such revenues to date and to further provide complete and timely cooperation with an audit by Plaintiffs or their agents of the accounting records of Defendants with respect thereto.

**NINTH CAUSE OF ACTION**  
**(Constructive Trust Against All Defendants)**

100. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs above.

101. Plaintiffs are informed and believe, and on that basis allege, that the monies and/or financial benefits obtained by Defendants as a result of the fraud, misrepresentation and unlawful tying agreements as described herein, were paid to Defendants.

102. Plaintiffs are informed and believe, and on that basis allege, that Defendants knew or reasonably should have known, at the time of the receipt of said funds and/or financial benefits, from Plaintiffs directly or from Defendants as alleged herein, that said funds and/or financial benefits were misappropriated, were obtained as a result of fraud, misrepresentation, and/or illegal tying agreements, and were generally the property of Plaintiffs.

03/15/2018



103. Plaintiffs are informed and believe, and on that basis allege, that Defendants at all material times knew or reasonably should have known, that the funds and/or financial benefits received by them were misappropriated assets and the property of Plaintiffs.

104. Plaintiffs are entitled to the proceeds from the acts alleged herein and any and all profits and assets generated thereby that Defendants have derived from said acts.

105. Plaintiffs are informed and believe, and on that basis allege, that Defendants herein own and possesses tangible assets consisting of profits from or monies and/or financial benefits obtained by Defendants' unlawful acts, as alleged herein.

106. Plaintiffs are thus entitled to a constructive trust over all revenues, assets, and profits that Defendants or its successors in interest received as a result of its distribution of *Gilmore Girls* and *Gilmore Girls: A Year in the Life*.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. For compensatory and consequential damages in an amount to be proven at trial; including pro-rated costs, with interest at the maximum rate permitted by law;
2. For exemplary and punitive damages;
3. For treble damages;
4. For restitution and disgorgement of profits derived from acts of unfair competition by Defendants;
5. For preliminary and permanent injunctive relief enjoining Defendants from engaging in their fraudulent business practices of (1) inaccurately reporting income and expenses on television shows and films to profit participants, including Plaintiffs; (2) straight-lining; and (3) requiring Defendants and/or their successors in interest to provide a complete and accurate accounting to profit participants, including Plaintiffs; and (4) requiring complete and timely cooperation for an audit by Plaintiffs, their agents, or other profit participants, of the accounting books and records of Defendants.
6. For a declaration that Defendants have breached their duties to Plaintiffs as alleged herein;

1           7.     For a constructive trust over all revenues, assets, and profits that Defendants and/or  
2 their successors in interest received as a result of their distribution of *Gilmore Girls* and *Gilmore*  
3 *Girls: A Year in the Life*.

4           8.     For reasonable attorneys' fees and costs; and

5           9.     For any and all other relief found to be just and proper.  
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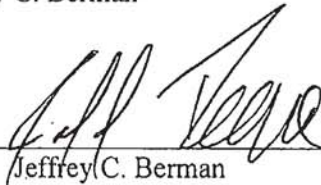
8 DATED: March 13, 2018

BROWNE GEORGE ROSS LLP

Eric M. George

Jeffrey C. Berman

By

  
Jeffrey C. Berman

Attorneys for Plaintiffs Hofflund/Polone and Gavin  
Polone

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

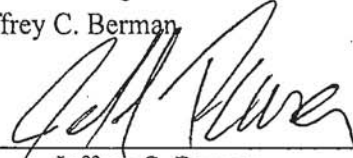
DATED: March 13, 2018

BROWNE GEORGE ROSS LLP

Eric M. George

Jeffrey C. Berman

By



Jeffrey C. Berman

Attorneys for Plaintiffs Hofflund/Polone and Gavin  
Polone

03/15/2018



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Muhammad Ali Enterprises LLC,

Plaintiff,

v.

Case No. 1:17-cv-7273

Fox Broadcasting Company,

Defendant.

**COMPLAINT**

Plaintiff Muhammad Ali Enterprises LLC, by its attorneys, for its complaint against Fox Broadcasting Company, states as follows:

**THE PARTIES**

1. Plaintiff Muhammad Ali Enterprises LLC (“MAE”) owns the trademark rights, copyrights, right of publicity, and all other intellectual property rights of boxing legend Muhammad Ali.

2. Defendant Fox Broadcasting Company (“Fox”) is a major commercial television network that broadcasts its programs throughout the United States.

**NATURE OF THE CASE**

3. This case arises out of Fox’s unauthorized use of Muhammad Ali’s identity in a promotional video that Fox broadcast immediately before the start of Fox’s broadcast of the 2017 Super Bowl. MAE brings these claims for false endorsement and violation of the right of publicity against Fox for the damages caused and profits unjustly gained by Fox for its unauthorized use of Muhammad Ali’s identity.

