

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

— • —

PAMELA FAUST, LEN MARAZZO, LISA MCCARTHY,
DEBORAH RUBINSOHN, AND GARY TALEWSKY,
Applicants,

v.

PARAMOUNT SKYDANCE CORPORATION AND SKYDANCE MEDIA,
LLC,
Respondents.

**TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE NINTH CIRCUIT**

**EMERGENCY APPLICATION FOR AN INJUNCTION PENDING
DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI**

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INTRODUCTION

On October 6, 2026, two days from now, Paramount Skydance threatens to close the \$110 billion enterprise-value acquisition of Warner Bros. Discovery, one of the largest acquisitions in the history of antitrust law, before the District Court has any opportunity to evaluate the acquisition on the merits, even though the defendants had previously agreed to stay the acquisition until June 2027 in anticipation of a trial in March 2027 by certain states of the United States, who settled their litigation with the defendants. This case is the only consumer case, which was filed months before any other lawsuit challenging the acquisition. App. 33a-35a, 474a-476a. The transaction will place under one corporate parent Paramount Pictures and Warner Bros. Motion Picture Group; Paramount+ and HBO Max; CBS, CBS News, and 60 Minutes; CNN and HBO; New Line Cinema; and major film, television, news, and streaming libraries. App. 379a, 477a. Applicants respectfully request an immediate injunction preserving separate ownership pending disposition of the accompanying petition for a writ of certiorari or further order of this Court.

The threatened change is not abstract. Respondents' own sworn declaration anticipates consolidating offices and technology, moving the streaming businesses toward a single technology stack, reducing portions of the combined workforce performing duplicative functions, and pruning content. App. 442a-443a. The States' settlement itself requires that the combined company not sell or close the Paramount or Warner Bros. lots during the commitment period, provides reapplication rights to employees displaced by the transaction, and creates an editorial-independence board. App. 98a-99a. Those safeguards show the magnitude of the integration that closing will unleash, but they do not preserve competition between Paramount and Warner Bros.

The district court nevertheless denied emergency Clayton Act relief on a categorical factual premise: Applicants had "fail[ed] to proffer any evidence." App. 4a. The record contained Respondents' own declaration, authenticated transaction materials, CEO statements, and consumer verifications describing the very competitive change Applicants identified. App. 124a-126a, 375a-377a, 431a-436a, 441a-443a, 489a-490a. The Ninth Circuit then denied mandamus in a two-page order stating only that Applicants had not shown a clear and indisputable right and denied all pending motions as moot. App. 1a-2a. No lower-court order now prevents the October 6 closing.

American Stores supplies the emergency model. There, Justice O'Connor granted an application to stay the Ninth Circuit's mandate pending certiorari because a substantial lessening of competition was irreparable injury, later remedies might be inadequate, and the equities favored preserving competition despite substantial delay costs. *California v. American Stores Co.*, 492 U.S. 1301, 1304-08 (1989). Here, a stay of the Ninth Circuit's denial would not itself restrain closing. Applicants therefore seek the functional equivalent: an injunction preserving separate ownership while this Court considers the petition.

OPINIONS AND ORDERS BELOW

The Ninth Circuit's October 2, 2026 order denied the petition for writ of mandamus and denied all pending motions as moot. App. 1a-2a. The district court's September 30, 2026 order denied the emergency TRO application. App. 3a-4a.

JURISDICTION AND RULES INVOKED

The Court has jurisdiction to review the Ninth Circuit's order under 28 U.S.C. § 1254(1). This application invokes Supreme Court Rules 22 and 23 and the All Writs Act, 28 U.S.C. § 1651(a). Justice Kagan is the Circuit Justice for the Ninth Circuit. Applications for injunctions pending the filing or disposition of a petition for certiorari are an established form of emergency relief where a stay of the lower-court disposition alone would not preserve the status quo.

Applicants exhausted emergency relief below. The district court denied relief on September 30, 2026 and warned that future applications submitted without evidentiary support would face summary denial. App. 3a-4a. The Ninth Circuit denied mandamus and all pending motions on October 2. App. 1a-2a. The separate States' no-closing restraint had already been dissolved, and the companies announced an October 6 closing. App. 33a-35a. Only this Court can preserve separate ownership before that date.

STATUTORY PROVISIONS INVOLVED

Section 7 of the Clayton Act, 15 U.S.C. § 18 (in pertinent part):

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Section 16 of the Clayton Act, 15 U.S.C. § 26 (in pertinent part):

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

The All Writs Act, 28 U.S.C. § 1651(a):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

A. The October 6 closing will combine iconic independent institutions across movies, streaming, television, and national news.

Respondents value the acquisition at approximately \$110 billion in enterprise value and describe it as a defining combination of two iconic companies. App. 474a-476a. The assets moving under common control include Paramount Pictures and Warner Bros. Motion Picture Group; Paramount+ and HBO Max; CBS, CBS News, and 60 Minutes; CNN and HBO; New Line Cinema; and extensive film and television libraries. App. 379a, 477a. Respondents' evidence also describes the competitive mechanism: Ellison stated that Paramount planned to "put the 2 services together"; the sworn declaration describes a single streaming technology stack, content pruning, office consolidation, workforce reductions, and Paramount+ and HBO Max on one platform. App. 442a-443a, 489a-490a.

B. Applicants are direct consumers of the products whose independent competition will disappear.

The FAC alleges a Direct-to-Consumer Subscription Streaming Market. App. 333a-336a. Marazzo and Rubinsohn purchase both Paramount+ and HBO Max; the FAC alleges that the merger will put both recurring purchases under one seller and eliminate independent competition for their subscription payments, viewing time, and retention. App. 326a, 358a, 365a-367a. Their sworn verifications address their personal subscription, payment, use, and threatened-injury facts. App. 431a-432a, 435a-436a. The FAC also alleges independent competition between Paramount and Warner Bros. in theatrical films and between CBS News and CNN in national television news. App. 327a-349a.

