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17 Hicks Media, Inc., a Texas Corporation, as successor to M&M  
18 Momar, Inc.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

21 HICKS MEDIA, INC., a Texas Corporation, as  
22 successor to M&M MOMAR, INC.;

23 Plaintiff,

24 vs.

25 BIG TICKET PRODUCTIONS, INC., a  
26 Delaware Corporation; PARAMOUNT  
27 PICTURES CORPORATION, a Delaware  
28 Corporation; CBS STUDIOS f/k/a CBS  
TELEVISION STUDIOS, a subsidiary of  
CBS ENTERTAINMENT GROUP, a  
division of VIACOMCBS INC., a  
Delaware Corporation; and DOES 1-50,  
inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

1. BREACH OF WRITTEN CONTRACT
2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
3. INTENTIONAL INTERFERENCE WITH CONTRACT
4. ACCOUNTING

DEMAND FOR JURY TRIAL



1 to be syndicated), as well as the contractual limitations placed on how the Series' AGR must be  
2 calculated, Plaintiff reasonably expected to enjoy significant contingent compensation from the  
3 Series' revenues. That expectation has not proven to be the reality. Moreover, Plaintiff is informed  
4 and believes, and thereupon alleges, that Defendants have similarly deprived the Series' writers and  
5 creators of their right to contingent compensation. Plaintiff is further informed and believes and  
6 thereupon alleges that the Series' writers and creators performed a forensic audit that this forensic  
7 audit of the Series' books and records strongly suggested that Defendants have inequitably  
8 structured the Series' finances to artificially depress its profitability and retain millions that would  
9 otherwise be contractually due and owing to Plaintiff.

10 6. Plaintiff is further informed and believes and thereupon allege that the Series'  
11 writers and creators shared the full findings of the Audit, Defendants have refused to compensate  
12 Plaintiff fully and properly for the monies wrongfully withheld from it, thereby necessitating this  
13 action to vindicate Plaintiff's contractual rights.

14 **PLAINTIFF**

15 7. Plaintiff Hicks Media, Inc., a Texas Corporation, is the effective successor to M&M  
16 Momar, Inc., a predecessor corporation. M&M Momar, Inc. had a contractual relationship with  
17 Defendants giving rise to its right to profit participation. In later years, and with Defendants'  
18 consent and knowledge, Plaintiff Hicks Media, Inc. assumed rights and obligations of M&M  
19 Momar, Inc. acting as its effective successor and Defendants acknowledged and recognized Hicks  
20 Media, Inc.'s continued right to profit participation pursuant to M&M's contractual rights.

21 **DEFENDANTS**

22 8. Defendant Big Ticket Productions, Inc., on information and belief, is, and at all  
23 relevant times was, a Delaware corporation with offices located in the County of Los Angeles.<sup>1</sup>

24 9. Defendant Paramount Pictures Corporation, on information and belief, is, and at  
25 all relevant times was, a Delaware corporation whose principal place of business is located in the  
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27 <sup>1</sup> BTP's agreements with RJI and JSPI specify that all notices to BTP thereunder shall be  
28 directed to Big Ticket Television at 1438 North Gower Street, Bldg. 35, Box 45, Los Angeles, CA  
90028.

1 County of Los Angeles, and has represented itself to be successor-in-interest to BTP.

2 11. On information and belief, Defendant CBS Studios is, and at all relevant times  
3 was, a subsidiary of CBS Entertainment Group, itself a division of ViacomCBS Inc., a Delaware  
4 corporation, whose principal place of business is located in the County of Los Angeles.

5 12. Defendants DOES 1 through 50 are sued herein by fictitious names for the reason  
6 that their true names are unknown to Plaintiff. Plaintiff will seek leave to amend this complaint  
7 to allege the true names and capacities of these Defendants when the same have been ascertained.  
8 Plaintiff is informed and believes and based thereon alleges that these fictitiously named  
9 Defendants are responsible in some manner for the actions and damages alleged herein.

10 13. Plaintiff is further informed and believes and based thereon alleges that Defendants  
11 at all times herein alleged were the agents, alter egos, successors in interest, employees, servants,  
12 joint venturers and/or co-conspirators of each of the other remaining Defendants, and that in doing  
13 the things herein alleged were acting in the course and scope of such agency, employment, joint  
14 venture and/or conspiracy.

