

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

WARNERMEDIA DIRECT, LLC,

Plaintiff,

v.

PARAMOUNT GLOBAL, SOUTH PARK
DIGITAL STUDIOS LLC and MTV
ENTERTAINMENT STUDIOS,

Defendants.

Index No. 651001/2023

Hon. Margaret Chan
IAS Part 49

ANSWER AND COUNTERCLAIMS

ANSWER

Defendants Paramount Global, South Park Digital Studios LLC, and MTV Entertainment Studios (collectively, “Defendants”), by their undersigned attorneys, as and for their Answer to the Complaint, dated February 24, 2023 (“Compl.”), state as follows:¹

Plaintiff’s Allegation:

1. This is a case about Defendants’ opportunistic repudiation of Warner/HBO’s exclusive streaming rights in the popular animated comedy series South Park, for which Warner/HBO agreed to pay more than half a billion dollars. When Paramount decided to launch a new streaming platform of its own (“Paramount+”), its priorities changed drastically, and Defendants embarked on a multi-year scheme to unfairly take advantage of Warner/HBO by breaching its contract and stealing its content. That scheme, which was blatantly intended to prop up Paramount+ at the expense of Warner/HBO, is the subject of this lawsuit.

Defendants’ Response:

1. Defendants deny the allegations set forth in paragraph 1, except admit that Plaintiff did agree to pay monies for the subject streaming rights.

¹ Pursuant to Commercial Division Rule 6(d), Defendants have interlinedated each paragraph in plaintiff’s complaint with Defendants’ response to that paragraph.

Plaintiff's Allegation:

2. *South Park* (“the Series”) is an extremely valuable franchise. The Series has aired for more than twenty years and throughout that time has remained wildly popular with its fanbase, which is primarily composed of the key age 18-34 demographic. Although nearly all *South Park* episodes first air on Comedy Central, one of Paramount’s cable channels, a lucrative aftermarket has emerged for the digital rights to this content. Similar to sitcoms such as *Friends* and *The Big Bang Theory*, the *South Park* franchise is “anchor” content on any platform, and therefore central to branding and marketing for any distributor of the Series. The availability of *South Park* episodes on a streaming platform can increase subscribers and subscription fees, as well as draw in advertisers.

Defendants' Response:

2. Defendants admit that the *South Park* series is valuable and has been on the air for more than twenty years, and that *South Park* episodes initially air on Comedy Central, a cable channel owned by one of Paramount Global’s subsidiaries. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 2.

Plaintiff's Allegation:

3. Cognizant of this tremendous value, SPDS—a joint venture between Paramount and *South Park*’s creators, Matt Stone and Trey Parker—held open bids in September 2019 for the exclusive streaming rights to *South Park*. SPDS publicly announced that these rights would encompass both the existing library, as well as 30 new episodes for upcoming seasons 24, 25, and 26 (more than 300 episodes in all). The bidding was fierce, with a number of major entertainment companies vying to acquire the rights. In the end, Warner/HBO had to aggressively outbid its competitors to win exclusive rights to the Series, signing a contract with SPDS in October 2019. Under its terms, Warner/HBO agreed to pay more than half-a-billion dollars to SPDS in exchange for exclusive streaming rights to the Series’ entire library and three new seasons of content.

Defendants' Response:

3. Defendants deny the allegations set forth in paragraph 3, except admit that several companies did submit competing proposals to license the streaming rights to certain *South Park* content from SPDS, and Plaintiff and SPDS did sign a contract in October 2019 in which Plaintiff agreed to pay monies to SPDS.

Plaintiff's Allegation:

4. In reliance on gaining these exclusive rights, HBO Max (the Warner/HBO streaming platform) started touting its exclusive streaming of *South Park* in its advertising.

Defendants' Response:

4. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4.

Plaintiff's Allegation:

5. After the Parties started performing under the contract, Paramount launched its own streaming platform, Paramount+. While that was certainly within Paramount's rights, on information and belief, SPDS, Paramount, and MTV Entertainment Studios (Paramount's indirect subsidiary) then engaged in an illicit scheme to unfairly and deceptively divert to its nascent streaming platform *South Park* content belonging exclusively to Warner/HBO. Defendants apparently considered the success of Paramount+ to warrant—if not require—multiple and flagrant duplicitous contortions of fact and breaches of contract, as well as other forms of misconduct described in detail below.

Defendants' Response:

5. Defendants deny the allegations set forth in paragraph 5, except admit that Paramount Global, through a subsidiary, operates a streaming platform currently known as Paramount+.

Plaintiff's Allegation:

6. Warner/HBO brings this lawsuit to vindicate its rights and recover the hundreds of millions of dollars in damages incurred as a result of Defendants' misconduct. On information and belief, even Defendants have valued those damages in the hundreds of millions.

Defendants' Response:

6. Paragraph 6 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in paragraph 6.

Plaintiff's Allegation:

7. Plaintiff WarnerMedia Direct, LLC ("Warner/HBO") is a limited liability company organized and existing under the laws of Delaware with its principal place of business in New York, New York. Warner/HBO is the domestic operator of HBO Max, a subscription video-on-demand streaming platform.

Defendants' Response:

7. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7.

Plaintiff's Allegation:

8. Defendant Paramount Global ("Paramount"), formerly known as ViacomCBS, Inc., is a corporation organized and existing under the laws of Delaware with its principal place of business in New York, New York. Paramount is a multinational mass media and entertainment corporation that owns and operates properties such as Paramount Pictures (a film and television studio), CBS Entertainment Group (consisting of the CBS television network, television stations, and other CBS-branded assets), media networks (consisting of cable television networks including Comedy Central, MTV, Nickelodeon, BET, and Showtime), and streaming platforms (including Paramount+ and Pluto TV).

Defendants' Response:

8. Defendants admit that Paramount Global, formerly known as ViacomCBS, Inc., is a corporation incorporated under the laws of Delaware with its principal place of business in New York, and that Paramount Global is a multinational entertainment and mass media company that owns and operates numerous properties.

Plaintiff's Allegation:

9. Defendant South Park Digital Studios LLC ("SPDS") is a limited liability company organized and existing under the laws of Delaware with its principal place of business in California. SPDS

is a joint venture between Paramount and the creators of South Park, Trey Parker (“Parker”) and Matt Stone (“Stone”).

Defendants’ Response:

9. Defendants deny the allegations set forth in paragraph 9, except admit that SPDS is a limited liability company organized and existing under the laws of Delaware with a principal place of business in California.

Plaintiff’s Allegation:

10. Defendant MTV Entertainment Studios (“MTV”) is, upon information and belief, an indirect subsidiary of Paramount Global, and has its principal place of business in New York, New York.

Defendants’ Response:

10. Defendants deny the allegations set forth in paragraph 10, except admit that MTV Entertainment Studios is a division of Paramount Global.

Plaintiff’s Allegation:

11. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302, because Paramount’s and MTV’s principal place of business are in New York and Defendants regularly conduct and transact business in New York.

Defendants’ Response:

11. Paragraph 11 contains legal conclusions, as to which no response is required. Notwithstanding, Defendants do not contest jurisdiction in this matter.

Plaintiff’s Allegation:

12. Venue is proper in New York County pursuant to CPLR § 503 because Warner/HBO and Paramount are residents of New York County.

Defendants’ Response:

12. Paragraph 12 contains legal conclusions, as to which no response is required. Notwithstanding, Defendants do not contest venue in this matter.

Plaintiff's Allegation:

13. This case is appropriate for assignment to the Commercial Division because the amount in controversy exceeds \$500,000 and the primary claims pertain to breach of contract and business torts.

Defendants' Response:

13. Paragraph 13 contains legal conclusions, as to which no response is required.

Notwithstanding, Defendants do not contest assignment to the Commercial Division in this matter.

Plaintiff's Allegation:

14. Warner/HBO is part of Warner Bros. Discovery ("WBD"), a leading global media and entertainment company that creates and distributes the world's most differentiated and complete portfolio of content and brands across television, film, and streaming. WBD's iconic brands and products include HBO, HBO Max, Discovery Channel, discovery+, CNN, DC, HGTV, Food Network, OWN, Investigation Discovery, TLC, Magnolia Network, TNT, TBS, TruTV, Travel Channel, MotorTrend, Animal Planet, Science Channel, Warner Bros. Pictures, Warner Bros. Television, Warner Bros. Games, New Line Cinema, Cartoon Network, Adult Swim, Turner Classic Movies, Discovery en Español, Hogar de HGTV, and others.

Defendants' Response:

14. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14.

Plaintiff's Allegation:

15. Warner/HBO, together with its affiliated entities, operate HBO Max, a subscription video-on-demand streaming platform, and licenses content on its behalf for distribution on the platform. By purchasing a monthly subscription to HBO Max, users can access this content by streaming programs on demand via either an ad-supported or non-ad-supported plan.

Defendants' Response:

15. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15.

Plaintiff's Allegation:

16. HBO Max features original programming from its namesake network, HBO, along with programming and films curated from across WBD's portfolio of networks, brands, and franchises, and licensed from third-party studios and producers.

Defendants' Response:

16. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16.

Plaintiff's Allegation:

17. Like any streaming platform, HBO Max is specifically programmed to attract and retain the broadest possible range of subscribers, as the competition to obtain popular content is extremely fierce among streaming platforms. The inclusion of exclusive content offerings generally attracts premium advertisers.

Defendants' Response:

17. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17.

Plaintiff's Allegation:

18. *South Park* is an extraordinarily popular animated television series. New episodes of the Series have consistently been among the top performers on HBO Max since its launch in 2020, based on key streaming metrics such as "first views" (i.e., the first show a subscriber watches when they launch the streaming platform), "total hours viewed," and "viewing accounts" (i.e., what number/percentage of subscribers have engaged with the Series).

Defendants' Response:

18. Defendants admit that *South Park* is a popular animated television series. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 18.