C. The district court denied relief on a premise the record directly contradicts.

The district court stated that Applicants again failed to proffer any evidence, that they were left with allegations, and that future TRO or preliminary-injunction motions submitted without evidentiary support would face summary denial. App. 4a. Yet Applicants had specifically directed the court to Respondents' declaration, authenticated exhibits, Ellison's statements, and the consumer verifications. App. 124a-126a. The extraordinary showing begins with that clear factual error: the evidence the court said did not exist was already in its record.

D. The Ninth Circuit left the October 6 closing unrestrained.

The Ninth Circuit denied mandamus in a two-page order, stating only that Applicants had not shown a clear and indisputable right, and denied all pending

motions as moot. App. 1a-2a. It did not address the district court's no-evidence premise, the specific record evidence, or *American Stores*. With the separate States' restraint dissolved, no lower-court order now prevents closing. App. 33a-35a.

ARGUMENT

I. Applicants have made the extraordinary showing for immediate Supreme Court intervention.

An injunction pending certiorari requires a reasonable probability that certiorari will be granted, a fair prospect of reversal, irreparable harm, and a favorable balance of equities. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010); *Nken v. Holder*, 556 U.S. 418, 434 (2009). Applicants recognize that this standard is demanding. The October 6 closing, the district court's demonstrably incorrect no-evidence premise, and the irreversible elimination of separate competitors satisfy it.

There is a reasonable probability of review because the petition presents a recurring problem at the intersection of mandamus and preventive antitrust relief: whether a merger may be permitted to close after a district court denies Section 16 relief on the categorical ground that no evidence exists when Respondents' own sworn evidence was already in the record and specifically identified. In a pre-closing merger case, that error can extinguish the preventive remedy before ordinary appellate review becomes possible.

There is also a fair prospect of reversal. The district court's stated premise was not that the evidence was weak; it was that Applicants offered none. App. 4a. Respondents' own declaration and materials establish the planned integration, and Applicants specifically cited them. App. 124a-126a, 441a-443a, 489a-490a. A factual premise contradicted by the record is clear error, and the district court's warning of summary denial left no adequate path to timely protection below. *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380-81 (2004).

The underlying Section 7 showing is substantial. *Brown Shoe Co. v. United States*, *United States v. Philadelphia Nat'l Bank*, *United States v. Pabst Brewing Co.*, and *United States v. Von's Grocery Co.* require attention to the elimination of significant independent rivals against an industry's structure and trend toward concentration. Here the record shows a \$110 billion combination of two historic studios, two substantial DTC services, and competing national-news operations, along with admitted plans to integrate technology, content, offices, and portions of the workforce. App. 379a, 442a-443a, 474a-477a, 489a-490a. Section 16 permits relief against threatened loss before the harm occurs. *Zenith Radio Corp. v. Hazeltine Resch., Inc.*, 395 U.S. 100, 130 (1969).

II. The announced October 6 closing creates immediate and irreparable injury.

Closing will not merely change a stock ledger. It will replace separate ownership with common control over competing studios, streaming products, and news organizations and permit the integration Respondents themselves describe. App. 379a, 442a-443a, 477a. Once independent pricing,

programming, release, newsroom, technology, employment, and investment decisions are centralized, later relief cannot restore the period of competition that was lost. *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1023-24 (9th Cir. 2016), recognizes competitive harm as irreparable when supported by the record.

American Stores is directly instructive. Justice O'Connor found adequate irreparable injury because other injunctive relief might not remedy a merger's anticompetitive effects and held that the threatened competitive harm outweighed the respondents' costs of delay. 492 U.S. at 1304-08. The case for preservation is at least as strong here because Applicants seek relief before closing and integration, when preserving two firms is simpler than trying to separate one combined enterprise after competitive decisions have been centralized.

III. The equities and public interest favor preserving separate ownership for the short period needed for review.

Respondents asserted contractual ticking fees and financing burdens below. Those costs warrant expedition, not consummation before review. The merger documents themselves contemplated delay and Respondents negotiated the ticking fee as part of the transaction. App. 61a-62a. Against those financial costs stands the threatened elimination of independent competition across movies, streaming, television, and news, together with Respondents' own admitted plans for integration and workforce reductions. App. 442a-443a. *American Stores* holds that threatened competitive harm can outweigh substantial merger-delay costs. 492 U.S. at 1307-08.

The requested order is narrow: preserve separate ownership and prohibit integration pending disposition of the petition or further order. It does not decide final antitrust liability. It preserves the Court's ability to decide the legal questions before the October 6 closing changes the competitive structure the Clayton Act is designed to protect. If the Court requires security, Applicants request a bond tailored to demonstrated damages caused by the short preservation order, not an amount that effectively forecloses Supreme Court review for individual consumers.

CONCLUSION

The application should be granted. Applicants respectfully request an immediate injunction prohibiting closing, consummation, and integration of Paramount's \$110 billion enterprise-value acquisition of Warner Bros. Discovery pending disposition of the accompanying petition for a writ of certiorari or further order of this Court.

Dated: October 5, 2026

Respectfully submitted,

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Counsel for Petitioners

APPENDIX

In re Pamela Faust, et al.

Petition for a Writ of Certiorari and Emergency Application

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**APPENDIX A - ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED OCTOBER 2, 2026**

Case: 26-6423, 10/02/2026, DktEntry: 11.1, (1 of 2)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 2 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: PAMELA FAUST; et al.