#### 15 **JURISDICTION AND VENUE**

16 14. The Court has personal jurisdiction over Defendants pursuant to California Code  
17 of Civil Procedure section 410.10 because the Defendants are doing business in the State of  
18 California, and some or all of the agreements that are the subject of this dispute were made,  
19 entered into, performed, and breached within the State of California. The amount in controversy  
20 exceeds the jurisdictional minimum of this Court.

21 15. Venue is proper in this County pursuant to California Code of Civil Procedure  
22 sections 395(a) and 395.5 because some or all of the agreements that are the subject of this  
23 dispute were made, entered into, performed, and/or breached in this County.

24 16. Venue is also proper under the parties' agreements and based on the location of the  
25 relevant events (including formation of the contracts) and locations that Defendants did business.

#### 26 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 17. On information and belief, BTP was created in 1994 as a subsidiary of Spelling  
28 Entertainment Group, itself then-majority-owned by Viacom. When the Series was enjoying its

1 first-run broadcast (lasting from 1999 to 2004), Viacom additionally owned UPN and CBS.

2 18. Between approximately 1999 and 2000, BTP entered into written agreements with  
3 M&M (hereafter referred to as the M&M agreement(s)). Pursuant to the M&M agreement(s),  
4 Plaintiff is entitled to 2.5% of 100% of the AGR of the Series. The calculation of this amount is  
5 subject to numerous common contractual limitations to preserve the integrity of Plaintiff's  
6 contingent compensation rights.

7 19. Also pursuant to the M&M agreement(s), BTP is required to provide Plaintiff with  
8 written statements semi-annually showing in reasonable detail the computation of the Series' net  
9 profits, if any, and requiring that any portion thereof payable to Plaintiff be remitted with the  
10 particular statement(s) indicating such amount(s) to be due. On information and belief, BTP has  
11 entered into an agreement with CBS for the latter to render to Plaintiff the accountings required of  
12 BTP under Plaintiff's agreements therewith.

13 20. Upon information and belief, the writers and creators of the Series had similar  
14 agreements with Defendants though the writers and creators were entitled to 6.25% of the AGR of  
15 the Series. Upon information and belief, the writers and creators of the Series exercised their right  
16 to audit the books and records of account relating to the distribution and exploitation of the Series<sup>2</sup>  
17 by having auditing firm of Green Hasson Janks (hereafter, GHJ) review the accounting records of  
18 the Series from inception to March 31, 2014 (hereafter referred to as the Audit Report).

19 21. Upon information and believe, based on the allegations made by the writers and  
20 creators in their public lawsuit filed in June 2022, the Audit Report identified significant financial  
21 malfeasance undertaken by Defendants, including but not limited to the following issues:

22 a. At the time the Series was licensed by BTP to UPN, both entities were owned in  
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24 <sup>2</sup> Such audits are a practical necessity in the entertainment industry due to the fact that,  
25 when calculating the amount of contingent compensation owed to profit participants, a perverse  
26 incentive exists for producers to artificially increase costs and decrease the revenues reportable to  
27 offset those costs, thereby keeping the relevant project from reaching its "breakeven point" where  
28 revenues eclipse costs, the project is considered to be profitable, and contingent compensation is  
owed. In order to guard against this, profit participants must undertake periodic financial audits of  
the books and records covering the project in question to identify accounting improprieties that  
have lessened or altogether prevented the payment of contingent compensation.

1 whole or majority by Viacom, the parent company of CBS. Traditionally,  
2 network license fees for a first-run television program would cover 80% of the  
3 show's production costs. However, the fees paid by UPN amounted to less than  
4 50% of the Series' production costs, leaving it with a deficit of nearly \$50 million  
5 that required years to recoup on top of interest and administrative fees charged.  
6 This strongly indicates that the Series was not licensed on an arms-length basis in  
7 order to artificially delay the point at which contingent compensation would be  
8 owed to Plaintiff for the benefit of BTP and UPN's common parent entities.