Plaintiff's Allegation:

19. Since its debut in 1997, *South Park* has been nominated for 18 Emmys (winning five), was adapted into a theatrical film (1999's *South Park: Bigger, Longer & Uncut*, which grossed over \$80

million worldwide—approximately \$150 million in today's dollars—on a \$21 million budget), and has been watched by tens of millions of viewers.

Defendants' Response:

19. Defendants deny the allegations set forth in paragraph 19, except admit that *South Park* was originally released in 1997 and has been widely viewed, has won an Emmy Award on five occasions, and that in 1999 the theatrical film *South Park: Bigger, Longer & Uncut* was released, which grossed over \$80 million in the worldwide box office.

Plaintiff's Allegation:

20. *South Park* episodes currently premiere on Comedy Central, a cable network owned by Paramount.

Defendants' Response:

20. Defendants admit that episodes of the *South Park* series currently premiere on Comedy Central, a cable network currently owned by one of Paramount Global's subsidiaries.

Plaintiff's Allegation:

21. In 1998, Paramount Pictures Corporation ("PPC"), a Paramount affiliate that owns and operates the Paramount Pictures film and television studios, entered into a Joint Production Agreement (the "1998 Agreement") with Warner Bros. Entertainment Inc. ("WB"), then a division of Time Warner Entertainment Company, L.P., and now a subsidiary of WBD, and an affiliate of Warner/HBO.

Defendants' Response:

21. Defendants deny the allegations set forth in Paragraph 21, except admit that in 1998 Paramount Pictures Corporation entered into the 1998 Agreement with WB, and respectfully refer the Court to that agreement for its full contents. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations concerning WB's corporate ownership.

Plaintiff's Allegation:

22. Pursuant to the 1998 Agreement, WB and PPC each had a 50% interest in the motion picture that would become *South Park: Bigger, Longer & Uncut*, as well as in its copyright and any sequel.

Defendants' Response:

22. Defendants deny the allegations set forth in Paragraph 22, except respectfully refer the Court to the 1998 agreement for a true and accurate recitation of its full contents.

Plaintiff's Allegation:

23. Pursuant to the 1998 Agreement, and premised on their shared ownership, the Parties agreed that all subsequent productions based on the motion picture—including sequels and feature length home video productions—would require mutual agreement in writing.

Defendants' Response:

23. Defendants deny the allegations set forth in Paragraph 23, except respectfully refer the Court to the 1998 agreement for a true and accurate recitation of its full contents.

Plaintiff's Allegation:

24. Two decades later, on September 12, 2019, Paramount and its subsidiary, Comedy Central, issued a press release announcing that South Park's creators, Parker and Stone, were extending the Series by **“three seasons and 30 episodes in a new deal with Comedy Central, taking the longest-running primetime scripted series in cable through an unprecedented 26th season and at least 327 episodes.”**

Defendants' Response:

24. Defendants deny the allegations set forth in Paragraph 24, except respectfully refer the Court to the 1998 agreement for a true and accurate recitation of its full contents.

Plaintiff's Allegation:

25. SPDS then solicited bids for the exclusive right to stream the 30 new episodes after their Comedy Central premieres, as well as the exclusive right to stream the existing library of old episodes (representing, in total, more than 300 episodes).

Defendants' Response:

25. Defendants deny the allegations set forth in paragraph 25, except admit that in 2019 SPDS considered offers for the right to license the streaming rights to the *South Park* television series, and that the existing library of the *South Park* television series consisted of over 300 episodes.

Plaintiff's Allegation:

26. *South Park* is premium content and a top performer, especially with the highly prized 18-34 audience that is dedicated to the show and engages in repeated viewing.

Defendants' Response:

26. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26, except admit that *South Park* is valuable content.

Plaintiff's Allegation:

27. Warner/HBO expected *South Park* to serve as a critical content offering that would differentiate HBO Max from other streaming platforms, attract new subscribers by targeting a key demographic that HBO content alone did not traditionally serve, and solidify its subscriber base.

Defendants' Response:

27. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27.

Plaintiff's Allegation:

28. Warner/HBO participated in the bidding process, which was extremely competitive.

Defendants' Response:

28. Defendants admit that Plaintiff submitted a proposal to license certain streaming rights and that other third parties also submitted competitive proposals.

Plaintiff's Allegation:

29. During the bidding process, SPDS encouraged Warner/HBO to propose a flat-rate, per-episode license fee that would apply equally to all Series episodes: both the older "library" episodes (seasons 1 through 23) and the new episodes to be produced for seasons 24 through 26.

Defendants' Response:

29. Defendants deny the allegations set forth in paragraph 29.

Plaintiff's Allegation:

30. On information and belief, SPDS knew that the older "library" episodes of South Park were far less valuable than the new episodes SPDS would be licensing for seasons 24 through 26.

Defendants' Response:

30. Defendants deny the allegations set forth in paragraph 30.

Plaintiff's Allegation:

31. Nevertheless, SPDS told Warner/HBO that it would likely reject any bid that offered differentiated pricing for the older episodes (as opposed to the new episodes).

Defendants' Response:

31. Defendants deny the allegations set forth in paragraph 31.

Plaintiff's Allegation:

32. In other words, SPDS said that it would consider only offers with the highest "flat fee" per episode (whether old or new).

Defendants' Response:

32. Defendants deny the allegations set forth in paragraph 32.

Plaintiff's Allegation:

33. Warner/HBO acted in reliance on that information, assuming that SPDS was making similar statements to other bidders.

Defendants' Response:

33. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33.

Plaintiff's Allegation:

34. To calculate a single, blended, per-episode rate as SPDS requested, Warner/HBO agreed to consider the value of the existing library, the value of the new episodes, and the total number of new episodes.

Defendants' Response:

34. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34.

Plaintiff's Allegation:

35. By adding the relatively lower per-episode fee amounts for the library episodes to the relatively higher per-episode fees for the new episodes, and then dividing that by the combined number of old and new episodes, Warner/HBO would be able to offer a competitive flat-fee per-episode bid.

Defendants' Response:

35. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35.

Plaintiff's Allegation:

36. Thus, SPDS's representations that the new seasons would comprise 30 episodes were essential to Warner/HBO's calculation of its proposed per-episode rate. On information and belief, SPDS knew that its representations about the number of new episodes were dispositive in securing the highest possible bids.

Defendants' Response:

36. Defendants deny the allegations set forth in paragraph 36.

Plaintiff's Allegation:

37. On information and belief, SPDS knew that if it actually intended to offer fewer than 10 episodes for each of the new seasons,

the reduced number of episodes would mean a lower flat-fee per-episode bid.

Defendants' Response:

37. Defendants deny the allegations set forth in paragraph 37.

Plaintiff's Allegation:

38. Conversely, on information and belief, SPDS knew that more new South Park episodes would garner higher flat-fee bids.

Defendants' Response:

38. Defendants deny the allegations set forth in paragraph 38.

Plaintiff's Allegation:

39. Thus, SPDS's representation of 10 new episodes per season was essential to the bids made by Warner/HBO and other bidders.

Defendants' Response:

39. Defendants deny the allegations set forth in paragraph 39.

Plaintiff's Allegation:

40. In October 2019, prior to receiving Warner/HBO's bid, SPDS again confirmed to Warner/HBO that the exclusive streaming license would include at least 333 total episodes—in other words, the 303 existing "library" episodes and 10 new episodes for each of seasons 24 through 26.

Defendants' Response:

40. Defendants deny the allegations set forth in paragraph 40.

Plaintiff's Allegation:

41. Exclusivity was so important to Warner/HBO that when SPDS asked Warner/HBO whether it would consider sharing the rights to South Park with CBS All Access or another Paramount streamer, Warner/HBO rejected the proposition as a "non-starter."

Defendants' Response:

41. Defendants deny the allegations set forth in paragraph 41.

Plaintiff's Allegation:

42. In reliance on SPDS's representations, on or about October 19, 2019, Warner/HBO proposed a flat-rate license fee of \$1,687,500 for each episode—offering a total of more than *half a billion dollars* for the exclusive domestic streaming rights to the 333 *South Park* episodes SPDS had agreed to license.

Defendants' Response:

42. Defendants deny the allegations set forth in paragraph 42, except respectfully refer the Court to the Term Sheet between WarnerMedia Direct, LLC and SPDC for a true and accurate recitation of its full contents and deny any allegations that conflict with such document.

Plaintiff's Allegation:

43. Following an intensive bidding war, SPDS accepted Warner/HBO's bid.

Defendants' Response:

43. Defendants deny the allegations set forth in paragraph 43, except admit that SPDS ultimately accepted WarnerMedia Direct, LLC's offer.

Plaintiff's Allegation:

44. On October 22, 2019, the Parties entered into an agreement, using a binding term sheet that memorialized the terms of the deal (the "2019 Agreement").

Defendants' Response:

44. Defendants deny the allegations set forth in paragraph 44, except admit that SPDS and WarnerMedia Direct, LLC entered into a binding term sheet effective October 22, 2019 (the "Term Sheet") and respectfully refer the Court to that document for its full contents.

Plaintiff's Allegation:

45. Although, by its terms, the Parties expected to subsequently draft a final agreement, at SPDS's suggestion, the Parties agreed to treat the term sheet as the final agreement.

Defendants' Response:

45. Defendants deny the allegations set forth in paragraph 45, except admit that the Term Sheet is a valid and enforceable agreement, and respectfully refer the Court to that document for its full contents.

Plaintiff's Allegation:

46. The 2019 Agreement's term extended from June 24, 2020 through June 23, 2025 (the "Term").

Defendants' Response:

46. Defendants respectfully refer the Court to the Term Sheet for its full contents and deny any allegations that conflict with such document.

Plaintiff's Allegation:

47. The 2019 Agreement provided for two types of content (collectively, the "Licensed Content").
- a. The first type of content comprised long-form episodes (*i.e.*, over 20 minutes) that first premiered on a non-streaming platform, (*i.e.*, a Nielsen-rated basic cable network such as Comedy Central or a major broadcast network such as CBS) ("Type A Licensed Content").
 - b. The second type of content comprised all season 24-26 episodes that did not meet the premiering criteria applicable to Type A Licensed Content (*e.g.*, long-form content that premiered on a streaming platform) ("Type B Licensed Content").