No. 26-6423

PAMELA FAUST; et al.,

D.C. No.

4:26-cv-03790-AMO

Northern District of California,
San Francisco

Petitioners,

ORDER

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA, OAKLAND,

Respondent,

PARAMOUNT SKYDANCE
CORPORATION and SKYDANCE
MEDIA, LLC,

Real Parties in Interest.

Before: W. FLETCHER, DESAI, and DE ALBA, Circuit Judges.

Petitioners have not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus. *See In re Mersho*, 6 F.4th 891, 897 (9th Cir. 2021) (“To determine whether a writ of mandamus should be granted, we weigh the five factors outlined in *Bauman v. United States District Court*.”); *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). The petition is denied.

Appendix A

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All other pending motions are denied as moot.

DENIED.

**APPENDIX B - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE
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Case 4:26-cv-03790-AMO Document 96 Filed 09/30/26 Page 1 of 2

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, et al.,

Plaintiffs,

v.

PARAMOUNT SKYDANCE
CORPORATION, et al.,

Defendants.

Case No. 26-cv-03790-AMO

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 92

Before the Court is a motion for temporary restraining order (“TRO”) from Plaintiffs Pamela Faust, Len Marazzo, Lisa McCarthy, Deborah Rubinsohn, and Gary Talewsky. Plaintiffs request a TRO enjoining Defendants from closing, consummating, or otherwise completing one of the two merger transactions underlying this lawsuit, Defendant Paramount Skydance Corporation’s proposed acquisition of Warner Bros. Discovery. The motion follows the Court’s earlier consideration and rejection of Plaintiffs’ motion for preliminary injunction seeking similar relief. *See* Dkt. Nos. 12 & 69.

To obtain the extraordinary remedy of preliminary injunctive relief, such as the TRO sought here, the moving party must show: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief, (3) the balance of equities tips in the favor of the moving party, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To grant preliminary injunctive relief, a court must find that “a certain threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam).

The Court weighed the *Winter* factors in addressing Plaintiffs’ motion for preliminary injunction. The Court denied the motion because Plaintiffs did not offer any evidence in support

Appendix B

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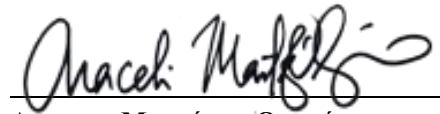
United States District Court
Northern District of California

1 of their request for extraordinary relief, which fell far short of the “clear showing” necessary to
 2 support each relevant preliminary injunction factor. *See* Hrg. Tr. (Dkt. No. 74). Plaintiffs again
 3 fail to proffer any evidence in support of the extraordinary relief requested in the instant
 4 submission. *See generally* Dkt. No. 92; *cf.* Civil L.R. 7-5. Plaintiffs rely on evidence and legal
 5 analysis from a separate case, which alleges different antitrust markets inapplicable in this case.
 6 *See, e.g.,* Dkt. No. 92 at 3 (citing *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-
 7 AMO, Dkt. No. 141 at 6-8 (N.D. Cal. July 20, 2026)). Evidence used in one antitrust case does
 8 not automatically apply with equal import in another antitrust case just as one party’s success does
 9 not bear on these Plaintiffs’ likelihood of success. And absent any evidence proffered in support
 10 of preliminary injunctive relief in this case, Plaintiffs are left with nothing more than allegations of
 11 antitrust violations and harm, which do not suffice for the extraordinary relief sought. *See*
 12 *Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1065 (N.D. Cal. 2023) (“Merely alleging the
 13 elimination of a rival does not plausibly support an inference of an appreciable danger of
 14 anticompetitive effects in a relevant market.”). Moreover, Plaintiffs’ likelihood of success
 15 remains unclear given the serious concerns regarding Plaintiffs’ standing as identified in the
 16 Court’s order granting Defendant’s motion to dismiss, Dkt. No. 79 at 4-9, and renewed in
 17 Defendant’s pending motion to dismiss the amended complaint, Dkt. No. 87 at 13-21. Thus,
 18 Plaintiffs do not meet the “clear showing” necessary to obtain preliminary injunctive relief. *See*
 19 *Winter*, 555 U.S. at 22; *Leiva-Perez*, 640 F.3d at 966.

20 The Court therefore **DENIES** Plaintiffs’ motion for TRO. In light of Plaintiffs’ repeated
 21 failures to advance any evidence in support of their motions for preliminary relief in this case to
 22 date, the Court cautions Plaintiffs that future motions for TRO or preliminary injunction submitted
 23 without evidentiary support will face summary denial.

24 **IT IS SO ORDERED.**

25 Dated: September 30, 2026

26 
 27 ARACELI MARTÍNEZ-OLGUÍN
 28 United States District Judge

**APPENDIX C - EMERGENCY PETITION FOR A WRIT OF MANDAMUS OR OTHER
APPROPRIATE WRIT, FILED SEPTEMBER 30, 2026**

Case: 26-6423, 09/30/2026, DktEntry: 1.1, (1 of 26)

No.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re PAMELA FAUST et al.,
Petitioners.

PAMELA FAUST, LEN MARAZZO, LISA McCARTHY,
DEBORAH RUBINSOHN, and GARY TALEWSKY,
Petitioners-Plaintiffs,

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA,

Respondent Court,

PARAMOUNT SKYDANCE CORPORATION and
SKYDANCE MEDIA, LLC,

Real Parties in Interest.