9 b. CBS licensed the Series for domestic cable television as part of "packages,"  
10 whereby multiple properties are granted to a single licensee as part of a single  
11 commercial transaction, including to parties related to Defendants (such as BET,  
12 which is owned by Viacom). CBS refused to provide GHJ with unredacted  
13 copies of these agreements in order to hide which other properties were included  
14 in the relevant packages and how the license fees were allocated between the  
15 properties, meaning GHJ could not confirm whether the fees reflected the  
16 properties' fair market value or were otherwise manipulated to reduce the Series'  
17 profitability.

18 c. CBS refused to provide GHJ with documentation supporting the revenues it  
19 reported for the Series' earnings on free, pay, and basic cable television beyond a  
20 sales reporting listing the cash collections for selected contracts. Additionally,  
21 when GHJ selected a sample of CBS's claimed distribution and production  
22 expenses<sup>3</sup> to examine, CBS could only provide supporting documentation for  
23 41% and 38% thereof, respectively. The Audit thus casts significant doubt on  
24 both the accuracy of the Series' accounting and the propriety of its deductions.

25 d. GHJ identified multiple instances of costs deducted against the Series' profits  
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27 <sup>3</sup> GHJ was only able to test claimed production expenses as part of the Audit with respect to  
28 the fourth and fifth seasons of the Series, as Defendants failed to provide them with an account  
summary for the first season or production bibles for the first, second, or third seasons.

1 that were incorrect (such as errors in the formula used by CBS to calculate  
2 interest), misclassified (such as music synchronization fees), apparently  
3 duplicative (with CBS unable to provide any documentation distinguishing  
4 multiple identical cost instances), or categorically improper (such as charging for  
5 the work of in-house CBS employees as though they were outside legal counsel).

6 22. Upon information and belief, the foregoing is only a representative sample of the  
7 improprieties discovered during the Audit, which are in no sense exhaustive, as the Audit was  
8 significantly impeded by CBS's refusal to fully cooperate with the creators' auditors. Plaintiff is  
9 informed and believes, and on such basis alleges, that CBS withheld documents would reveal that  
10 the Series' distribution was structured to inequitably advance the interests of Defendants and  
11 favored third parties over those of Plaintiff, and Defendants' fear of such revelations animated their  
12 noncooperative conduct.

13 23. Plaintiff only recently discovered the breaches and/or concealment of material facts  
14 described herein when it learned of details of the publicly-filed lawsuit by the writers and creators  
15 of the Series. Before that, they had been lulled through the words and actions of the Defendants  
16 into believing that all moneys were properly paid.

17 **FIRST CAUSE OF ACTION**

18 **BREACH OF WRITTEN CONTRACT**

19 **(Against Defendants BTP, Paramount, CBS, and DOES 1-25)**

20 24. Plaintiff incorporates by reference and realleges each and every allegation in  
21 paragraphs 1 through 23 of this Complaint, inclusive, as though fully set forth herein.

22 25. Plaintiff has performed all conditions, covenants, and promises required to be  
23 performed by it in accordance with the terms of its agreements.

24 26. All conditions required for Defendants' performance of the conditions, covenants,  
25 and promises required to be performed by them in accordance with the terms of the parties'  
26 agreements have occurred.

27 27. As detailed above, Defendants have breached the agreements by, among other  
28 things, failing to pay monies due to Plaintiff.





1 e. Failing to engage in arms-length transactions or otherwise avoid self-dealing  
2 when contracting with vertically-integrated or otherwise-related entities.

3 34. As a direct and proximate result of Defendants' breaches of the implied covenant  
4 of good faith and fair dealing, Plaintiffs have suffered monetary damages in an amount to be  
5 proven at trial.

6 **THIRD CAUSE OF ACTION**  
7 **INTENTIONAL INTERFERENCE WITH CONTRACT**  
8 **(Against Defendants CBS and DOES 26-50)**

9 35. Plaintiff incorporates by reference and realleges each and every allegation in  
10 paragraphs 1 through 34 of this Complaint, inclusive, as though fully set forth herein.

11 36. Plaintiff pleads this cause of action in the alternative based on the fact that  
12 Plaintiff has not seen numerous underlying contracts for the Series and it is currently unknown  
13 whether Defendants CBS and DOES 26-50 are acting in the capacity of licensees or assignees of the  
14 contractual rights created by the agreements between Plaintiff and BTP. This cause of  
15 action is pled on the basis that Defendants CBS and DOES 26-50 are licensees.