Defendants' Response:

47. Defendants deny the allegations set forth in paragraph 47, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

48. SPDS gave Warner/HBO the exclusive U.S. rights to stream:
- a. All long-form episodes from seasons 1 through 23 (all of which were identified in "Exhibit A" to the 2019 Agreement);
 - b. The long-form documentary 6 Days to Air: The Making of South Park;
 - c. **All Type A Licensed Content for seasons 24 through 26;** and
 - d. Selected short-form content.

Defendants' Response:

48. Defendants deny the allegations set forth in paragraph 48, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

49. SPDS gave HBO Max “**the option but not the obligation**” to license Type B Licensed Content.

Defendants' Response:

49. Defendants deny the allegations set forth in paragraph 49, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

50. The 2019 Agreement specifically provided that Warner/HBO's streaming rights were “exclusive.”

Defendants' Response:

50. Defendants deny the allegations set forth in paragraph 50, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

51. The 2019 Agreement provided for a bargained-for blended-rate “License Fee” of \$1,687,500 for each episode of the Series covered by the Agreement.

Defendants' Response:

51. Defendants deny the allegations set forth in paragraph 51, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

52. The 2019 Agreement contained “Exhibit A,” which listed every South Park long-form episode released at the time of the execution of the Agreement. Each season listed consisted of at least 10 episodes.

Defendants' Response:

52. Defendants deny the allegations set forth in paragraph 52, except respectfully refer the Court to the Term Sheet for its full contents.

Plaintiff's Allegation:

53. While the Parties initially agreed that HBO Max would receive in 2020 the first episodes of the new *South Park* season 24, in March 2020, SPDS informed Warner/HBO that it would not go forward with production of season 24 as a result of the COVID pandemic.

Defendants' Response:

53. Defendants deny the allegations set forth in paragraph 53.

Plaintiff's Allegation:

54. Despite the pandemic, however, SPDS proceeded to produce other *South Park* content. Specifically, between September 2020 and March 2021, it produced two COVID-themed "specials" (collectively, the "Pandemic Specials"), each of which was approximately 50 minutes long and initially premiered on Comedy Central. The first, *The Pandemic Special*, aired on September 30, 2020. The second, *South Park Vaccination Special*, aired on March 10, 2021.

Defendants' Response:

54. Defendants deny the allegations set forth in paragraph 54, except admit that SPDS produced "The Pandemic Special," which aired on Comedy Central on September 30, 2020, and "South ParQ Vaccination Special," which aired on Comedy Central on March 10, 2021.

Plaintiff's Allegation:

55. Before its release, SPDS insisted to Warner/HBO that *The Pandemic Special* was not the first episode of the new season but agreed that it was "Licensed Content" under the 2019 Agreement.

Defendants' Response:

55. Defendants deny the allegations set forth in paragraph 55.

Plaintiff's Allegation:

56. However, since *The Pandemic Special* was approximately 50 minutes in length, the Parties also agreed to a license fee of over \$3.3 million—double the regular single-episode fee.

Defendants' Response:

56. Defendants deny the allegations set forth in paragraph 56, except admit that the Parties agreed to a license fee for the television episode “The Pandemic Special,” of over \$3.3 million.

Plaintiff's Allegation:

57. During this period, SPDS gave various assurances to Warner/HBO that the season 24 episodes would be coming soon.

Defendants' Response:

57. Defendants deny the allegations set forth in paragraph 57.

Plaintiff's Allegation:

58. However, SPDS stated that season 24 would consist of a series of longer “specials”—rather than the promised 10-episode season which was more desirable and lucrative to Warner/HBO.

Defendants' Response:

58. Defendants deny the allegations set forth in paragraph 58.

Plaintiff's Allegation:

59. As of 2021, none of the ten 22-minute episodes for season 24 (*i.e.*, the Type A Content) had been delivered to HBO Max under the 2019 Agreement.

Defendants' Response:

59. Defendants deny the allegations set forth in paragraph 59.

Plaintiff's Allegation:

60. In January 2021, Paramount announced that it intended to launch its own streaming platform, Paramount+.

Defendants' Response:

60. Defendants deny the allegations set forth in paragraph 60, except admit that in early 2021, Paramount Global rebranded the streaming platform it operates as Paramount+.

Plaintiff's Allegation:

61. Paramount decided to make *South Park* a core part of its strategy to grow Paramount+.

Defendants' Response:

61. Defendants deny the allegations set forth in paragraph 61.

Plaintiff's Allegation:

62. To do so, on information and belief, Paramount, SDPS, and MTV Entertainment Studios ("MTV"), acting in concert, planned to divert as much of the new *South Park* content as possible to Paramount+ in order to boost that nascent streaming platform.

Defendants' Response:

62. Defendants deny the allegations set forth in paragraph 62.

Plaintiff's Allegation:

63. Indeed, in August 2021, less than six months after the launch of Paramount+, one Paramount+ executive admitted that it intended to use *South Park* "to help fuel" Paramount+ and that "[f]ranchising marquee content like *South Park* . . . is at the heart of [their] strategy to continue growing Paramount+." But this strategy ignored—and, indeed, expressly repudiated—Warner/HBO's exclusive rights to stream *South Park*'s new and existing episodes through June 2025.

Defendants' Response:

63. Defendants deny the allegations set forth in paragraph 63, except respectfully refer the Court to the underlying document referenced in paragraph 63 for a true and accurate recitation of its full contents.

Plaintiff's Allegation:

64. On August 25, 2021, in furtherance of their scheme, Paramount's indirect subsidiary, MTV, announced a new deal with Parker and Stone, reportedly worth *more than \$900 million*. As Stone publicly described it, "**we have f—k you money now.**"

Defendants' Response:

64. Defendants deny the allegations set forth in paragraph 64, except respectfully refer the Court to the underlying document referenced in paragraph 64 for a true and accurate recitation of its full contents.

Plaintiff's Allegation:

65. That deal provided, among other things, that extensive new South Park content would premiere exclusively on Paramount+ over the next five years—even though: (1) HBO Max had exclusive U.S. streaming rights to all long-form South Park episodes through season 26; (2) SPDS had the obligation to offer Warner/HBO any Type B Licensed Content during the Term; and (3) SPDS had yet to provide HBO Max with a *single episode of South Park* season 24, having repeatedly told HBO Max that the Pandemic Specials were not part of season 24.

Defendants' Response:

65. Defendants deny the allegations set forth in paragraph 65, except respectfully refer the Court to the agreement referenced in paragraph 65 for its full contents.

Plaintiff's Allegation:

66. Rather than honor its obligations to Warner/HBO, on information and belief, SPDS, acting in concert with Paramount and MTV, engaged in a campaign of verbal trickery designed to circumvent the terms of the 2019 Agreement. To accomplish this, Defendants used grammatical sleight-of-hand, characterizing new content as “movies,” “films,” or “events” to side-step SPDS’s contractual obligations.

Defendants' Response:

66. Defendants deny the allegations set forth in paragraph 66.

Plaintiff's Allegation:

67. Specifically, MTV publicly announced that, under the Paramount+ deal, 14 “made-for-streaming movies” (as opposed to “episodes” or “events”) would premiere on Paramount+, starting with two “films” in 2021.

Defendants' Response:

67. Defendants deny the allegations set forth in paragraph 67, except admit that a press release announced that certain “made-for-streaming movies” would premiere on Paramount+ starting in 2021.

Plaintiff's Allegation:

68. On information and belief, MTV, in coordination with Paramount and SPDS, characterized the programming that would premiere on Paramount+ as “movies” or “films” in a calculated and deliberate attempt to distinguish them from the Pandemic Specials that were included as part of the Licensed Content under the 2019 Agreement.

Defendants' Response:

68. Defendants deny the allegations set forth in paragraph 68.

Plaintiff's Allegation:

69. Moreover, on information and belief, the 14 made-for-television “movies” SPDS promised to Paramount+ were substantially similar in kind to the Pandemic Specials that had been provided to Warner/HBO as Licensed Content pursuant to the 2019 Agreement.

Defendants' Response:

69. Defendants deny the allegations set forth in paragraph 69.

Plaintiff's Allegation:

70. On October 27, 2021, Paramount+ and MTV issued a press release announcing that two *South Park* “events” would premiere exclusively on Paramount+.

Defendants' Response:

70. Defendants deny the allegations set forth in paragraph 70, except admit that, on October 27, 2021, a press release announced the release of two *South Park* made-for-streaming movies, and respectfully refer the Court to that document for its full contents.

Plaintiff's Allegation:

71. The press release stated that the first “event,” entitled *South Park: Post COVID*, would premiere on Paramount+ in the United States on November 25, 2021, and that the second “event” would premiere in December 2021 (collectively, the “Post-COVID Content”).

Defendants' Response:

71. Defendants deny the allegations set forth in paragraph 71, except respectfully refer the Court to the document referenced therein for its full contents.

Plaintiff's Allegation:

72. Paramount's announcement shocked Warner/HBO for three reasons.

Defendants' Response:

72. Defendants presently lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 72.

Plaintiff's Allegation:

73. First, SPDS had not yet provided Warner/HBO with any season 24 episodes.

Defendants' Response:

73. Defendants deny the allegations set forth in paragraph 73.

Plaintiff's Allegation:

74. Second, SPDS had told Warner/HBO in June 2021 that the next *South Park* episodes it would receive would be set in the future, post-COVID—just like the Post-COVID Content being provided directly to Paramount+.

Defendants' Response:

74. Defendants deny the allegations set forth in paragraph 74.

Plaintiff's Allegation:

75. Third, calling the Post-COVID Content “events” did not vitiate SPDS’s obligation to first offer Warner/HBO the option to stream that content, as it had with the Pandemic Specials.

Defendants' Response:

75. Defendants deny the allegations set forth in paragraph 75.

Plaintiff's Allegation:

76. Prior to the press release, SPDS had not given Warner/HBO any notice of its plan to divert the Post-COVID Content to Paramount+.