**EMERGENCY PETITION FOR A WRIT OF MANDAMUS
OR OTHER APPROPRIATE WRIT
TO THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

District Court No. 4:26-cv-03790-AMO
The Honorable Araceli Martínez-Olguín

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INTRODUCTION

Petitioners ask this Court to grant an immediate temporary restraint prohibiting consummation of Paramount Skydance Corporation's proposed acquisition of Warner Bros. Discovery, based on the sworn declarations and authenticated transaction materials already submitted in this action. Petitioners seek an order entered by this Court preserving separate ownership through the district court's disposition of the pending motion to dismiss, set for hearing October 22, 2026, subject to further order of this Court.

On September 30, 2026, the district court denied Petitioners' renewed application because, it stated, they again failed to proffer evidence. Dkt. 96 at 2. Yet the application rested on evidence in the record, and Petitioners' filings expressly identified sworn testimony and authenticated exhibits that Defendants themselves filed in this action. Dkt. 94 at 2–3. Defendants' declaration describes their plan to combine Paramount+ and HBO Max, consolidate streaming infrastructure, and obtain content savings. Dkt. 35 ¶¶ 8, 12, 17. Those materials cannot reasonably be characterized as mere allegations in an unverified complaint.

The existing evidence supplies the basis for immediate temporary protection. Defendants' own sworn submissions describe the proposed combination of Paramount+ and HBO Max and consolidation of their infrastructure. Dkt. 35 ¶¶ 8, 12, 17. Petitioners contend that those plans threaten the loss of independent

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competitive decision-making and consumer choice before their claims can be adjudicated.

Defendants' own September 22 representation supports the emergency: all requirements to close had been satisfied and legal barriers removed. Dkt. 93 at 3. Today the district court denied Petitioners' renewed application and dissolved the separate restraint in the States' action. Dkt. 96; States Dkt. 266 at 4. Petitioners request same-day relief before consummation, without representing that the record establishes a particular closing hour.

I. RELIEF SOUGHT

Petitioners request an immediate temporary injunction prohibiting Paramount Skydance Corporation and Skydance Media, LLC, from closing, consummating, or otherwise completing Paramount's proposed acquisition of Warner Bros. Discovery through the district court's disposition of Defendants' pending motion to dismiss, set for hearing October 22, 2026, subject to further order of this Court.

Petitioners request that this Court enter its own order granting the substantive no-closing restraint requested below in Dkt. 92, with protection here extending through the district court's disposition of Defendants' pending motion to dismiss, Dkt. 87, set for hearing October 22, 2026, subject to further order of this Court. The requested restraint rests on the evidence already submitted and identified in Dkt. 94. As immediate interim protection while this Court acts on that request, Petitioners

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also seek an injunction against consummation pending determination of this petition and the accompanying emergency motion.

The requested extraordinary relief is an affirmative restraint entered by this Court against consummation by the real parties in interest. A stay of the district court's denial alone would not restrain consummation. Petitioners therefore ask this Court to grant the requested temporary protection directly under the All Writs Act and Rule 21.

II. ISSUES PRESENTED

1. Whether the district court clearly erred by denying temporary restraint on the premise that Petitioners offered no evidence, where Plaintiffs identified Defendants' declarations, authenticated transaction materials, and CEO statements already in the record before the application.
2. Whether the existing evidence of substantial market consolidation, Defendants' express intention to combine Paramount+ and HBO Max, and the threatened loss of independent competition for Petitioners' subscription purchases supports temporary restraint under Sections 7 and 16 of the Clayton Act.
3. Whether this Court should immediately prohibit consummation through disposition of the motion to dismiss set for hearing October 22, 2026, to

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prevent likely irreparable competitive injury and preserve effective judicial review.

III. JURISDICTION AND GOVERNING STANDARD

This petition invokes 28 U.S.C. § 1651(a) and Federal Rule of Appellate Procedure 21. The underlying action asserts federal antitrust claims. This Court has appellate jurisdiction over reviewable orders and final judgments entered in that action. The All Writs Act permits relief in aid of existing or potential appellate jurisdiction; it does not independently create jurisdiction over the controversy.

In *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966), the Supreme Court recognized authority to preserve effective appellate review where implementation of a merger threatened subsequent relief. That case arose from an FTC proceeding. Petitioners invoke the principle of protecting effective appellate jurisdiction, while recognizing the different procedural setting of this private action.

Mandamus requires the absence of another adequate means to obtain relief, a clear and indisputable entitlement, and circumstances making issuance appropriate. *Cheney v. United States District Court*, 542 U.S. 367, 380–81 (2004). The Ninth Circuit considers the factors stated in *Bauman v. United States District Court*, 557 F.2d 650, 654–55 (9th Cir. 1977), including adequacy of other remedies, prejudice not correctable on ordinary appeal, and clear legal error. Clear error is ordinarily

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essential. *Chau v. U.S. Dist. Court for the Dist. of Ariz. (In re Mersho)*, 6 F.4th 891, 897–98 (9th Cir. 2021).

Here, the asserted clear error is the district court’s failure to consider specifically identified evidence already in the record, coupled with its warning that further requests “submitted without evidentiary support will face summary denial.” Dkt. 96 at 2. Because the lower court treated the existing record as containing no supporting evidence, that warning leaves Petitioners without an adequate avenue for timely protection below on the same record. Petitioners seek consideration of evidence the district court overlooked, rather than reweighing of evidence it evaluated.

IV. FACTS AND PROCEDURAL HISTORY

Petitioners are the five named Plaintiffs in *Faust v. Paramount Skydance Corporation*, No. 4:26-cv-03790-AMO. The real parties in interest are Paramount Skydance Corporation and Skydance Media, LLC.

Defendants filed their opposition to preliminary relief on June 3, 2026. Dkt. 33. Their opposition relied on the Goldberg declaration and its authenticated exhibits, Dkts. 34–34-4, and the Brandon-Gordon declaration, Dkt. 35. The opposition itself described the planned combination of Paramount+ and HBO Max, supported by those declarations. Dkt. 33 at 4–5.

