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11
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STARZ ENTERTAINMENT, LLC

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 STARZ ENTERTAINMENT, LLC,

17 Plaintiff,

18 v.

19 MGM DOMESTIC TELEVISION
20 DISTRIBUTION LLC,

21 Defendant.

Civil Action No. 2:20-cv-4048

22 **COMPLAINT FOR:**

- 23 **1) DIRECT COPYRIGHT INFRINGEMENT;**
 - 24 **2) CONTRIBUTORY COPYRIGHT INFRINGEMENT;**
 - 25 **3) VICARIOUS COPYRIGHT INFRINGEMENT;**
 - 26 **4) BREACH OF CONTRACT;**
 - 27 **AND**
 - 28 **5) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
- DEMAND FOR JURY TRIAL**

1 Picture on that distributor’s service to be directed to a version of that movie made
2 available directly from MGM to subscribers of that platform at no additional cost.
3 Pursuant to the Library Agreements, the consumer should have been directed only
4 to STARZ—because only STARZ should have had the right to exhibit the movie.
5 In that way, MGM’s breach both robbed STARZ of an opportunity to gain
6 subscribers and allowed MGM to further benefit by directing those subscribers (and
7 the associated fees) to itself.

8 4. STARZ brings this action against MGM for direct copyright
9 infringement, contributory copyright infringement, vicarious copyright
10 infringement, breach of contract and breach of the covenant of good faith and fair
11 dealing. STARZ seeks monetary damages—in the form of, *inter alia*, its own lost
12 profits and all of MGM’s profits attributable to the infringement—and injunctive
13 relief, as specified below.

14 5. STARZ is a leading provider of premium subscription video
15 programming in the United States for distribution via facilities-based multichannel
16 video programming distributors, including cable operators, satellite television
17 providers and telecommunications companies (collectively, “MVPDs”), and via the
18 Internet, including STARZ’s direct-to-consumer distribution. STARZ built its
19 business by offering viewers content they could find nowhere else, including
20 recently released “first-run” movies and other library movies. It primarily acquires
21 this content by entering into exclusive license agreements with movie studios such
22 as MGM.

23 6. For years, STARZ and MGM have had agreements in place—
24 including the Library Agreements—through which STARZ acquired the exclusive
25 right and license to exhibit hundreds of popular movies, including *Bill & Ted’s*
26 *Excellent Adventure*; *Bull Durham*; *Dances With Wolves*; *Rain Man*; *Hannibal*; *The*
27 *Birdcage*; *Valkyrie*; *Be Cool*; *Moonstruck*; *Stargate*; *The Good, The Bad, and The*
28 *Ugly*; *The Manchurian Candidate*; *Thelma & Louise*; *The Thomas Crown Affair*;

1 *Mad Max; The Terminator*; and James Bond films such as *Never Say Never Again*,
2 *Die Another Day*, *The World is Not Enough* and *Tomorrow Never Dies*, among
3 many others.

4 7. Pursuant to the terms of the Library Agreements, MGM both
5 granted STARZ the exclusive right to exhibit the copyrighted Pictures during the
6 time periods specified therein, and also represented and warranted that it would not
7 take or authorize any action that would materially impair any of the rights for which
8 STARZ had bargained and paid.¹

9 8. MGM breached both promises. Unbeknownst to STARZ, by at
10 least 2015 (and potentially earlier), MGM began granting licenses to the STARZ-
11 exclusive Pictures to other competing content services during the very time periods
12 in which STARZ had the exclusive rights. By its own admission, MGM licensed
13 **over 32%** of the Pictures in the Library Agreements to competing services, in
14 violation of STARZ's exclusive rights to those movies. Although MGM has
15 admitted to the breach generally, it is not yet confirmed how many platforms
16 licensed Pictures from MGM. STARZ's own investigation has revealed that over
17 150 titles have been breached, with some breaches occurring on MGM's own
18 network, Epix, which competes with STARZ.