Defendants' Response:

76. Defendants deny the allegations set forth in paragraph 76.

Plaintiff's Allegation:

77. Shortly after MTV’s announcement, and after previously telling Warner/HBO that the Pandemic Specials were not part of season 24, SPDS reversed its position, deciding not only that the two Pandemic Specials in fact were part of season 24, but also that they would constitute four—not two—episodes of season 24.

Defendants' Response:

77. Defendants deny the allegations set forth in paragraph 77, except admit that “The Pandemic Special,” which aired on Comedy Central on September 30, 2020, and “South ParQ Vaccination Special,” which aired on Comedy Central on March 10, 2021, comprised season 24 of *South Park*.

Plaintiff's Allegation:

78. SPDS further assured Warner/HBO that it would “still get the remaining six episodes of season 24” to be delivered in the first quarter of 2022, thus re-affirming its recognition of Warner/HBO’s right to receive 10 episodes of new *South Park* content per season.

Defendants' Response:

78. Defendants deny the allegations set forth in paragraph 78.

Plaintiff's Allegation:

79. On December 8, 2021, Paramount+ and MTV issued another press release, on information and belief at Defendant SPDS's direction or with its permission, announcing that yet another South Park episode was being provided to Paramount+—making clear that Defendants were again depriving Warner/HBO of its rights so that it could “fuel” Paramount+.

Defendants' Response:

79. Defendants deny the allegations set forth in paragraph 79, except admit that a press release was issued on December 8, 2021 and respectfully refer the Court to the referenced press release for its full contents.

Plaintiff's Allegation:

80. Specifically, they announced that the “second of this year's exclusive ‘South Park’ events,” entitled *South Park: Post COVID: The Return of COVID*, would premiere on Paramount+ in the United States later that month.

Defendants' Response:

80. Defendants deny the allegations set forth in paragraph 80, except respectfully refer the Court to the referenced press release for its full contents.

Plaintiff's Allegation:

81. It had become evident that Paramount sought to use the Post-COVID Content to boost Paramount+'s subscribership, in flagrant disregard of Warner/HBO's contractual rights. Moreover, on information and belief, Paramount and SPDS deliberately characterized the Post-COVID Content as “events” rather than “episodes” in a disingenuous attempt to distinguish them from the Pandemic Specials provided to Warner/HBO under the 2019 Agreement.

Defendants' Response:

81. Defendants deny the allegations set forth in paragraph 81.

Plaintiff's Allegation:

82. But these so-called “events” were substantially similar in format and length to the Pandemic Specials, which SPDS had agreed

constituted Licensed Content under the 2019 Agreement. All four episodes featured the iconic characters from the prior 23 seasons of *South Park*, addressed similar subject matter (COVID), and had similar running times (approximately 50-60 minutes per episode).

Defendants' Response:

82. Defendants deny the allegations set forth in paragraph 82, except respectfully refer the Court to the *South Park* programs referenced therein for their full contents.

Plaintiff's Allegation:

83. Incredibly, this was not Defendants' only duplicity with respect to the Post-COVID Content. When MTV and Paramount+ announced the Post-COVID Content, they had initially characterized the episodes as "movies." However, when WB pointed out that exploitation of movie sequels to *South Park: Bigger, Longer & Uncut* required WB's written consent under the 1998 Agreement, MTV, on information and belief, in coordination with Paramount and SPDS, changed its characterization of the Post-COVID Content from "movies" to "events."

Defendants' Response:

83. Defendants deny the allegations set forth in paragraph 83.

Plaintiff's Allegation:

84. Thus, on information and belief, Defendants engaged in a simple and obvious artifice of mischaracterizing the content to avoid obligations under both the 2019 and 1998 Agreements.

Defendants' Response:

84. Defendants deny the allegations set forth in paragraph 84.

Plaintiff's Allegation:

85. SPDS's failure to offer Warner/HBO the option to license the Post-COVID Content for HBO Max was another clear breach of the 2019 Agreement.

Defendants' Response:

85. Defendants deny the allegations set forth in paragraph 85.

Plaintiff's Allegation:

86. Defendants' machinations did not stop there. After repeatedly claiming that the Pandemic Specials did not constitute episodes of season 24 of the Series, SPDS reversed course *for the third time* in January 2022 and announced that those two episodes alone would count as the entirety of season 24, and that season 25 would consist of only six episodes—in direct violation of SPDS's agreement that each new season under the 2019 Agreement would include at least 10 episodes, for a total of 30 new episodes.

Defendants' Response:

86. Defendants deny the allegations set forth in paragraph 86.

Plaintiff's Allegation:

87. On information and belief, this announcement was made in concert with, or at the direction of, Paramount.

Defendants' Response:

87. Defendants deny the allegations set forth in paragraph 87.

Plaintiff's Allegation:

88. As of February 9, 2023, notwithstanding the clear terms of the 2019 Agreement, SPDS had provided Warner/HBO with only eight new *South Park* episodes: the two Pandemic Specials it claims constitute the entirety of season 24 and six episodes for season 25.

Defendants' Response:

88. Defendants deny the allegations set forth in paragraph 88, except admit that as of February 9, 2023, SPDS had delivered season 24 of *South Park*, which consisted of two oversized episodes that were each more than double the length of a typical television episode, and season 25 of *South Park*, which consisted of six episodes.

Plaintiff's Allegation:

89. SPDS provided Warner/HBO with the first episode of season 26 on February 9, 2023, and the second episode of season 26 on February 16, 2023. Prior to that, SPDS had not provided Warner/HBO with any new *South Park* content since the final episode of season 25 premiered on March 17, 2022.

Defendants' Response:

89. Defendants admit the allegations set forth in paragraph 89.

Plaintiff's Allegation:

90. On information and belief, season 26 will also consist of only six, rather than ten, episodes.

Defendants' Response:

90. Defendants deny the allegations set forth in paragraph 90, except admit that season 26 of *South Park* consists of 6 television episodes.

Plaintiff's Allegation:

91. Yet, since announcing its massive deal with Paramount+ in August 2021, SPDS has provided Paramount+ with four supersized *South Park* episodes of the same format and similar length as the two supersized Pandemic Specials which SPDS had provided to Warner/HBO as the entirety of season 24: the Post-COVID Content, *South Park The Streaming Wars Part 1* ("*Streaming Wars Part 1*") and *South Park The Streaming Wars Part 2* ("*Streaming Wars Part 2*") (collectively, the "*Streaming Wars Content*"), in violation of the 2019 Agreement.

Defendants' Response:

91. Defendants deny the allegations set forth in paragraph 91.

Plaintiff's Allegation:

92. Moreover, pursuant to the MTV deal with Stone and Parker, SPDS is scheduled to provide an additional 10 supersized *South Park* episodes to Paramount+ over the next five years, including at least four during the Term of the 2019 Agreement. This is a further diversion of content to Paramount+ that should be going to Warner/HBO, and a further dilution of the exclusivity Warner/HBO expressly bargained for.

Defendants' Response:

92. Defendants deny the allegations set forth in paragraph 92, except refer to the agreement referenced therein for its full contents.

Plaintiff's Allegation:

93. Warner/HBO has suffered, and continues to suffer, significant damages because of Defendants' misconduct.

Defendants' Response:

93. Defendants deny the allegations set forth in paragraph 93.

Plaintiff's Allegation:

94. First, by providing Warner/HBO with fewer than half of the promised episodes, SPDS deprived it of the ability to release new *South Park* episodes over an extended period of time and drove loyal *South Park* fans to a competing streaming platform.

Defendants' Response:

94. Defendants deny the allegations set forth in paragraph 94.

Plaintiff's Allegation:

95. Second, SPDS caused Warner/HBO to significantly overpay for each *South Park* episode, since—at SPDS's express instruction—it calculated the blended per-episode rate based on SDPS's representation that it would receive 30 new episodes over three seasons, not the mere 14 episodes that SPDS subsequently and improperly chose to provide.

Defendants' Response:

95. Defendants deny the allegations set forth in paragraph 95.

Plaintiff's Allegation:

96. Third, and in contrast, since announcing its \$900 million deal with Paramount+ in August 2021, SPDS has provided Paramount+ with four supersized *South Park* episodes of the same format and similar length as the two supersized *Pandemic Specials* provided to Warner/HBO as season 24: (1) the *Post-COVID Content*, and (2) the *Streaming Wars Content*—all, in violation of the 2019 Agreement.

Defendants' Response:

96. Defendants deny the allegations set forth in paragraph 96.

Plaintiff's Allegation:

97. Finally, Paramount and SPDS have been unfairly enriched by their own deliberate misconduct, through which, on information and belief, they have profited at Warner/HBO's expense. Warner/HBO is entitled to disgorgement of the value of any profits Defendants earned as a result of their misconduct. Had SDPS adhered to its obligation under the 2019 Agreement, HBO Max would have attracted even more new subscribers.

Defendants' Response:

97. Paragraph 97 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in paragraph 97.

Plaintiff's Allegation:

98. Paramount enjoyed a sizeable increase in its subscriptions during the quarter that the Post-COVID Content was released on Paramount+.

Defendants' Response:

98. Defendants deny the allegations set forth in paragraph 98, except admit that Paramount+ subscriptions increased during Q4 2021.

Plaintiff's Allegation:

99. For example, during Paramount's Q4 2021 earnings call, CEO Robert Bakish reported that the "company added 9.4 million new streaming subscribers in Q4 alone, 80% of them on Paramount+." Significantly, the surge in subscribers came during the quarter that the Post-COVID Content aired exclusively on Paramount+.

Defendants' Response:

99. Defendants deny the allegations set forth in paragraph 99, except respectfully refer the Court to the referenced earnings call for its full contents.

Plaintiff's Allegation:

100. Paramount+ similarly experienced a huge uptick around the time Streaming Wars Part 1 aired (June 2, 2022). Bakish reported that "Paramount+ [had] added 4.9 million global subscribers," touting Paramount+'s status "as one of the fastest growing premium

streaming services” and attributing its growth to “strong performances. . . [including by] . . . our latest South Park special, South Park The Streaming Wars.”⁷

Defendants’ Response:

100. Defendants deny the allegations set forth in paragraph 100, except respectfully refer the Court to the referenced earnings call for its full contents.