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The district court denied preliminary relief after the July hearing. Dkt. 69. The minute entry records exclusion of evidence and verification submitted by Plaintiffs after Defendants' opposition. That timing ruling does not, on its face, encompass the evidence Defendants had already submitted with their opposition.

On August 5, the district court dismissed the original complaint with leave to amend, identifying standing deficiencies. Dkt. 79. Defendants subsequently moved to dismiss the First Amended Complaint. Dkt. 87. That motion remains pending, with a hearing confirmed for October 22, 2026. *See* Dkt. 96 at 2.

Petitioners renewed their request to prevent consummation in Dkt. 92, seeking protection for at least ten days or until a hearing on renewed preliminary relief, whichever came first. Dkt. 92 at 5. The restraint requested here extends through disposition of the pending dismissal motion. Defendants opposed on September 22, Dkt. 93, and Petitioners replied on September 23, Dkt. 94.

In support of their application, Petitioners identified Defendants' authenticated direct-to-consumer materials, Dkts. 34-2, 34-3, and 34-4; the proposed consolidation described in Dkts. 34-1, 34-3, and 35; individual Plaintiff declarations cited as Dkts. 44–48; and an Ellison statement cited as Dkt. 80-2. Dkt. 94 at 2–3.

On September 30, the district court denied the application. Dkt. 96. It stated that Petitioners again failed to proffer evidence, discussed their reliance on the different markets in the States' action, quoted the March 2023 *DeMartini* order,

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and referenced unresolved standing concerns. *DeMartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055 (N.D. Cal. 2023), at 2. It did not discuss the substance of Defendants' previously filed declarations.

That same day in the States' action, the district court also approved a settlement on September 30 and dissolved the no-closing order effective on entry. *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-AMO, Dkt. 266 at 4. The court entered the consent decree as Dkt. 267. That settlement is not a merits adjudication of Petitioners' private claims.

V. REASONS FOR ISSUING THE WRIT

- A. The court incorrectly found that Petitioners offered no evidence, although evidence already in the record supported the requested temporary restraint.

Sufficient evidence was already in the record of this action before Petitioners filed their renewed application to support the requested temporary restraint. The court's contrary predicate that Petitioners offered "no evidence" is incorrect. Petitioners identified Defendants' previously filed, authenticated transaction materials, statements by their chief executive officer, David Ellison, and their declaration describing the intended consolidation of Paramount+ and HBO Max. Dkts. 34–35, 80-2. These materials directly address the proposed combination, its scale, and its competitive consequences. Petitioners directed the court to evidence already before it; the court denied relief without considering its substance.

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The Goldberg declaration authenticates the transaction materials filed as its exhibits. Dkt. 34; Dkts. 34-1 through 34-4. Those materials describe the streaming services, their direct-to-consumer businesses, subscriber scale, and planned integration. Paramount expressly identifies its streaming business as “direct-to-consumer.” Dkt. 34-2 at 9; Dkt. 34-4 at 5–6. These authenticated exhibits were filed on June 3, 2026, months before Petitioners’ September 21 application.

In those materials, Ellison expressly stated: “we do plan to put the 2 services together,” producing “a little over 200 million direct-to-consumer subscribers.” Dkt. 34-3 at 10. He explained that Paramount had already consolidated its existing streaming services under one unified technology stack and intended to take a similar approach to the combined platform. *Id.* His description establishes an affirmative plan to combine the services and their operations. It appears in Defendants’ authenticated transaction materials independently of the later Ellison essay filed as Dkt. 80-2.

Defendants’ declaration confirms the same plan. Paragraph 17 describes combining Paramount+ and HBO Max on a single platform. Paragraph 8 describes consolidating the technology infrastructure supporting the services into a single technology stack. Paragraph 12 describes projected savings through pruning existing content. Dkt. 35 ¶¶ 8, 12, 17. This evidence supports Petitioners’ contention that the

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acquisition would eliminate a substantial independent competitor and reduce consumers' ability to choose between independently controlled services.

The quantitative materials also appeared in the record before the application. The First Amended Complaint, filed August 14, includes figures and an accompanying chart showing approximately \$10.3 billion in Warner Bros. Discovery's United States streaming revenue and \$7.6 billion in Paramount's, placing approximately \$17.9 billion under common control. Dkt. 81 ¶ 86. Its subscriber figures show approximately 128 million HBO Max subscriptions and 79.1 million Paramount+ subscriptions, or approximately 207.1 million gross subscriptions combined, subject to adjustment for overlapping subscribers. Id. ¶ 87. Those subscriber totals illustrate the scale of the combination rather than United States market shares. Ellison's previously filed statement independently confirms a combined subscriber base exceeding 200 million. Dkt. 34-3 at 10.

The record separately contained the theatrical-distribution chart showing a combined Paramount–Warner Bros. share of approximately 23.6%, the largest studio share shown, and a post-acquisition top-four share of approximately 76.3%. Dkt. 81 ¶ 124. Those figures concern United States and Canadian theatrical box-office performance and provide a distinct measure of the substantial businesses being consolidated.

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Defendants assert that the combination will increase content spending, improve the product, and benefit consumers. Dkt. 35 ¶¶ 12, 17–19. Those assertions do not erase their descriptions of platform consolidation, common infrastructure, and content pruning. They present competing inferences about the consequences of the admitted integration plans. The court must assess that evidence and the inferences it supports; competing characterizations cannot justify a categorical finding that no evidence was offered.