19 9. MGM's breach of the Library Agreements and infringement of
20 STARZ's exclusive copyrights caused STARZ tremendous damage in the form of
21 lost profits, diminished reputation and loss of goodwill. STARZ's offerings, which
22 STARZ markets as exclusive, were de-valued both by customers and distributors
23 because STARZ's exclusive copyrights were being infringed.

24 10. In August 2019, STARZ first became suspicious that MGM
25 might have violated the terms of the Library Agreements after a STARZ employee

26 _____
27 ¹ Exclusive licenses transfer copyright ownership for the purposes of the Copyright
28 Act. For that reason, STARZ uses the terms "licenses", "copyrights" and "rights"
interchangeably throughout its Complaint.

1 discovered that *Bill & Ted's Excellent Adventure*—a film that should have been
2 exclusive to STARZ—was available for streaming on Amazon. After notifying
3 MGM of this discovery, MGM admitted this breach. STARZ, however, discovered
4 that *Bill & Ted's Excellent Adventure* was far from the only film that MGM
5 appeared to have improperly licensed.

6 11. On November 1, 2019, after repeated communications from
7 STARZ identifying additional Pictures in breach, MGM—claiming that it had,
8 itself, just become aware of its rampant breach—sent STARZ a list of 136 movies
9 and 108 television series episodes that it identified as in breach of the Library
10 Agreements. STARZ's own investigation has uncovered nearly 100 additional
11 Pictures that MGM apparently has licensed to others, including MGM's own
12 network Epix, in breach of the Library Agreements. The Pictures with respect to
13 which STARZ believes its copyright and/or contractual rights have been violated
14 are attached as Exhibit A.

15 12. MGM's failure to honor its grant of exclusivity to STARZ is a
16 direct, willful and reckless infringement of STARZ's copyrights; MGM also
17 willfully and recklessly induced others to infringe STARZ's copyrights when
18 MGM purported to license to those companies the same Pictures to which STARZ
19 already had an exclusive license.

20 13. STARZ brings this action to enforce its rights under the
21 Copyright Act and to seek redress for MGM's breaches of the Library Agreements.
22 STARZ seeks damages under the Copyright Act 17 U.S.C. §§ 502, 504 and 505,
23 including actual losses and infringer's profits; injunctive relief; compensatory and
24 consequential damages; and attorney's fees.

THE PARTIES

25
26 14. Plaintiff Starz Entertainment, LLC is a limited liability company
27 organized and existing under the laws of the State of Colorado with its principal
28 place of business in Santa Monica, California.

1 21. The STARZ Services are available to consumers through
2 MVPDs (such as Comcast, Charter, AT&T/DIRECTV, DISH Network and
3 Verizon) and Internet-based distributors (such as Amazon’s Prime Video service,
4 Hulu and STARZ’s own direct-to-consumer Internet service). STARZ Services are
5 offered on a recurring monthly basis as part of a program package or on an a la
6 carte basis.

7 22. To ensure that STARZ continues to offer competitive and
8 compelling content, STARZ has entered into licensing agreements with several
9 movie studios, including MGM. Pursuant to the terms of those agreements,
10 STARZ receives the exclusive rights to exhibit specific content throughout the
11 STARZ network. Those exclusive rights ensure that, for a given Picture, STARZ
12 will be the only service with that Picture for a specified period of time.

13 23. Content exclusivity always has been important to STARZ. It
14 built its business on offering consumers movies that are available only through it.
15 Those exclusive offerings include a large, rotating selection of newer movies that
16 are no longer in theaters but also are not available for viewing on any other
17 subscription, advertising-supported or free video service (“first-run” movies) and
18 classic movies.

19 24. Exclusive content attracts customers and is vital to STARZ’s
20 relationships with distributors. STARZ has built a library of exclusive movies so
21 that at any given time since at least 2015 STARZ has had more exclusive movies
22 on its service than competing services. By being able to consistently offer more
23 movies on an exclusive basis than other networks, STARZ has built its reputation
24 among consumers and among MVPDs as a valuable premium channel.
25 Historically, STARZ has sought *only* exclusive licenses. Thus, for example, while
26 there have been a few exceptions, more than 98% of the broadcast movies on the
27 STARZ flagship channel in 2019 are licensed on an exclusive basis.
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1 25. Exclusive licenses are extremely valuable to STARZ, not only
2 because they allow the licensed Pictures to be shown on the STARZ Services, but
3 also because they convey an ownership interest which enables STARZ to *exclude*
4 *others* from showing the Pictures.