### **JURISDICTION**

4. Count I of this action arises under the Lanham Act of 1946, as amended, 15 U.S.C. §§ 1051 et seq. This Court has jurisdiction over this claim under 15 U.S.C. §§ 1121 and 28 U.S.C. §§ 1331 and 1338.

5. Count II of this action arises under state statutory law. This Court has jurisdiction over this claim under 28 U.S.C. § 1338(b) in that this claim is joined with a substantial and related claim brought under the trademark laws of the United States (15 U.S.C. §§ 1051 et seq.). This Court also has supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367 because the federal and state claims are based on the same operative facts, and because judicial economy, convenience, and fairness to the parties will result if the Court assumes and exercises jurisdiction over the state law claim.

6. This Court has personal jurisdiction over Fox because it regularly conducts business in this District and caused the promotional video at issue to be disseminated throughout the District.

### **FACTUAL BACKGROUND**

#### **Muhammad Ali: “The Greatest”**

7. Muhammad Ali, who died in 2016 at the age of 74, was given the name Cassius Marcellus Clay by his parents, took the name Muhammad Ali when he converted to Islam, and earned the names “The Greatest,” “The People’s Champion,” “The Louisville Lip,” and “The King of Boxing” during his lifetime.

8. Ali learned to box as a 12-year-old boy, after his new red and white bicycle, which his father had given him, was stolen. Young Cassius Clay vowed he was “gonna whup whoever stole my bike!” A Louisville policeman, Joe Martin, counseled the boy not to make idle threats and took Cassius under his wing. Martin trained Cassius to box for six months, after

which he won his debut boxing match in a three-round decision.

9. After winning a gold medal in the 1960 Summer Olympics in Rome, Cassius Clay, as he was still known, turned professional later that year, and in 1964 at the age of 22, won the heavyweight boxing title after defeating Sony Liston in an upset. That same year, Ali converted to Islam and was forever known as Muhammad Ali.

10. In 1966, Ali refused to be drafted, citing his objection to the Vietnam War and his religious beliefs. He was arrested, tried, and convicted for draft evasion and stripped of his boxing titles. The Supreme Court overturned his conviction in 1971, and Ali's principled stance against the war as a conscientious objector made him an icon to many in a tumultuous time in modern American history.

11. Despite being sidelined from boxing for four years before his conviction was overturned, Ali went on to earn additional heavyweight titles in 1974 and 1978. *Sports Illustrated* named him the greatest athlete of the 20th century, and the BBC named Ali the Sports Personality of the Century. He is the only boxer to have earned *The Ring* magazine's designation of Fighter of the Year six times.

12. Ali developed a reputation for provocative trash talking, using rhyming and poetry to make his points, anticipating rap and hip-hop music. He recorded two spoken word albums and was twice nominated for a Grammy Award. After his retirement from boxing, Ali dedicated his life to religious and charitable causes. He died on June 3, 2016.

13. Muhammad Ali had, and through his endorsement company MAE, continues to have enormous success as an endorser of carefully selected products and services in which high-quality businesses that wish to profit from an association with Ali contracted with him and now MAE to use aspects of his world-famous identity, including his image and persona, in their

advertising and marketing materials.

14. By carefully controlling the nature and frequency of his product endorsements – rejecting far more requests to use his name and persona than he grants – Ali and MAE have enhanced and maintained the value of his legacy and endorsements.

15. The majority of Ali’s and MAE’s income was and continues to be derived from MAE’s ability to license Muhammad Ali’s name and persona to commercial sponsors who wish to capitalize on his fame.

16. Because of the public’s widespread knowledge and recognition of Muhammad Ali and admiration for him, goods and services endorsed by and associated with Ali through his endorsement company MAE have come to be well and favorably known and have benefitted greatly from their association with him.

17. Muhammad Ali’s name and persona have developed enormous commercial value and secondary meaning in promoting products and services as a result of the public’s widespread knowledge and admiration of him.

Fox’s Unauthorized Use of Muhammad Ali’s Identity

18. Fox broadcast Super Bowl LI in February 2017 to a nationwide audience, estimated to be over 111 million viewers.

19. Fox used Muhammad Ali’s name, image, and likeness as the centerpiece of its three-minute promotional video for its broadcast of Super Bowl LI. Fox aired its video immediately before its broadcast of the Super Bowl.

20. The video begins with a narrator who says, “Walk with me. Walk with me as I confront greatness” while the viewer sees the back of a boxer meant to be Ali, wearing a robe that says “The Greatest. The Lip.” The viewer sees actual film footage of Ali, as the viewer hears Ali shouting, “I am the Greatest!” The narrator continues, again imploring, “Walk with



me. I can show you what it means to be the greatest.”

21. Throughout the video, it refers to and depicts Ali, following him through his boxing career and highlighting his controversies and personal achievements, including his principled stance as a conscientious objector and his lighting the torch at the 1996 Summer Olympics in Atlanta. The video informs or reminds the viewer of the characteristics and accomplishments that made Ali “The Greatest,” repeatedly defining “greatness” with examples Ali set in his life.