Defendants’ September opposition itself discussed Ellison’s essay, disputed Petitioners’ interpretation, and referred to additional public statements. Dkt. 93 at 2. That discussion confirms a dispute over the significance of identified material already in the record. Ellison’s essay was filed in August as Dkt. 80-2, and his earlier description of combining the services had been filed in June as Dkt. 34-3. Both preceded the renewed application.

The district court’s categorical no-evidence premise disregards authenticated exhibits, executive statements, and sworn submissions establishing the intended combination of the services and their infrastructure. The court’s failure to consider this evidence cannot support its conclusion that no evidence was offered. Petitioners submit that this constitutes clear error and that this Court should grant temporary protection directly on the existing record. By prohibiting consummation through disposition of the pending motion to dismiss, set for hearing October 22, 2026, this

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Court can preserve separate ownership and independent competitive decision-making without finally resolving market definition or the ultimate merits of Petitioners' antitrust claims.

B. The existing record establishes grounds for immediate temporary restraint against consummation.

The evidence establishes more than a proposed acquisition. It identifies substantial businesses that presently operate independently, the consumers for whose payments they compete, and Defendants' announced plan to combine their streaming services, technology infrastructure, and content offerings. Temporary restraint would preserve that existing competition while the courts determine whether the acquisition may lawfully extinguish it. The record supports the required findings of likely success, likely irreparable injury, favorable equities, and public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

1. Defendants' own descriptions of the transaction support a likelihood of success.

Section 7 addresses the probable competitive consequences of an acquisition before those consequences become accomplished facts. Its purpose is to arrest anticompetitive concentration in its incipiency. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317–18, 323 (1962). The inquiry therefore concerns whether the proposed acquisition may substantially lessen competition, rather than whether

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consumers can already establish the full consequences of a transaction that has not closed.

The record evidence directly supports that predictive inquiry. Ellison announced that Paramount intends to combine Paramount+ and HBO Max, producing a business with more than 200 million direct-to-consumer subscribers. Dkt. 34-3 at 10. Defendants' declaration confirms consolidation of the services onto a single platform, consolidation of their technology infrastructure, and projected savings through content pruning. Dkt. 35 ¶¶ 8, 12, 17. The proposed elimination of independent operation follows from Defendants' announced business plan.

The economic significance of that consolidation is substantial. The materials included in the filed complaint show approximately \$17.9 billion in combined United States streaming revenue and approximately 207.1 million gross subscriptions, subject to subscriber overlap. Dkt. 81 ¶¶ 86–87. Ellison's authenticated statement independently confirms the combined subscriber scale. Dkt. 34-3 at 10. These figures demonstrate the magnitude of the businesses being placed under common control. The separate theatrical-distribution chart likewise depicts a significant consolidation, with approximately 23.6% combined United States and Canadian box-office share and approximately 76.3% post-acquisition top-four concentration. Dkt. 81 ¶ 124.

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The competitive inference is direct: once Paramount controls HBO Max, the two services will cease making independent decisions about how to compete for subscribers through price, programming, promotions, advertising, and investment. Combining their libraries does not preserve the independent rivalry between their owners. Defendants' predictions of improved products and increased spending present a merits dispute about the consequences of consolidation. They do not negate the evidence that the transaction will remove a substantial independent competitive constraint.

2. The threatened injury reaches Petitioners' recurring purchases and does not require an announced future price increase.

The threatened injury concerns the products Petitioners purchase. As pleaded, Marazzo and Rubinsohn subscribe to both Paramount+ and HBO Max and separately evaluate their prices, programming, advertising, promotional terms, and overall value when deciding whether to retain or substitute those services. Dkt. 81 ¶¶ 142–150. Common ownership would place both purchases under one seller's control and eliminate the competitive constraint created by separate ownership.

Section 16 permits preventive relief when an impending antitrust violation poses a significant threat of injury. Petitioners need not wait until the threatened violation has produced actual injury. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (1969). Defendants' express integration plans supply a concrete basis for that threat. Petitioners cannot reasonably be required to identify, before

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consummation, the precise future subscription price, discontinued promotion, advertising increase, or programming reduction through which diminished competition will affect their purchases. The evidence permits the court to assess those probable consequences now.

3. Closing would allow the competitive injury to occur before the court can adjudicate effective preventive relief.

The emergency is immediate. Defendants represented that they had satisfied the requirements to close and removed the legal barriers. Dkt. 93 at 3. The district court has now denied Petitioners' application, and the separate restraint in the States' action has been dissolved. Dkt. 96; States Dkt. 266 at 4. Without an operative restraint, Defendants may consummate the acquisition and begin implementing the integration described in their own submissions.

The Ninth Circuit has recognized that “[a] lessening of competition constitutes an irreparable injury” and affirmed preliminary restraint against an acquisition where the record demonstrated likely competitive harm before adjudication on the merits. *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1023–24 (9th Cir. 2016). Here, the threatened injury extends beyond a potentially recoverable subscription overcharge. It includes the loss of independent pricing and programming decisions, consolidation of the infrastructure through which the services operate, and implementation of content-pruning decisions. Dkt. 35 ¶¶ 8, 12, 17. A later monetary award cannot recreate competition that should have occurred

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during that interval or restore every programming and investment decision displaced by common ownership.

Justice O'Connor's order in *California v. American Stores Co.*, 492 U.S. 1301, 1304–08 (1989) (in chambers), supports preservation of separate operations while judicial review proceeds. There, the acquisition had already occurred, and she maintained protection against integration despite substantial claimed delay costs. Petitioners seek intervention before consummation, when separate ownership can still be preserved without reconstructing an integrated enterprise. The possible availability of eventual divestiture does not make the intervening loss of competition harmless.