5 26. This exclusivity is critical to STARZ’s ability to compete.
6 Distributors have put pressure on STARZ to ensure that it offers a wide range of
7 *exclusive* movies.

8 **STARZ’s Exclusive Licensing Agreements with MGM**

9 27. On July 26, 2013, STARZ entered into an exclusive licensing
10 agreement with MGM—the Library Deal Memorandum agreement (the “2013
11 Library Agreement”). Pursuant to the terms of this agreement, MGM granted
12 STARZ the exclusive right and license to exhibit within the United States 313
13 MGM movies and 108 television series episodes by means of pay television and
14 subscription video on demand for various license periods for each Picture.

15 28. MGM represented and warranted that “each Picture is and will
16 be protected by copyright in the U.S. throughout the duration of such Picture’s
17 License Period.”

18 29. The 2013 Library Agreement explicitly provides STARZ with
19 exclusive copyrights to show the listed Pictures on pay television and on-demand.
20 Paragraph 3 provides that:

21 [STARZ] will have the right and license to exhibit each
22 Picture by means of Pay Television and SOD in the
23 Territory during such Picture’s License Period, on the
24 [STARZ] services (as defined below) in the English
25 language and, if and to the extent such rights are owned or
26 controlled by MGM on a picture-by-picture basis as
27 indicated on Exhibit “A-1” hereto, Spanish **Such**
28 **Pay Television and SOD rights shall be exclusive** in the

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Territory with respect to the Pictures, other than [exceptions not relevant here].

30. MGM further committed that it would not exhibit or authorize others to exhibit the content on virtually any platform, including free television. In Paragraph 10, MGM promised that:

MGM shall not exhibit or authorize the exhibition of, or promote or authorize the promotion of the exhibition of, any Picture in the Territory during its applicable License Period(s) in the Licensed Languages or any non-Licensed Language by means of any form of free television (including free-on-demand television), basic television, SOD or Pay Television (including without limitation distribution of each of the foregoing media by means of electronic delivery via the Internet, for example, distribution of free television by means of the Internet).

31. In its representations and warranties, MGM represented in Paragraph 19 that it had not and would not grant rights in the Pictures to any other party:

MGM represents, warrants and covenants (a) it has all rights necessary to enter into this Library Deal Memorandum and to perform all of its obligations hereunder; (b) MGM has not taken or authorized, and will not take or authorize, any action by which any of the rights in any Picture granted herein by MGM to [STARZ] have been or may be materially impaired in any way.

32. In addition to granting STARZ exclusive rights, MGM delivered masters of each Picture to a “mutually agreed lab”, which is the means by which MGM provides the physical copy of pictures to entities who then exhibit them.

1 33. On May 7, 2015, STARZ and MGM entered into another
2 exclusive licensing agreement—the 2015 Library Agreement (the “2015 Library
3 Agreement”).

4 34. That agreement provided STARZ with the exclusive right to
5 exhibit within the United States 472 MGM movies and 68 television series
6 episodes. Like the 2013 Library Agreement, the 2015 Library Agreement provided
7 STARZ with exclusive copyrights in Paragraph 3:

8 MGM hereby grants to [STARZ] the exclusive right and
9 license (except as otherwise expressly set forth below) to
10 exhibit each Picture by means of Pay Television and
11 [Subscription Video On Demand] in the Territory during
12 such Picture’s License Period, on the [STARZ] Services
13 (each, as defined below) in the English language and, if
14 and to the extent such rights are owned or controlled by
15 MGM on a picture-by-picture basis as indicated on
16 Exhibit “A” hereto, Spanish Such Pay Television and
17 SVOD rights shall be exclusive in the Territory with
18 respect to the Pictures, other than [exceptions not relevant
19 here].