Plaintiff’s Allegation:

101. Following the release of Streaming Wars Part 2 (July 3, 2022), Bakish told investors that in Q3, Paramount+ had gained another 4.6 million global subscribers, for a total of 46 million subscribers and that year-over-year revenue for Paramount+ had grown by 95%.

Defendants’ Response:

101. Defendants deny the allegations set forth in paragraph 101, except respectfully refer the Court to the referenced earnings call for its full contents.

Plaintiff’s Allegation:

102. These reports further demonstrate that Paramount has earned massive profits—to Warner/HBO’s detriment—from the release of South Park on Paramount+.

Defendants’ Response:

102. Defendants deny the allegations set forth in paragraph 102.

Plaintiff’s Allegation:

103. As a result of Defendants’ misconduct, Warner/HBO has incurred, and continues to incur, damages in excess of \$200 million dollars.

Defendants’ Response:

103. Defendants deny the allegations set forth in paragraph 103.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT
(Against SPDS)

Plaintiff's Allegation:

104. Warner/HBO incorporates by reference paragraphs 1–103 as if fully set forth herein

Defendants' Response:

104. Defendants incorporate their responses to the allegations, as set forth above, as if fully set forth herein.

Plaintiff's Allegation:

105. The 2019 Agreement between Warner/HBO and SPDS is a valid and enforceable contract.

Defendants' Response:

105. Paragraph 105 contains legal conclusions, as to which no response is required. Notwithstanding, Defendants admit that the 2019 Agreement between Warner/HBO and SPDS is a valid and enforceable agreement.

Plaintiff's Allegation:

106. Warner/HBO has performed its obligations under the 2019 Agreement in all material aspects.

Defendants' Response:

106. Paragraph 106 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

107. SPDS breached the 2019 Agreement, which grants Warner/HBO the exclusive right and license to make seasons 24 through 26 of the Series available on HBO Max via streaming and temporary download, by diverting and licensing episodes of the Series to Paramount+.

Defendants' Response:

107. Paragraph 107 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

108. SPDS breached the 2019 Agreement by failing to offer Warner/HBO the right to license the Post-COVID Content and Streaming Wars Content.

Defendants' Response:

108. Paragraph 108 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

109. SPDS breached the 2019 Agreement by providing Warner/HBO with fewer than 10 episodes for each of seasons 24 and 25 of the Series, and on information and belief, for season 26 of the Series.

Defendants' Response:

109. Paragraph 109 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

110. SPDS's breaches directly and proximately caused Warner/HBO to be damaged in an amount to be proven at trial.

Defendants' Response:

110. Paragraph 110 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

SECOND CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against SPDS)

Plaintiff's Allegation:

111. Warner/HBO incorporates by reference paragraphs 1–103 as if fully set forth herein.

Defendants' Response:

111. Defendants incorporate their responses to the allegations, as set forth above, as if fully set forth herein.

Plaintiff's Allegation:

112. By virtue of their dealings, SPDS and Warner/HBO assumed a relationship of trust and confidence.

Defendants' Response:

112. Paragraph 112 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

113. SPDS had a duty to act fairly and in good faith and to do nothing that would have the effect of destroying, interfering, frustrating, or injuring the rights of Warner/HBO to receive the benefits of the 2019 Agreement.

Defendants' Response:

113. Paragraph 113 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

114. SPDS breached the implied covenant of good faith and fair dealing by engaging in a course of conduct that did and was intended to deprive Warner/HBO of its rights under the 2019 Agreement. SPDS has, among other things, destroyed, interfered with, frustrated, and injured Warner/HBO's rights by diverting and licensing South Park episodes to Paramount+, failing to offer Warner/HBO the right to license the Post-COVID Content and the Streaming Wars Content, and providing Warner/HBO with fewer than 10 episodes for each of seasons 24 and 25 of the Series, and, on information and belief, season 26 of the Series.

Defendants' Response:

114. Paragraph 114 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

115. As a direct and proximate result of SPDS's breach of the implied covenant of good faith and fair dealing under the 2019 Agreement, Warner/HBO has been injured and damaged in an amount to be proven at trial.

Defendants' Response:

115. Paragraph 115 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

THIRD CAUSE OF ACTION
DECEPTIVE PRACTICES IN VIOLATION OF GBL § 349
(Against SPDS, Paramount, and MTV)

Plaintiff's Allegation:

116. Warner/HBO repeats and realleges the allegations in paragraphs 1–103 as if fully set forth herein.

Defendants' Response:

116. Defendants incorporate their responses to the allegations, as set forth above, as if fully set forth herein.

Plaintiff's Allegation:

117. Defendants' marketing and sale of streaming subscriptions constitutes consumer-oriented conduct.

Defendants' Response:

117. Paragraph 117 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

118. By virtue of the conduct alleged above, Defendants have engaged in acts and practices that were materially deceptive and have resulted in consumer injury and broad adverse impact on the public at large.

Defendants' Response:

118. Paragraph 118 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

119. On information and belief, Defendants' conduct was willful and intentional, and intended to unfairly compete against Warner/HBO, divert its subscribers to Paramount+, steal its valuable streaming rights, and entice its advertisers.

Defendants' Response:

119. Paragraph 119 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

120. On information and belief, Defendants' conduct also had a significant consumer-facing impact, causing substantial confusion over which streaming platform had "exclusive" rights to South Park and necessitating that consumers purchase streaming subscriptions from Paramount+ when they already believed such exclusivity resided with HBO Max.

Defendants' Response:

120. Paragraph 120 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

121. As a result of Defendants' unlawful acts, including but not limited to conducting economic activity in a deceitful and anti-competitive manner, consumers have been harmed.

Defendants' Response:

121. Paragraph 121 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

122. As a result of Defendants' unlawful acts, Warner/HBO has suffered injury to its reputation, as well as monetary damages, including but not limited to lost advertising revenue, in an amount to be determined at trial.

Defendants' Response:

122. Paragraph 122 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

123. Defendants' conduct, as described above, warrant the award of attorneys' fees to Warner/HBO.

Defendants' Response:

123. Paragraph 123 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

FOURTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT
(Against Paramount and MTV)

Plaintiff's Allegation:

124. Warner/HBO incorporates by reference paragraphs 1–103 as if fully set forth herein.

Defendants' Response:

124. Defendants incorporate their responses to the allegations, as set forth above, as if fully set forth herein.

Plaintiff's Allegation:

125. Warner/HBO has a valid agreement with SPDS, which grants it the exclusive right and license to make the 24th through 26th seasons of the Series available on Warner/HBO's HBO Max video on-demand streaming platform.

Defendants' Response:

125. Defendants admit that South Park Digital Studios LLC and WarnerMedia Direct, LLC entered into the Term Sheet, and refer to the agreement for its full contents.

Plaintiff's Allegation:

126. Paramount and MTV had and has full knowledge of Warner/HBO's 2019 Agreement with SPDS.

Defendants' Response:

126. Paragraph 126 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

127. Based on information and belief, as well as the facts recited herein, Paramount and MTV maliciously and intentionally induced SPDS to breach its Agreement with Warner/HBO. As a result of Paramount's actions, SPDS breached the Agreement repeatedly, including by (1) failing to offer Warner/HBO the right to license the *South Park* Post-COVID Content and the Streaming Wars Content; (2) providing Warner/HBO with fewer than 10 episodes for each of seasons 24 and 25 of the Series; and, on information and belief, season 26 of the Series; and (3) diverting and licensing *South Park* episodes to Paramount+.

Defendants' Response:

127. Paragraph 127 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

128. Paramount and MTV had and has no lawful justification for its tortious interference with Warner/HBO's Agreement with SPDS.

Defendants' Response:

128. Paragraph 128 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

129. Paramount and MTV acted wrongfully and employed improper means because their purpose in interfering with the contract was to appropriate the benefits of Warner/HBO's Agreement with SPDS.

Defendants' Response:

129. Paragraph 129 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

130. Paramount and MTV acted maliciously and with wanton disregard for Warner/HBO's rights.

Defendants' Response:

130. Paragraph 130 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

131. As a result of Paramount and MTV's tortious interference with Warner/HBO's Agreement with SPDS, Warner/HBO has suffered and will continue to suffer irreparable harm, as well as significant monetary damages to be determined at trial.

Defendants' Response:

131. Paragraph 130 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT
(Against Paramount and MTV)

Plaintiff's Allegation:

132. Warner/HBO incorporates by reference paragraphs 1–103 as if fully set forth herein.

Defendants' Response:

132. Defendants incorporate their responses to the allegations, as set forth above, as if fully set forth herein.

Plaintiff's Allegation:

133. Paramount and MTV have enjoyed substantial revenue through advertising and gaining subscribers as a result of Paramount+'s streaming of South Park content.

Defendants' Response:

133. Defendants deny the allegations set forth in paragraph 133, except admit that Paramount Global and its subsidiaries have earned advertising and subscriber revenue in connection with the streaming of content on Paramount+.

Plaintiff's Allegation:

134. This benefit was obtained at Warner/HBO's expense, as Warner/HBO invested hundreds of millions to secure the exclusive right to stream the Licensed Content in order to gain revenue through, but not limited to, advertising and new subscribers.

Defendants' Response:

134. Paragraph 134 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

135. It would be against equity and good conscience to permit Paramount and MTV to retain any profits from their misconduct.

Defendants' Response:

135. Paragraph 135 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

Plaintiff's Allegation:

136. By reason of the foregoing, Warner/HBO has incurred damages, the total amount of which will be proven at trial.

Defendants' Response:

136. Paragraph 136 contains legal conclusions, as to which no response is required. To the extent a response is required, Defendants deny the allegations.

PRAYER FOR RELIEF

Defendants deny all allegations in the prayer for relief.

AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE**
(Failure to State a Claim)

137. The Complaint fails to state a cause of action upon which relief can be granted. Among other reasons, the cause of action for deceptive practices under § 349 of the General Business Law (“GBL”) fails, on its face, in the absence of any consumer-oriented or misleading conduct, or any injury to consumers or the public interest. In addition, the cause of action for breach of the implied covenant fails, on its face, because it is entirely duplicative of the cause of action for breach of contract.

SECOND AFFIRMATIVE DEFENSE
(Prior Breach)

138. Plaintiff’s claims and causes of action are barred, in whole or in part, by the doctrine of prior breach.

THIRD AFFIRMATIVE DEFENSE
(Parol Evidence)

139. Plaintiff’s claims and causes of action are barred, in whole or in part, by the terms of the applicable contract and the parol evidence rule, which precludes the admissibility of extrinsic evidence that vary the terms of the contract.

FOURTH AFFIRMATIVE DEFENSE
(Frustration of Purpose)

140. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of frustration of purpose.

FIFTH AFFIRMATIVE DEFENSE
(Impossibility and/or Impracticability)

141. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrines of impossibility or impracticability of performance.

SIXTH AFFIRMATIVE DEFENSE
(Force Majeure)

142. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of force majeure.

SEVENTH AFFIRMATIVE DEFENSE
(First Amendment)

143. Plaintiff's claims and causes of action are barred, in whole or in part, by Defendants' First Amendment rights.

EIGHTH AFFIRMATIVE DEFENSE
(Preemption)

144. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of preemption.

NINTH AFFIRMATIVE DEFENSE
(Waiver)

145. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE
(Estoppel)

146. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE
(Consent and/or Acquiescence)

147. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrines of consent or acquiescence.

TWELFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

148. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE
(Ratification)

149. Plaintiff's claims and causes of action are barred, in whole or in part, by its ratification.

FOURTEENTH AFFIRMATIVE DEFENSE
(Offset and/or Setoff)

150. Plaintiff's recovery of damages, if any, must be reduced in accordance with the doctrines of offset or setoff.

FIFTEENTH AFFIRMATIVE DEFENSE
(Substantial Performance)

151. Plaintiff's claims and causes of action are barred, in whole or in part, because South Park Studios has completely or substantially performed all of its obligations under the applicable contract.

SIXTEENTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)

152. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of unjust enrichment.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Laches)

153. Plaintiff's claims and causes of action are barred, in whole or in part, by the doctrine of laches.

COUNTERCLAIMS

1. In 2019, two highly-sophisticated entertainment companies—WarnerMedia Direct, LLC and South Park Digital Studios, LLC—entered into a license agreement by which WarnerMedia licensed the rights to stream more than 300 episodes of the iconic television series *South Park* on its affiliated platform, HBO Max. These sophisticated parties, whose related companies have done numerous licensing deals together, documented the exact contours of their respective rights and obligations to license and pay for the content in a written Term Sheet.

2. South Park Studios has abided by the terms of the written Term Sheet. WarnerMedia has not. Instead, despite continuously exploiting and profiting from the 300-plus episodes of *South Park* that it still has available for streaming on HBO Max, WarnerMedia is refusing to pay tens of millions of dollars in license fees owed to South Park Studios for the right to exploit that content. To purportedly justify its non-payment, WarnerMedia has accused South Park Studios of breaching certain alleged obligations in the Term Sheet. But, as detailed below, those alleged obligations simply do not exist in the Term Sheet, or otherwise. As such, WarnerMedia's excuses for failing to pay the required license fees, as well as its affirmative claims, are precluded by the plain terms of the parties' agreement.

3. The terms of the parties' deal were simple. Under the Term Sheet, dated as of October 22, 2019, South Park Studios agreed to license to WarnerMedia the streaming rights to the following specifically-enumerated content: (i) the existing library of over 300 television

episodes, each 22 minutes in length, which comprise Seasons 1 to 23 of the *South Park* series; (ii) the forthcoming television episodes that would make up Seasons 24 to 26 of the *South Park* series, provided the episodes first aired on a cable or major broadcast network, such as Comedy Central (the long-time home of the *South Park* television series); (iii) specified short-form content related to such television episodes, such as behind-the-scenes footage; and (iv) one 2011 made-for-television documentary titled *6 Days to Air: The Making of South Park*. The Term Sheet made clear that the rights to any *South Park* content not expressly licensed in the foregoing grants would be exclusively retained and available to exploit by South Park Studios.

4. Notably, the Term Sheet did *not* specify any minimum required number of episodes for the forthcoming Seasons 24-26.

5. The parties agreed that WarnerMedia would pay an episodic license fee of \$1,687,500 for each of the 300-plus existing episodes, as well as a reduced, prorated episodic license fee (which would decrease the \$1,687,500 base license fee in proportion to the time the episode was available to license during the five-year license term) for each new, still-to-come episodes in Seasons 24 to 26. The parties also agreed that the episodic license fees would be payable in four quarterly installment payments each year throughout the five-year license period.

6. South Park Studios held up its end of the bargain. It delivered the 300-plus library episodes of *South Park*, the one made-for-television documentary, and the specified short-form content at the start of the five-year license period. South Park Studios then delivered each new episode of Seasons 24 to 26, as each became available following its premiere on Comedy Central, precisely as required by the Term Sheet. Indeed, despite its production capabilities being nearly debilitated by the COVID-19 pandemic, and the growing desire of the *South Park* co-creators to experiment with other lengths and formats for entertainment content, South Park Studios delivered the equivalent of more than 4 television episodes for Season 24, delivered 6 television episodes for Season 25, and delivered another 6 television episodes for Season 26.

7. Despite receiving all of the content required under the Term Sheet, WarnerMedia apparently began to regret the actual terms of the deal it made. Specifically, WarnerMedia started

insisting that the Term Sheet, despite its plain language to the contrary, (i) included a requirement that South Park Studios produce and deliver a *minimum* of 10 episodes each for Seasons 24 to 26, and (ii) granted WarnerMedia the exclusive right to license “made-for-streaming” movies that South Park Studios produced. But WarnerMedia did not negotiate for or secure either of these terms. Indeed, unlike other streaming platforms involved in the bidding for the rights to the South Park television episodes in 2019, WarnerMedia did not seek to include a required minimum number of episodes for Seasons 24 to 26 in the Term Sheet. Likewise, WarnerMedia never sought, and certainly did not obtain, the right to license any “made-for-streaming” movies in the Term Sheet. And for good reason. South Park Studios would not have agreed to license any “made-for-streaming” movie rights on the same terms as, and certainly not for the price of, an episode of the television series.

8. WarnerMedia then began accusing South Park Studios of breaching the Term Sheet by failing to comply with these nonexistent terms. When South Park Studios did not give in to the baseless demands that South Park Studios deliver new television episodes that did not even exist and made-for-streaming movies that WarnerMedia has no right to license, WarnerMedia decided to withhold payment of the license fees for the content it had actually licensed and was exploiting. WarnerMedia refused to pay more than \$26 million in license fees that came due in December 2022. Then, after filing its Complaint in this action, WarnerMedia refused to pay more than \$26 million in additional license fees that came due on March 31, 2023. Further, by its actions, WarnerMedia has indicated that it will not pay any of the \$225+ million in license fees still owed for the rest of the five-year term of the Term Sheet unless and until South Park Studios produces and delivers an additional 14 episodes of Seasons 24 to 26 that do not exist and delivers certain “made-for-streaming” movies that South Park Studios produced for another streaming platform.

9. Despite WarnerMedia’s refusal to pay more than \$52 million in license fees already owed, WarnerMedia continues to stream on HBO Max the 318 episodes of the *South Park* television series that make up Seasons 1 to 26, along with the made-for-television documentary titled *6 Days to Air: The Making of South Park*.

10. WarnerMedia's wholesale refusal to pay for any of the *South Park* content it admits it has received and is continuing to exploit constitutes a clear and knowing breach of its obligations under the Term Sheet.

11. As an initial matter, because the license fees owed by WarnerMedia are calculated on a per-episode basis—that is, based on *South Park* episodes that have been delivered—the license fees WarnerMedia is refusing to pay are for content that WarnerMedia indisputably received and is continuing to exploit through the present day. WarnerMedia is continuing to stream on its HBO Max platform all 302 library episodes, whose collective value makes up the vast majority of the total license fees due under the Term Sheet, the made-for-television documentary and other short-form content required by the Term Sheet, and now the 16 episodes that comprise Seasons 24 to 26. WarnerMedia is refusing to pay the episodic license fee that applies to each of these delivered episodes.

12. Although WarnerMedia claims that it should have received 14 more episodes (*i.e.*, 6 more episodes for Season 24 and 4 more episodes each for Seasons 25 and 26), it had not been charged for any episodes not actually delivered. In other words, WarnerMedia is not complaining about “missing” content that it paid for. Indeed, recognizing the uncertainty of how many episodes would be delivered for Seasons 24 to 26, the Term Sheet provides that WarnerMedia owes nothing for an episode until it has been delivered and made available for streaming on HBO Max.

13. Nor is the purported shortfall of 14 episodes material when compared to the 318 episodes and other licensed content that WarnerMedia has received. 14 episodes represents less than 4 percent of the total content WarnerMedia claims it is entitled to under the Term Sheet. Thus, even by its own calculation, WarnerMedia has received 96 percent of the total content it believes it is owed under the Term Sheet. A nominal shortfall of 4 percent of the content WarnerMedia (wrongly) believes it is entitled to under the Term Sheet is hardly grounds to refuse to pay more than \$52 million in license fees currently owed to South Park Studios, or to repudiate all future payment obligations, for the indisputably valuable content it continues to exploit on HBO Max.

14. WarnerMedia has no basis to withhold the episodic license fee that applies to each

of (i) the 302 library episodes, which it received as of June 24, 2020, and which it continues to exploit through the present day; (ii) the 2011 made-for-television documentary, which it received as of June 24, 2020, and which it continues to exploit through the present day; (iii) the 16 additional episodes comprising Seasons 24 to 26, each of which was available to stream on HBO Max the day after its debut on Comedy Central and which it continues to exploit through the present day.