4. The balance of equities and public interest favor a restraint directed to the pending adjudication.

Petitioners seek protection through disposition of the motion to dismiss set for hearing October 22, 2026, subject to further order of this Court. That restraint preserves the businesses as independently owned competitors while the pending challenge to the complaint is resolved. It leaves the ultimate legality of the acquisition for adjudication.

Defendants' claimed ticking fees are a financial obligation Paramount voluntarily assumed as part of the consideration for its acquisition. Dkt. 35 ¶ 22. Paramount negotiated that obligation for its own commercial benefit, knowing that antitrust review could delay consummation. It cannot convert that allocation of

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transaction risk into an equitable entitlement to close before the courts determine whether temporary protection is warranted. The Ninth Circuit recognizes that self-inflicted harm substantially undermines a claim for equitable relief. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020). The ticking fee should therefore be rejected as a basis for denying the requested restraint.

September 30 is not a contractual deadline after which the acquisition necessarily fails. It is the date after which the agreed purchase consideration increases. The merger agreement expressly accommodates a substantially longer period for completion: Section 8.1(b)(i) establishes March 4, 2027 as the termination date, with an automatic extension to June 4, 2027 if specified regulatory conditions remain outstanding. Merger Agreement § 8.1(b)(i), Annex A (definition of “Ticking Consideration”). The agreement thus anticipates delayed closing and specifies its economic consequences.

Permitting those voluntarily assumed costs to outweigh the threatened loss of competition would allow merging parties to insulate an acquisition from meaningful judicial review simply by negotiating sufficiently expensive delay provisions. Petitioners did not negotiate those provisions and should not lose preventive relief because Paramount chose to undertake them. The Court should preserve independent ownership through disposition of the pending motion to dismiss, subject to further

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order, rather than permit Paramount's contractual payment schedule to dictate when competitive injury may occur.

Preserving competition also serves the public interest. *Boardman*, 822 F.3d at 1024. Allowing consummation while dismissing the existing transaction evidence as nonexistent would permit the very consolidation under challenge to occur before meaningful judicial consideration.

This Court should therefore enter an immediate temporary injunction prohibiting consummation through disposition of the pending motion to dismiss, subject to further order. At minimum, it should prohibit consummation while deciding the petition. That affirmative protection is necessary because a stay of the district court's denial alone would leave Defendants free to close.

VI. ADEQUACY OF OTHER REMEDIES

The challenged September 30 order is denominated a TRO denial. Its immediate appealability requires consideration of the applicable standards and practical effect. Petitioners do not presume appealability merely because they can submit a notice of appeal.

If a direct appeal provides an adequate means of obtaining timely relief, mandamus may be unnecessary. Petitioners ask the Court to consider the appropriate procedural avenue without permitting consummation to impair effective

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consideration. This petition challenges today's disposition; it is not a means of reviving an expired appeal from the July preliminary-injunction denial.

Petitioners sought relief against consummation below in Dkt. 92 and were denied that relief today. Dkt. 96. The separate States' restraint has also been dissolved. States Dkt. 266 at 4. Those developments, together with Defendants' representation concerning readiness to close, support immediate consideration of the temporary injunction requested here.

CONCLUSION

Petitioners request that this Court grant their request for temporary restraint on the evidence already submitted and enter an immediate order prohibiting Paramount Skydance Corporation and Skydance Media, LLC, from closing, consummating, or otherwise completing Paramount's proposed acquisition of Warner Bros. Discovery through the district court's disposition of the pending motion to dismiss, set for hearing October 22, 2026, subject to further order of this Court. At minimum, this Court should immediately prohibit consummation pending its determination of this petition.

Dated: September 30, 2026 Respectfully submitted,

Joseph M. Alioto, Esq. (SBN 42680)
ALIOTO LAW FIRM
Attorneys for Petitioners

Appendix C

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FOREMAN & BRASSO
Attorneys for Petitioners

Case: 26-6423, 09/30/2026, DktEntry: 1.1, (24 of 26)

CERTIFICATE OF INTERESTED PARTIES

There is no parent corporation nor any publicly held corporation that owns 10% or more of the stock of Petitioners.

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**Certificate of Compliance
California Rule of Court 8.204(c)(1)**

I hereby certify that this motion complies with the page limit of Ninth Circuit Rule 21-2(c) because the petition does not exceed 30 pages, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), and does not exceed 7800 words. I further certify that this motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using Microsoft Word in a proportionally spaced typeface, 14-point Times New Roman font.

Dated: September 30, 2026.

Joseph M. Alioto, Esq. (SBN 42680)
ALIOTO LAW FIRM

Case: 26-6423, 09/30/2026, DktEntry: 1.1, (26 of 26)

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2026, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. The District Court has been provided with a copy of this petition. Service has been accomplished via e-mail to the following counsel:

Joseph M. Alioto, Esq. (SBN 42680)
ALIOTO LAW FIRM

**APPENDIX D - EMERGENCY MOTION FOR A TEMPORARY INJUNCTION
PENDING CONSIDERATION OF THE PETITION, FILED OCTOBER 1, 2026**

Case: 26-6423, 10/01/2026, DktEntry: 6.1, (1 of 14)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, LEN MARAZZO, LISA McCARTHY,
DEBORAH RUBINSOHN, and GARY TALEWSKY,
Petitioners.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
Respondent Court.

PARAMOUNT SKYDANCE CORPORATION and
SKYDANCE MEDIA, LLC,
Real Parties in Interest.