20 35. In Paragraph 10, MGM again promised:

21 **MGM shall not exhibit or authorize the exhibition of,**
22 **or promote or authorize the promotion of the**
23 **exhibition of, any Picture in the Territory during its**
24 **applicable License Period(s) in the Licensed**
25 **Languages or any non-Licensed Language** by means of
26 any form of free television (including free-on-demand
27 television), basic television, SVOD or Pay Television
28 (including without limitation distribution of each of the

1 foregoing media by means of electronic delivery via the
2 Internet, for example, distribution of free television by
3 means of the Internet).

4 36. And, again, in Paragraph 19, MGM further promised that:

5 (a) it has all rights necessary to enter into this Library
6 Agreement and to perform all of its obligations hereunder;

7 (b) MGM has not taken or authorized, and will not take or
8 authorize, any action by which any of the rights in any
9 Picture granted herein by MGM to [STARZ] have been or
10 may be materially impaired in any way.

11 37. The two Library Agreements provided STARZ with the
12 exclusive right under copyright to exhibit 585 movies and 176 television series
13 episodes for the time periods provided under their respective agreements. In
14 exchange for those exclusive rights and licenses, STARZ agreed to pay MGM
15 nearly 70 million dollars over the life of the two Library Agreements.

16 38. The value in entering into the Library Agreements was not only
17 that they allowed STARZ to exhibit content, but also that the content would be
18 provided to STARZ exclusively, such that STARZ could prohibit others (including
19 MGM) from using or impairing STARZ's copyrights. STARZ would not have
20 entered into the Library Agreements without MGM providing exclusivity and
21 without MGM committing to safeguard those rights. As a premium pay network,
22 STARZ is not in the business of acquiring or exhibiting non-exclusive content.

23 39. MGM breached its representations, including its explicit
24 representation and warranty that MGM "ha[d] not taken or authorized, and will not
25 take or authorize, any action" impairing STARZ's rights to these Pictures.
26 Contrary to MGM's representations and promises, MGM repeatedly and
27 systematically breached its contractual obligations and infringed STARZ's
28 exclusive copyrights by purporting to license the Pictures to STARZ's competitors.

1 would have no additional incentive to subscribe to STARZ specifically; instead, the
2 consumer may choose to subscribe to one of STARZ's competitors or to watch the
3 title on a platform to which they already have a subscription. Thus, a lack of
4 exclusivity deprives STARZ of the opportunity to attract new subscribers.

5 **MGM is Forced To Admit the Massive Breaches Discovered By STARZ**

6 44. In August 2019, STARZ became suspicious for the first time
7 that MGM might have violated the terms of the Library Agreements. During that
8 month, a STARZ employee noticed that *Bill & Ted's Excellent Adventure*, a movie
9 that STARZ had the exclusive right to exhibit, was being exhibited on Amazon
10 Prime Video services. STARZ asked MGM about this apparent breach and MGM
11 responded that it would "dig into this" and get back to STARZ.

12 45. On August 13, 2019, MGM admitted that *Bill & Ted's Excellent*
13 *Adventure* had been licensed improperly during the STARZ exclusive license
14 period, and offered to provide additional periods of exclusivity. MGM did not
15 inform STARZ that the exclusivity of any other titles had been violated.

16 46. On August 23, 2019, STARZ followed up to inform MGM that
17 *Bill & Ted's Excellent Adventure* was not the only breach; STARZ had since
18 discovered that ***22 of the approximately 70 MGM movies then available on***
19 ***STARZ were streaming on Amazon Prime Video services***. Again, MGM told
20 STARZ that it would "dig into this".

21 47. On September 11, 2019, MGM claimed that it had found the
22 source of the problem that STARZ had brought to its attention, that the issue had
23 been "corrected", and that the 22 titles were no longer being infringed. Again,
24 MGM failed to disclose that other STARZ-exclusive Pictures also had been
25 improperly licensed.