22. But Fox’s promotional video, entitled “The Greatest,” is far more than a tribute to Muhammad Ali, who had died eight months before Super Bowl LI and whose fame and reputation were in the public consciousness when the video was shown. In the second half of the video, while continuing the theme of greatness, the focus shifts to imagery of NFL legends, including Joe Montana, Jerry Rice, Troy Aikman, Emmitt Smith, Joe Namath, John Elway, Tom Brady, Vince Lombardi, and Peyton Manning.

23. The video uses Ali to define greatness and ultimately to compare the NFL legends to Ali and thus to define them and the Super Bowl as “greatness” too. The narrator tells the viewer that “in the Super Bowl many have marched towards this same confrontation with greatness.” Juxtaposing images of Ali walking down a tunnel with those of Super Bowl greats walking in a tunnel on their way to the playing field, the narrator invites the viewer to “walk with me to that light at the end of the tunnel.” He concludes that “it’s the only way to prove you’re worthy of being called ‘The Greatest.’”

24. At the conclusion of the video, the screen displays the logo of Super Bowl LI and concludes with another screen that includes Muhammad Ali’s name and the years of his birth and death.

25. Fox never requested or received MAE's permission to use Ali's identity or to imply his endorsement in connection with the services offered by Fox, including its broadcast of the Super Bowl.

26. Fox's promotional video uses Ali's identity to promote Fox and its broadcast services.

27. Fox's promotional video is likely to confuse consumers as to Ali's and MAE's sponsorship or approval of those services.

28. Fox could have sold the three minutes it used for its promotional video to other advertisers for \$30 million.

29. MAE has been damaged by Fox, whose unauthorized promotional video infringes Ali's right of publicity, assigned to MAE, and falsely conveys Ali's and MAE's endorsement of Fox's services, leading consumers to wrongly conclude that Ali or MAE endorses those services.

### **COUNT I**

#### **(MAE'S CLAIM FOR VIOLATION OF SECTION 43(a) OF THE LANHAM ACT – FALSE ENDORSEMENT)**

30. MAE realleges and incorporates by reference paragraphs 1 through 29 of this Complaint.

31. Fox's unauthorized use of Ali's identity, including his image and persona, in its promotional video was a false or misleading representation of fact that falsely implies Ali's or MAE's endorsement of Fox's services.

32. Fox's unauthorized use of Ali's identity  
(a) is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Fox with Ali or MAE, or as to the origin, sponsorship, or approval of Fox's services or commercial activities by Ali or MAE in violation of Section 43(a) of the

Lanham Act, 15 U.S.C. § 1125(a)(1)(A); or

(b) misrepresents the nature, characteristics, or qualities of Fox's services or commercial activities in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

33. MAE has been damaged by these acts. MAE has no adequate remedy at law.

34. This case is an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, MAE requests that relief be granted in its favor and against Fox for (a) damages sustained by MAE, including Fox's profits, in an amount greater than \$30,000,000, such damages to be trebled pursuant to 15 U.S.C. § 1117, (b) attorneys' fees and costs, (c) a permanent injunction requiring Fox to refrain from any use of Ali's identity without prior authorization from MAE, (d) an order requiring Fox to delete or cause to be deleted all copies of the promotional video from any website or other location, and (e) such other and further relief as the Court deems just and proper.

## **COUNT II**

### **(MAE'S CLAIM FOR VIOLATION OF THE ILLINOIS RIGHT OF PUBLICITY ACT)**

35. MAE realleges and incorporates by reference paragraphs 1 through 29 of this Complaint.

36. Fox's unauthorized use of Ali's identity for commercial purposes is a violation the Illinois Right of Publicity Act, 765 ILCS 1075/1-60.

37. Fox's use of Ali's identity was unauthorized because Fox did not obtain Ali's or MAE's written consent to use Ali's identity in connection with the promotional video. In fact, Fox did not even request Ali's or MAE's consent.

38. Fox's use of Ali's identity was willful because Fox used Ali's identity

intentionally and with knowledge that its use was not authorized.

39. MAE has been damaged by Fox's unauthorized use of Ali's identity.

WHEREFORE, MAE requests that relief be granted in its favor and against Fox for (a) damages sustained by MAE, including Fox's profits, in an amount greater than \$30,000,000, (b) punitive damages, (c) attorneys' fees and costs, (d) a permanent injunction requiring Fox to refrain from any use of Ali's identity without prior authorization from MAE, (e) an order requiring Fox to delete or cause to be deleted all copies of the promotional video from any website or other location, and (f) such other and further relief as the Court deems just and proper.

**JURY DEMAND**

MAE hereby demands a trial by jury.

Dated: October 10, 2017

/s/ Frederick J. Sperling

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