16 37. Assuming *arguendo* that Defendants CBS and DOES 26-50 are licensees and  
17 through the conduct described above, Defendants CBS and DOES 26-50 intended to disrupt or  
18 prevent the performance by BTP and/or Paramount of the M&M Agreement(s) as set forth above  
19 and did disrupt or prevent that performance.

20 38. Assuming *arguendo* that Defendants CBS and DOES 26-50 are licensees and  
21 through their conduct, Defendants CBS and DOES 26-50 caused damage to Plaintiff by  
22 collaborating and/or participating in acts that reduced the Series' AGR and ultimately Plaintiff's  
23 contingent compensation in connection with the Series, in an amount to be proven at trial.

24 39. Assuming *arguendo* that Defendants CBS and DOES 26-50 are licensees, the  
25 conduct of Defendants CBS and DOES 26-50 was a substantial factor in causing Plaintiff's harm.

26 40. Assuming *arguendo* that Defendants CBS and DOES 26-50 are licensees and in  
27 engaging in the misconduct alleged herein, Defendants CBS and DOES 26-50 have acted with  
28 malice, oppression, or fraud, and in willful disregard of Plaintiff's rights and interests, thus

1 entitling Plaintiff to an award of punitive damages in an amount appropriate to punish or make  
2 an example of Defendants CBS and DOES 26-50, pursuant to Civil Code § 3294.

3 **FOURTH CAUSE OF ACTION**

4 **ACCOUNTING**

5 **(Against All Defendants)**

6 41. Plaintiff incorporate by reference and realleges each and every allegation in  
7 paragraph I through 40 of this Complaint, inclusive, as though fully set forth herein.

8 42. A relationship exists between Plaintiff, on the one hand, and Defendants on the  
9 other hand for which an accounting of Defendants' books and records is appropriate.

10 43. Plaintiff is informed and believe and thereon allege that Defendants have  
11 derived and received significant income, profit and other benefits from the aforementioned  
12 improper and fraudulent accounting practices. Plaintiff is entitled to a full and accurate  
13 accounting of all proceeds generated from, by or in connection with the distribution, licensing,  
14 and/or other exploitation of the Series and its components.

15 44. The amount of money due to Plaintiff is unknown and cannot be reasonably  
16 ascertained without a full and complete accounting of Defendants' books and records. Upon  
17 information and belief, Defendants have failed and refused to supply the information and  
18 documents necessary to complete an audit. Due to Plaintiff's exclusion from exercising any control  
19 or management over the distribution, licensing, and other exploitation of the Series and the  
20 collection, reporting, and accounting of revenues generated from such exploitation and the complex  
21 nature of the accounts of such exploitation, it is impractical to ascertain a fixed sum that is currently  
22 owed to Plaintiff. Accordingly, the full amount due and owing to Plaintiff can only be determined  
23 pursuant to a full and accurate accounting of all proceeds and expenses generated in connection with  
24 the distribution, licensing, and other exploitation of the Series that Plaintiffs seek herein.

25 45. Plaintiff further prays for the Court to impose a constructive trust on all monies  
26 wrongfully withheld by Defendants, in accordance with common law and California Civil Code  
27 sections 2223-24, for the benefit of Plaintiff and Plaintiff's interests.  
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**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For monetary damages in an amount to be proven at trial;
2. For an accounting under Court supervision of the profits of the Series and the amounts due and payable to Plaintiff in accordance with the agreements alleged herein;
3. For the Court to impose a constructive trust on the monies wrongfully withheld;
4. For an award of punitive damages in an amount to be proven at trial;
5. For pre-judgment interest pursuant to Civil Code sections 3287-88;
6. For costs of suit;
7. For attorneys' fees;
8. For such other, further, and different relief as the Court deems proper under the circumstances.

Dated: April 12, 2023

**The deRubertis Law Firm, APC  
Schimmel & Parks, APLC**

By  \_\_\_\_\_

David M. deRubertis  
Michael W. Parks  
Attorneys for Plaintiffs

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all aspects of this case so triable whether based on this pleading or any other or later pleading filed in this action.

Dated: April 12, 2023

**The deRubertis Law Firm, APC  
Schimmel & Parks, APLC**

By  \_\_\_\_\_

David M. deRubertis  
Michael W. Parks  
Attorneys for Plaintiffs