26 48. On September 30, 2019, MGM provided STARZ with a list of
27 22 movies that it had identified as streaming on Amazon Prime Video services
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1 when those movies should have only been available on STARZ. But STARZ found
2 discrepancies in the information MGM provided—certain movies STARZ had
3 found were not included on MGM’s list of 22 movies, and certain movies on
4 MGM’s list of 22 were new to STARZ. STARZ again asked MGM to investigate
5 the situation, and identified three additional movies that were being streamed by
6 Amazon Prime Video services in violation of STARZ’s rights to exclusivity.
7 MGM again said it would “dig[] into” it.

8 49. Becoming suspicious that MGM was not being forthcoming
9 about the scope and nature of its breach, on October 18, 2019, STARZ sent a letter
10 to MGM seeking formal assurances that (i) the 22 movies MGM had identified as
11 being exhibited by Amazon Prime, plus the three additional movies STARZ asked
12 MGM to investigate, were not licensed to any other service provider; (ii) that other
13 than those 25 movies, none of the other Pictures MGM licensed exclusively to
14 STARZ under the Library Agreements had been licensed to Amazon Prime or any
15 other service provider; and (iii) that MGM was taking affirmative measures to
16 ensure that no Pictures licensed to STARZ under the Library Agreements would be
17 licensed to any other service provider in violation of the terms of those agreements.

18 50. On November 1, 2019, MGM finally admitted that the 25
19 movies STARZ had inquired about were, in fact, only the tip of the iceberg. MGM
20 attached to its reply email *a list of 136 movies and 108 television series episodes*
21 that MGM identified as having been licensed to third parties during the STARZ
22 exclusive license periods. That list also included the number of days of
23 “exclusivity overlap” for each Picture, meaning that MGM told STARZ the number
24 of days on which the Pictures were licensed to third parties when STARZ had the
25 exclusive copyright to those Pictures. The exclusivity overlaps ranged from one
26 day for *Gang Related* to all 456 days of the license period for *The Thomas Crown*
27 *Affair* under the 2013 Library Agreement. In that same email, MGM assured
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1 STARZ that it had “taken action to ensure that [its] rights tracking system
2 accurately reflects the terms of our deals and full exclusivity for all other licensed
3 Pictures will be maintained”. But that was not true. As of December 12, 2019,
4 several of the breached and/or infringed Pictures were *still* available on various
5 services when they should have been exclusive to STARZ.

6 51. STARZ has since learned that MGM’s breach of exclusivity has
7 been happening since at least 2015 without STARZ’s knowledge. Certain Pictures
8 were licensed in violation of STARZ’s rights under copyright for hundreds of days.
9 For example, MGM licensed the James Bond movie *Never Say Never Again* to
10 Amazon Prime Video services for *over 300 of the 429 days* that STARZ held the
11 exclusive license to distribute that movie on pay television and SVOD. MGM
12 *admitted* that it did this with hundreds of Pictures, in breach of the Library
13 Agreements and in violation of STARZ’s copyrights.

14 52. STARZ continues to discover new evidence that MGM has
15 licensed *even more* of STARZ’s exclusive Pictures to third parties than MGM
16 admitted in its November 1, 2019 email. Through STARZ’s continuing internal
17 review, it has so far identified *nearly 100 additional movies* (not included on
18 MGM’s list) that appear to have been licensed to third parties during time periods
19 in which STARZ enjoyed exclusivity.

20 53. Worse, STARZ discovered that some of the Pictures exclusively
21 licensed to STARZ were exhibited on Epix—the competitor pay television and
22 SVOD service *wholly owned by MGM*—during the periods in which STARZ had
23 an exclusive right to exhibit those Pictures. STARZ requires discovery to uncover
24 the full extent of MGM’s breach and infringement.