15. Through this Counterclaim, South Park Studios seeks to recover all of the unpaid license fees, totaling more than \$52 million to date, based upon WarnerMedia's blatant breaches of the Term Sheet. In addition, based on WarnerMedia's material breaches of contract, and its indications that it will continue to withhold the \$225+ million in license fees still owed for the rest of the five-year term, South Park Studios is entitled to a declaratory judgment confirming the parties' rights and obligations under the Term Sheet.

FACTUAL BACKGROUND

The *South Park* Television Series.

16. *South Park* is an immensely popular animated television series created by Trey Parker and Matt Stone. The *South Park* television series centers on the lives of four fictional children—Stan Marsh, Eric Cartman, Kyle Broflovski, and Kenny McCormick—who live and go to school in the show's titular Colorado town. Since its debut on the cable network Comedy Central in 1997, *South Park* has become the high-water mark for animated television comedy.

17. From 2008 until 2013, each television episode of the *South Park* series was made available for free, on-demand streaming on the official South Park Studios website, for a one-week window following its debut on the Comedy Central cable network.

South Park Studios And WarnerMedia Enter Into The Term Sheet.

18. From 2014 to 2020, South Park Studios licensed the streaming rights to *South Park* television episodes to Hulu's premium service, Hulu Plus. When the Hulu streaming deal was nearing an end, a bidding war for the right to license the *South Park* television episodes ensued among various steaming platforms.

19. WarnerMedia ultimately prevailed in the bidding. WarnerMedia and South Park

Studios thus entered into a written Term Sheet dated October 22, 2019, and amended as of August 7, 2020, to delineate the exact scope and terms of the license.

20. Pursuant to the Term Sheet, South Park Studios licensed to WarnerMedia the following rights:

- (a) All long-form television episodes from the preexisting Seasons 1 to 22 of the *South Park* television series (defined as the “S1-22 Episodes”);
- (b) All long-form television episodes from the current Season 23 of the *South Park* television series (defined as the “S23 Episodes”);
- (c) All long-form television episodes from the forthcoming Seasons 24 to 26 of the *South Park* television series (defined as the “S24-26 Episodes”), “provided that each episode in the applicable season of the S24-26 Episodes premieres on a Licensor (or Licensor affiliate) owned or controlled (i) Nielsen-rated basic cable network or (ii) major broadcast network, in Licensor’s sole discretion during the Term”;
- (d) Specified short-form content (*i.e.*, clips, trailers, teasers, outtakes, behind-the-scenes, bonus content, making-ofs, DVD materials, promos, and marketing materials) related to the licensed television episodes; and
- (e) One made-for-television, live-action documentary from 2011 titled *6 Days to Air: The Making of South Park*.

21. In the event that a “S24-S26 Episode” did not premiere on a basic cable or major broadcast network owned by or affiliated with South Park Studios, the Term Sheet provided that WarnerMedia would have the option to license that episode.

22. The five-year term of the license period for all existing television episodes comprising Seasons 1 to 23 began on June 24, 2020. For forthcoming episodes of Seasons 24 to 26, each new episode would be available to stream on HBO Max the day after the episode’s premiere via linear television distribution. The term of the license period for all such licensed content is set to expire on June 23, 2025.

23. As made clear by the explicit list of grants, the scope of the Term Sheet was specifically limited to “Episodes” of Seasons 1-26 of the *South Park* television series; related “short-form content” like short clips and bonus content; and exactly one made-for-television documentary titled, *6 Days to Air: The Making of South Park*.

24. The Term Sheet was equally certain about what rights South Park Studios had **not** licensed to WarnerMedia, stating that “[e]xcept for the rights expressly granted hereunder,” SPDS would retain “the full, perpetual, unlimited, exclusive right to exhibit, distribute, transmit, advertise, market, promote and otherwise exploit [*South Park*] and all allied and ancillary rights therein of any kind, in all forms of media, on all platforms, and by all means, throughout the world.”

25. That reservation of rights meant that South Park Studios withheld and expressly retained for itself the right to exploit or license to another party the streaming rights to **all other content** not specifically enumerated in the Term Sheet, including the streaming rights to any “made-for-streaming” movies based on the *South Park* property, which was an equally obvious category of content that could have been, but deliberately was **not**, included in the grant of rights.

26. WarnerMedia’s approach to the negotiations of the Term Sheet was different than other streaming outlets that sought to bid for the same streaming rights. Unlike other streaming outlets who bid for the valuable license to stream the *South Park* television series, WarnerMedia did not seek to include in the Term Sheet an episodic minimum number of episodes in Seasons 24 to 26. Likewise, WarnerMedia never once proposed that the Term Sheet include a right for WarnerMedia to license any “made-for-streaming” movies, which would have required a separately negotiated license fee specific to that content.

27. Thus, as reflected in the Term Sheet, WarnerMedia sought and acquired the streaming rights to exactly one identified made-for-television documentary titled *6 Days to Air: The Making of South Park*; the over 300 library television episodes in existence; new television episodes constituting Seasons 24 to 26; certain related short-form content—**and nothing more**.

South Park Studios Fully Delivers All Library Episodes, The 2011 Documentary, and The Short-Form Content.

28. On or around June 24, 2020, South Park Studios delivered the 300-plus existing television episodes of the *South Park* television series, the specified short-form content, and the 2011 made-for-television documentary *6 Days to Air: The Making of South Park* to WarnerMedia.

29. On information and belief, all of the delivered content was made immediately available by WarnerMedia for streaming on HBO Max and still remains available for streaming on HBO Max through the present day.

30. On August 7, 2020, the parties entered into an amendment to the Term Sheet to address changes to the branding and marketing obligations and to add exceptions to the confidentiality provision. The parties made no other changes to the Term Sheet. In particular, the parties did not amend the Term Sheet to include any episodic minimum for the upcoming Seasons 24 to 26 of the television series. And once again, the parties did not include any right or obligation to license any made-for-streaming movies.

The COVID-19 Pandemic Upends The Production Of Season 24 Of *South Park*.

31. Before South Park Studios could begin the production of new episodes for Season 24 of *South Park*, the entire world was upended by the COVID-19 pandemic.

32. Because of the closure of the production studio during the early months of the pandemic, and the physical distance separating the creative team (including the co-writers, animators, art and sound coordinators, voice actors, and other production staff), who were each working out of his or her own personal residences, the logistical impediments to the process of conceptualizing and executing new *South Park* content during the pandemic were unprecedented.

33. Unlike prior seasons, during which a team of approximately seventy people was famously known to churn out a 22-minute episode of *South Park* by working together non-stop for six consecutive days at the production studio, new *South Park* content conceived of during the pandemic had to come together very differently. Given the health and safety and logistical challenges posed by the COVID-19 pandemic, South Park Studios was forced to expend millions

of dollars on remote technologies and equipment to try to enable the makeshift production of *South Park* content from home.

34. Although the production capabilities were severely impaired, the creative juices were overflowing—there was so much to say, and so many scathing sociopolitical observations to make, about the ongoing COVID-19 pandemic. The new *South Park* content conceived of and created by the pandemic-challenged team was the aptly-titled “The Pandemic Special”—an overlong, overstuffed television episode that came out to be 48-minutes long (more than double the length of the typical 22-minute television episode).

35. “The Pandemic Special” television episode aired on Comedy Central on September 30, 2020, to record-breaking viewership numbers. It was delivered to WarnerMedia, and made available for streaming on HBO Max the day after it aired on Comedy Central as part of “Season 24” of the *South Park* series, pursuant to the Term Sheet.

36. After completing “The Pandemic Special,” the *South Park* team could not proceed, as they had in the past, to produce more *South Park* episodes in the same fast-paced, dynamic, and team-oriented environment that existed at the production studio pre-pandemic. As noted, it would have been impossible, operating under the current health and safety guidelines, for the *South Park* team to live together for weeks on end, working around-the-clock at the production studio, to produce multiple television episodes in rapid succession.

37. Instead, as time continued to pass with no end to the pandemic in sight, the *South Park* team decided it had no choice but to close out Season 24 with another oversized television episode. Once again, the *South Park* team labored through the far-from-ideal circumstances created by the COVID-pandemic to produce a second television special episode. The resulting product was another ultra-topical “South ParQ Vaccination Special,” a 47-minute-long television episode.

38. Like the mega-popular “The Pandemic Special” that came before it, the “South ParQ Vaccination Special” drew record-breaking viewership numbers on Comedy Central and became cable’s top telecast among young adults that year. As with “The Pandemic Special” before

it, one day after its broadcast on Comedy Central on March 10, 2021, the “South ParQ Vaccination Special” was delivered to WarnerMedia and made available for streaming on HBO Max the next day, pursuant to the Term Sheet.

39. Thus, with the delivery of the “South ParQ Vaccination Special,” South Park Studios communicated to WarnerMedia that it had completed its delivery of the pandemic-interrupted Season 24. WarnerMedia agreed to pay a license fee equivalent to four regular-length television episodes for Season 24.

40. Though the two installments of Season 24 had a combined runtime that equaled approximately 4.3 standard-length television episodes, neither Comedy Central and WarnerMedia could complain about receiving new *South Park* content in the middle of a pandemic, when the production of any new content, of any format or length, had been near-impossible to pull off.

41. South Park Studios also believed that WarnerMedia would be particularly understanding of the limitations forced by COVID-19, which had caused WarnerMedia and HBO Max to severely and very publicly alter their own distribution strategies and shut down or reduce production of original content during the pandemic.

42. As expected, despite the abnormality of the completed Season 24—which consisted of only the “The Pandemic Special” and the “South ParQ Vaccination Special” episodes—WarnerMedia was apparently happy to receive any content at all. WarnerMedia agreed to pay a license fee equivalent to four regular-length television episodes and made “Season 24” available to stream on HBO Max.

43. In the meantime, to WarnerMedia’s great fortune, the value of the existing 300-plus library episodes unexpectedly skyrocketed, as the viewing public became captive at home under stay-at-home orders and viewership of streaming content exploded.

South Park Studios Completes Delivery Of Season 25.