1 58. That had severe negative consequences for STARZ. When a
2 consumer is searching for a STARZ-exclusive title on Amazon, the platform should
3 inform the consumer that the title is available for no additional charge to
4 subscribers of STARZ. For a consumer that is not a STARZ subscriber, the
5 platform also promotes the STARZ service, offering a seven-day free trial. This is
6 a powerful way for STARZ to attract new subscribers based on the exclusive nature
7 of its offerings. But when a title is not exclusive to STARZ, but instead is also
8 available on the Amazon Prime Video services (even when it should have been
9 available only through STARZ), the platform first suggests that the consumer watch
10 it through the Amazon Prime Video services, at no additional charge for Amazon
11 Prime subscribers. The platform does not highlight the STARZ service and,
12 instead, the company that provided the movie through the Prime Video Direct
13 service (such as MGM) gets a fee from Amazon if the customer watches the movie
14 through Amazon Prime Video. Thus, when MGM licensed STARZ-exclusive
15 content to Amazon through the Prime Video Direct service, it both robbed STARZ
16 of the opportunity to attract new subscribers, and directly profited from its own
17 infringement.

18 59. Not only is exclusivity important in attracting new subscribers,
19 it also is a key component in maintaining consumer loyalty. For example, one
20 consumer recently stated in a review of STARZ on Apple's App Store that "Starz
21 shows movies you don't always see on the other services and *for that reason alone*
22 *it's worth the price of a subscription.*" If consumers see that the Pictures they are
23 looking for, time after time, are available not only on STARZ but also on Amazon
24 Prime Video services or another third-party service, they are less likely to keep a
25 STARZ subscription.

26 60. STARZ has been irreparably harmed by MGM's actions. This
27 includes harm to its reputation and loss of goodwill among consumers and
28 distributors as a source for exclusive, high-quality programming.

COUNTS 1-340: COPYRIGHT INFRINGEMENT IN VIOLATION OF
17 U.S.C. § 501

(Against Defendant MGM)

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4 61. STARZ incorporates by reference paragraphs 1-60 as if fully set
5 forth herein.

6 62. STARZ is the exclusive licensee of registered copyrights in
7 certain Pictures under the Library Agreements. With each license, STARZ holds
8 the exclusive rights and licenses to exhibit the at-issue Pictures within the United
9 States for pay television and SVOD during the exclusivity periods.

10 63. MGM infringed those rights and violated the Copyright Act,
11 17 U.S.C. § 501, when MGM purported to grant licenses for the same copyrights
12 for the same Pictures to third parties during the exclusivity periods.

13 64. At no time has STARZ authorized MGM to license or distribute
14 those works to other competing services during the exclusivity periods.

15 65. MGM knew that STARZ owned the exclusive rights and license
16 to the infringed works. Despite that knowledge, MGM willfully entered into
17 agreements that purported to license the copyrighted works to other parties.

18 66. MGM's infringement is and has been willful, intentional,
19 purposeful and reckless, in complete disregard of the rights it granted to STARZ,
20 and has caused substantial damage to STARZ.

21 67. Each violation of STARZ's rights in and to each copyrighted
22 Picture constitutes a separate and distinct act of copyright infringement by MGM.
23 MGM infringed STARZ's copyrights for the Pictures attached as Exhibit A.

**COUNTS 341-680: CONTRIBUTORY COPYRIGHT INFRINGEMENT IN
VIOLATION OF 17 U.S.C. § 501**

(Against Defendant MGM)

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4 68. STARZ incorporates by reference paragraphs 1-60 as if fully set
5 forth herein.

6 69. MGM is liable as a contributory infringer for the copyright
7 infringement committed by Amazon and other third parties. MGM knew that the
8 infringement has occurred and is continuing to occur, and MGM caused, enabled,
9 facilitated and materially contributed to that infringement.

10 70. Amazon and other third parties have directly infringed and are
11 directly infringing STARZ's copyrights by distributing copyrighted Pictures to the
12 public via pay television and SVOD in violation of STARZ's exclusive rights under
13 the Library Agreements and in violation of the Copyright Act, 17 U.S.C. § 501.

14 71. MGM caused, enabled, facilitated and materially contributed to
15 that infringement by purporting to issue licenses to the at issue Pictures to those
16 third parties and by giving those third parties access to the masters of the Pictures.

17 72. MGM's knowledge of the infringement is both actual and
18 constructive. It has admitted that it entered into licensing agreements with third
19 parties which purported to grant those third parties licenses to distribute Pictures
20 when MGM knew that STARZ owned the exclusive copyrights to those Pictures,
21 having granted STARZ those exclusive rights in the first instance.

22 73. MGM's contributory infringement is and has been willful,
23 intentional, purposeful and reckless, in complete disregard of the rights it granted to
24 STARZ, and has caused substantial damage to STARZ.

25 74. Each violation of STARZ's rights in and to each copyrighted
26 Picture constitutes a separate and distinct act of copyright infringement. MGM
27 contributorily infringed STARZ's copyrights for the Pictures attached as Exhibit A.
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COUNTS 681-1020: VICARIOUS COPYRIGHT INFRINGEMENT IN
VIOLATION OF 17 U.S.C. § 501

(Against Defendant MGM)

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4 75. STARZ incorporates by reference paragraphs 1-60 as if fully set
5 forth herein.

6 76. MGM is liable as a vicarious infringer for the copyright
7 infringement committed via Amazon Prime Video services and other third-party
8 services. MGM (i) profited from the direct infringement while (ii) declining to
9 exercise its rights to stop or limit it.

10 77. Amazon and other third parties have directly infringed and are
11 directly infringing STARZ's copyrights by distributing copyrighted Pictures to the
12 public via pay television and SVOD in violation of STARZ's exclusive rights under
13 the Library Agreements and in violation of the Copyright Act, 17 U.S.C. § 501.

14 78. MGM had the ability to prevent the infringing conduct by
15 refusing to license to third parties works that already had been exclusively licensed
16 to STARZ. MGM did not do so, but, instead actively sought to license STARZ's
17 exclusive Pictures to others.

18 79. MGM profited from the direct infringement by, *inter alia*,
19 (i) receiving license fees from Amazon and others for the STARZ-exclusive
20 Pictures; and (ii) gaining an enhanced reputation as having rights to Pictures it does
21 not have.

22 80. MGM's vicarious infringement is and has been willful,
23 intentional, purposeful and reckless, in complete disregard of the rights it granted to
24 STARZ, and has caused substantial damage to STARZ.

25 81. Each violation of STARZ's rights in and to each copyrighted
26 Picture constitutes a separate and distinct act of copyright infringement. MGM
27 vicariously infringed STARZ's copyrights for the Pictures attached as Exhibit A.
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COUNT 1021: BREACH OF CONTRACT

(Against Defendant MGM)

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3 82. STARZ incorporates by reference paragraphs 1-60 as if fully set
4 forth herein.

5 83. The Library Agreements between STARZ and MGM are valid
6 and enforceable agreements between the parties.

7 84. STARZ has performed its obligations under the Library
8 Agreements in all material respects.

9 85. MGM breached the Library Agreements, which grant STARZ
10 the exclusive right and license to exhibit certain Pictures on pay television and
11 SVOD and provide that MGM shall not exhibit or authorize the exhibition of those
12 same Pictures by means of free television, basic television, SVOD and pay
13 television, by purporting to license Pictures to others that MGM already had
14 licensed exclusively to STARZ.

15 A. MGM breached paragraph 10 of the 2013 Library Agreement
16 and paragraph 10 of the 2015 Library Agreement, which state that “MGM shall not
17 exhibit or authorize the exhibition of, or promote or authorize the promotion of the
18 exhibition of” any of the Pictures covered under that agreement “by means of any
19 form of free television”, “basic television”, Subscription Video on Demand, or “Pay
20 Television” when it purported to grant licenses for STARZ’s exclusive content to
21 third parties.

22 B. MGM breached its representations and warranties in paragraph
23 19 of the 2013 Library Agreement and paragraph 19 of the 2015 Library Agreement
24 by failing to ensure that it “has not taken or authorized, and will not take or
25 authorize, any action by which any of the rights in which any Picture granted [by
26 MGM to STARZ] have been or may be materially impaired in any way.”