44. In January 2022, Comedy Central announced the upcoming Season 25 of *South Park* would consist of six new television episodes, which would debut on Comedy Central beginning on February 2, 2022, and then (in accordance with the Term Sheet) become available to

stream on HBO Max the next day.

45. With the health and safety restrictions from the COVID-19 pandemic relaxing, the creative team returned to the normal grind of producing television episodes, with each of the standalone episodes in Season 25 conceived of and produced in the six days preceding its broadcast date on Comedy Central.

46. After each of the Season 25 episodes debuted on Comedy Central, South Park Studios delivered each of them to WarnerMedia to upload and make available on HBO Max the next day, in fulfillment of the Term Sheet requirements for Season 25.

47. To this day, WarnerMedia has continued to exploit all 6 episodes of Season 25 by making them available for streaming as “Season 25” of the series on HBO Max.

South Park Studios Completes Delivery Of Season 26.

48. In January 2023, Season 26 of *South Park* was given its official premiere date of February 8, 2023.

49. Like Season 25, Season 26 consisted of 6 television episodes. All 6 episodes comprising Season 26 premiered on Comedy Central and were delivered to WarnerMedia for streaming the next day on HBO Max.

50. To this day, WarnerMedia has continued to exploit all 6 of the delivered episodes by making them available for streaming as “Season 26” of the series on HBO Max.

WarnerMedia Refuses To Pay The License Fees In Breach Of The Term Sheet.

51. In the Term Sheet, WarnerMedia and South Park Studios agreed that the license fee for each “SP Episode” would be \$1,687,500. Payment for each episode would commence upon delivery of that episode to HBO Max and would be paid out quarterly over the remaining term of the deal.

52. For the 300-plus library *South Park* episodes and the made-for-television documentary that were delivered to WarnerMedia immediately at the start of the license term on June 24, 2020, the parties agreed that \$1,687,500 was an appropriate license fee because WarnerMedia could exploit that content for up to five years.

53. With respect to the new episodes comprising Seasons 24 to 26, the parties agreed that there would be a reduced license fee, “prorated separately for each applicable SP Episode, calculated by multiplying the License Fee by a fraction, the numerator of which shall be the number of days in the applicable License Period for such SP Episode, and the denominator of which shall equal the number of days in the License Period for the S1-23 Episodes.”

54. In the event that an episode of *South Park* was withdrawn from the license, the Term Sheet confirmed that South Park Studios would simply “pay or credit to [WarnerMedia] a prorated withdrawal payment/credit, calculated by multiplying the License Fee for such SP Episode by a fraction, the numerator of which shall equal the number of days remaining in the applicable License Period for such SP Episode and the denominator of which shall equal the total number of days in such SP Episode’s License Period.”

55. Despite receiving all of the content it is entitled to under the clear grant of rights outlined in the Term Sheet, WarnerMedia has failed to pay more than \$26 million on December 31, 2022, and more than \$26 million on March 31, 2023. By simply refusing to pay ongoing license fees, WarnerMedia has made it clear that it intends not to make any future license fee payments under the Term Sheet unless it gets the content it claims to be owed.

56. It is indisputable that WarnerMedia has received and is continuing to exploit, to this day, all 300-plus library episodes; the only made-for-television documentary title it contracted for; and every single episode of Seasons 24 to 26. It is likewise indisputable that the license fees that WarnerMedia has refused to pay are for the foregoing content, which it indisputably received and has exploited from the time of receipt through the present day.

57. In refusing to pay the license fees due in December 2022 and March 2023, however, WarnerMedia has concocted an argument that the Term Sheet contained two game-changing contractual terms (found nowhere in the four corners of the Term Sheet), which South Park Studios had purportedly breached: (i) a minimum requirement of 10 episodes for each of Seasons 24 to 26; and (ii) WarnerMedia’s right to license any made-for-streaming movies produced for a streaming platform for the same license fee as a *South Park* series episode.

58. The plain terms of the Term Sheet confirm that neither of these terms exist.

59. The Term Sheet reflects no episodic commitment whatsoever for the new seasons of *South Park*. If anything, the Term Sheet reflects the opposite: a pricing structure designed to permit South Park Studios the freedom to vary the number of television episodes it produced in any upcoming season and designed to protect WarnerMedia by providing that the license fee to be paid is based only on episodes delivered.

60. The Term Sheet likewise reflects no term that could require South Park Studios to offer to license to WarnerMedia the rights to any made-for-streaming movies developed outside the television seasons. The Term Sheet lists, in exhaustive form, the content that is within the grant of rights; made-for-streaming movies simply does not appear on that list.

61. Moreover, even assuming WarnerMedia is correct that the Term Sheet contains a 10-episode minimum for Seasons 24 to 26 (it is not), the total “missing” content amounts to 14 out of 332 total episodes, or a mere 4-percent of the total licensed content. WarnerMedia, under its own theory of a breach by South Park Studios, has no valid excuse for refusing to pay the license fees that are contractually owed for the 96-percent of the content it admits it has received and continues to exploit.

62. WarnerMedia also has hinted that it may attempt to assert that it is not in breach of any payment obligations under the Term Sheet, because it informed Paramount Global that it planned to withhold these payments in December 2022. In particular, WarnerMedia has begun to construct, in certain recent correspondence Paramount Global, a narrative claiming that discussions in December 2022 resulted in an arrangement by which each side could pause and defer certain contractual payments otherwise due and owing to the other under unrelated agreements.

63. There is no such mutually agreed arrangement. To the contrary, WarnerMedia simply announced in December 2022, unilaterally and without any sign-off by South Park Studios or Paramount Global, that it had decided to withhold the payments due and owing under the Term Sheet, for an unspecified duration of time while this dispute played out. Defendants never agreed

that would be okay. Neither South Park Studios nor Paramount Global ever indicated, through any words or through conduct, that it would tolerate or view the non-payments by WarnerMedia as anything other than an outright breach of the Term Sheet.²

64. Further, WarnerMedia has given clear indications that it will not pay any of the remaining \$225+ million in license fees still owed for the rest of the five-year term of the Term Sheet. Paramount Global certainly has not agreed that WarnerMedia can continue to disregard its contractual obligations in this manner.

65. WarnerMedia's obligations to timely make all the payments owed under the Term Sheet are live and ongoing, not subject to any agreed-upon abeyance or deferral, and completely unaffected by the fact that WarnerMedia had previously advised South Park Studios, back in December 2022, of its desire to withhold these payments.

66. WarnerMedia is required to pay South Park Studios more than \$52 million in overdue payments under the Term Sheet and it is without any excuse for failing to do so. WarnerMedia is also required to continue to make all future payments under the Term Sheet as they come due, on a quarterly basis.

COUNT I – BREACH OF CONTRACT

67. South Park Studios re-alleges and incorporates by reference paragraphs 1 through 66 as though fully set forth herein.

68. The parties entered into the Term Sheet as of October 22, 2019, which, at all relevant times, has been binding and enforceable.

² In response to WarnerMedia's unilateral decision to refuse to pay more than \$52 million in license fees owed thus far under the Term Sheet, the parties agreed that Paramount Global would withhold an equal amount from payments that were otherwise owed pursuant to different deals between the parties' related entities, until WarnerMedia pays what is owed under the Term Sheet. However, Paramount Global *never* agreed that WarnerMedia was entitled to withhold any payments in the first place, and it has always been Paramount Global's position that the parties should simply comply with their contractual obligations—*i.e.*, WarnerMedia should pay all amounts owed under the Term Sheet, in which case Paramount Global and its affiliates will pay all equivalent amounts owed to WarnerMedia and its affiliates.

69. South Park Studios has performed its obligations under the Term Sheet.

70. WarnerMedia's performance of its payment obligations has not been excused.

71. Nonetheless, WarnerMedia has breached its obligations under the Term Sheet, including by, among other things, failing to remit the license fees due and owing as of December 2022 and March 2023.

72. South Park Studios has suffered damages in an amount yet to be determined, but in all events exceeding \$52 million to date, as a direct result of WarnerMedia's breaches of the Term Sheet.

COUNT II – DECLARATORY JUDGMENT

73. South Park Studios re-alleges and incorporates by reference paragraphs 1 through 72 as though fully set forth herein.

74. South Park Studios seeks a declaratory judgment to resolve questions concerning the respective rights, obligations, and duties of the parties under the Term Sheet, including with respect to (i) WarnerMedia's refusal to pay quarterly license fees for the South Park content it has received and continues to exploit and (ii) its assertion that it is entitled to suspend and/or defer its payment obligations going forward due to a purported arrangement it claims was made between the parties in December 2022—an assertion that South Park Studios vigorously disputes.

75. An actual case or justiciable controversy exists between the parties concerning WarnerMedia's refusal to pay the agreed-upon license fees and its purported entitlement to suspend or defer its payment obligations under the Term Sheet.

76. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy between the parties and will provide certainty to the parties with respect to their rights and obligations under the Term Sheet.

77. By reason of the foregoing, South Park Studios is entitled to a declaratory judgment establishing the rights and obligations of the parties, including WarnerMedia's obligation to pay the license fees set forth in the Term Sheet and the validity of WarnerMedia's purported reasons for nonpayment.

78. South Park Studios therefore requests a declaration by this Court that it is entitled to receive payments of license fees in accordance with the schedule required by the Term Sheet, notwithstanding WarnerMedia’s belief that an arrangement or defer and/or suspend such payments exists.

PRAYER FOR RELIEF

WHEREFORE, South Park Studios prays for judgment as follows:

1. For judgment in favor of South Park Studios and against WarnerMedia on all causes of action;
2. For actual and compensatory damages in an amount to be proven at trial;
3. For a judgment declaring that WarnerMedia’s obligations to make payments under the Term Sheet are not suspended or excused, and its failure to make payments are in breach of the Term Sheet;
4. For any reasonable attorneys’ fees, costs, disbursements, and other expenses recoverable by South Park Studios, in an amount according to proof;
5. For pre- and post-judgment interest thereon at the applicable rate under the Term Sheet; and
6. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
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