1 86. STARZ has been injured, and continues to be injured, by
2 MGM's material breaches of the Library Agreements. STARZ is entitled to
3 compensatory and consequential damages in an amount to be proven at trial.

4 **COUNT 1022: BREACH OF THE COVENANT OF GOOD FAITH**
5 **AND FAIR DEALING**
6 **(Against Defendant MGM)**

7 87. STARZ incorporates by reference paragraphs 1-60 as if fully set
8 forth herein.

9 88. MGM and STARZ entered into the Library Agreements
10 whereby MGM granted STARZ the exclusive right and license to certain Pictures.

11 89. STARZ has performed its obligations under the Library
12 Agreements in all material respects.

13 90. MGM had a duty to act fairly and in good faith and to do
14 nothing which would have the effect of destroying, interfering, frustrating or
15 injuring the rights of STARZ to receive the benefits of the Library Agreements.

16 91. MGM has breached the implied covenant of good faith and fair
17 dealing by engaging in a course of conduct to deprive STARZ of its rights under
18 the Library Agreements. MGM has, among other things, destroyed, interfered with,
19 frustrated and injured STARZ's rights by failing to ensure that MGM was not
20 licensing STARZ-exclusive Pictures to third parties during the STARZ exclusivity
21 periods.

22 92. As a direct and proximate result of MGM's breach of the
23 implied covenant of good faith and fair dealing under the Library Agreements,
24 STARZ has been injured and damaged in an amount to be proven at trial.
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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiff prays for judgment in its favor and against
3 Defendant and respectfully requests the following relief:

4 A. Judgment that MGM directly, contributorily and vicariously
5 infringed STARZ's copyrights in violation of the Copyright Act;

6 B. Judgment that MGM breached the Library Agreements and the
7 implied covenant of good faith and fair dealing contained therein;

8 C. An award to STARZ of MGM's profits attributable to its direct,
9 contributory and vicarious copyright infringement pursuant to 17 U.S.C. § 504(b),
10 including, but not limited to, licensing fees it collected from third parties for the
11 STARZ-exclusive Pictures it purported to license in violation of STARZ's
12 copyrights and all other profits it stands to gain from its infringement;

13 D. An award to STARZ of monetary damages equal to STARZ's
14 actual damages caused by MGM's direct, contributory and vicarious copyright
15 infringement pursuant to 17 U.S.C. § 504(b), including, but not limited to, lost
16 profits from receiving less in distribution fees from content distributors, lost profits
17 due to the loss of subscribers to STARZ's services, loss of good will and
18 reputational harm;

19 E. In the alternative, STARZ reserves the right to elect maximum
20 statutory damages (in lieu of actual damages) pursuant to 17 U.S.C. § 504(c) at
21 anytime prior to final judgment;

22 F. An order (i) enjoining MGM from infringing STARZ's
23 copyrights, whether directly, indirectly or vicariously; and (ii) directing MGM to
24 cease causing, enabling, facilitating, encouraging, promoting, inducing,
25 contributing to, and participating in the infringement of STARZ's copyrights;

26 G. Compensatory and consequential damages, including, but not
27 limited to, lost profits, goodwill and reputational harm, resulting from MGM's
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1 breach of the terms and representations and warranties in the Library Agreements,
2 in an amount to be proven at trial;

3 H. Compensatory and consequential damages, including, but not
4 limited to, lost profits, goodwill and reputational harm, resulting from the breach of
5 the covenant of good faith and fair dealing in the Library Agreements in an amount
6 to be proven at trial;

7 I. STARZ's costs and disbursements in this action, including
8 reasonable attorneys' fees and prejudgment and post-judgment interest; and

9 J. Such other and further relief as the Court deems proper and just.

10 **Jury Demand**

11 Pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, STARZ demands a jury trial
12 on all issues so triable.

13 Dated: May 4, 2020

14 Respectfully submitted,

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