Ninth Circuit No. 26-6423
District Court No. 4:26-cv-03790-AMO
The Honorable Araceli Martínez-Olguín

**EMERGENCY MOTION FOR A TEMPORARY INJUNCTION
PENDING CONSIDERATION OF THE PETITION**

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3
IMMEDIATE RELIEF REQUESTED OCTOBER 1, 2026
DECISION REQUESTED BY OCTOBER 5, 2026
AT 5:00 P.M. PACIFIC TIME
ANTICIPATED CLOSING OCTOBER 6, 2026**

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Appendix D

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Circuit Rule 27-3 Certificate

I, Joseph M. Alioto, undersigned counsel for Petitioners, certify the following. Notice and service are prospective, Notice and service described prospectively below will be completed on October 1, 2026; no completed notice or service is represented by those statements.

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Appendix D

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2 Nature of the emergency and requested decision date

The district court denied Petitioners' application to prevent consummation on September 30, 2026. Dkt. 96, APP 3–4. That day it also dissolved the separate no-closing restraint in the States' action. States Dkt. 266 at 4, APP 40. The companies announced an expected October 6 closing, subject to customary conditions. Ex. A. Petitioners request an immediate injunction on October 1, with a decision by October 5 at 5:00 p.m. Pacific Time, to preserve separate ownership while this Court considers the petition. The announcement supplies no closing hour or assurance against an earlier closing.

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3 Why this motion could not have been filed earlier

This motion responds to the September 30 denial, dissolution of the separate restraint, and announcement of the anticipated closing date. Petitioners previously sought protection below in Dkt. 92. They submit this motion the day after the challenged disposition to obtain protection during this Court's consideration of the petition.

4 Notice and service and opposing parties position

On October 1, before or upon filing, counsel will notify the Court's emergency motions unit at Emergency@ca9.uscourts.gov or (415) 355-8020 of the assigned case number, filing date, requested relief, anticipated closing, and requested decision deadline.

On October 1, at the earliest practicable time before or upon filing, counsel will email the opposing counsel listed above notice and copies of this motion and its exhibits, together with the petition and appendix if not already provided. Counsel will request Defendants' position, confirmation of the closing date and time, and agreement to refrain from closing during consideration. Service will be completed through authorized appellate electronic service, email with established consent, or delivery under Federal Rule of Appellate Procedure 25(c). Counsel will file proof of completed service and provide the petition to the district judge under Rule 21(a)(1).

Defendants opposed the restraint below. Dkt. 93. Their position on this appellate motion is not yet confirmed. Counsel will promptly report any response or agreement concerning closing.

5 Relief requested in the district court

Petitioners sought a restraint against consummation in Dkt. 92. The district court denied it in Dkt. 96 and warned that further requests submitted without evidentiary support would face summary denial. This motion requests direct temporary protection from this Court on the evidence already in the district court record.

Dated: October 1, 2026
Respectfully submitted,
ALIOTO LAW FIRM
s/ Joseph M. Alioto
Joseph M. Alioto
Attorneys for Petitioners

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Introduction

Petitioners request an immediate temporary injunction prohibiting the Real Parties in Interest from consummating Paramount Skydance Corporation's acquisition of Warner Bros. Discovery, Inc., and integrating the businesses, until this Court disposes of the petition or orders otherwise. The companies anticipate closing October 6. Petitioners request action today, and a decision by October 5 at 5:00 p.m. Pacific Time.

The district court denied protection on the premise that Petitioners offered no evidence. However, Defendants' sworn declaration and authenticated transaction materials, already filed before the application, describe the combination of Paramount+ and HBO Max into one platform. That evidence bears directly on the elimination of an independent competitor and the threatened injury to consumers who purchase these services. A brief injunction would preserve separate ownership while this Court considers the petition, including its request for protection through disposition of the dismissal motion set for hearing October 22.

Procedural background

Petitioners applied for relief against consummation on September 21. Dkt. 92, APP 54–59. On September 30, the district court denied relief, citing evidentiary insufficiency and continuing standing concerns. Dkt. 96, APP 3–4; Ex. B. The separate States' no-closing restraint was dissolved the same day. States Dkt. 266 at 4, APP 40. The companies then announced an anticipated October 6 closing.

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Ex. A. Petitioners request notice of the announcement's issuance and stated timing solely to establish this emergency, rather than as new proof of the antitrust merits.

Argument

Petitioners seek relief under 28 U.S.C. § 1651(a) and Federal Rules of Appellate Procedure 21 and 27 to protect this Court's review of the challenged disposition and its potential appellate jurisdiction over the underlying action. *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966), recognizes jurisdiction-preserving merger relief in the FTC setting. The petition must satisfy the demanding mandamus requirements, including no adequate alternative remedy and a clear and indisputable right. *Cheney v. United States District Court*, 542 U.S. 367, 380–81 (2004); *In re Mersho*, 6 F.4th 891, 897–98 (9th Cir. 2021). The interim injunction factors are likelihood of success, likely irreparable injury, the balance of equities, and public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

I The existing record contradicts the finding that Petitioners offered no evidence

Petitioners identified evidence already filed in this action before the September 21 application. Dkt. 94 at 2–3, APP 42–43. Goldberg's declaration authenticates the transaction exhibits. Dkt. 34, APP 363–370. Ellison's discussion of combining the services appears in Dkt. 34-3 at 10, APP 406, independently of the later essay at Dkt. 80-2. Defendants' sworn declaration describes consolidated

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streaming infrastructure, content savings through pruning, and Paramount+ and HBO Max on one platform. Dkt. 35 ¶¶ 8, 12, 17, APP 356–362.

These materials directly establish the planned competitive change. Defendants’ asserted efficiencies and consumer benefits present competing inferences from the same record. *Id.* ¶¶ 12, 17–19. They do not support a categorical finding that evidence was absent. Petitioners submit that disregarding these identified materials constitutes clear error. Their challenge concerns the failure to account for the evidence, rather than a request to reweigh evidence the court evaluated.

II The evidence supports likely competitive harm and threatened injury to Petitioners

Ellison describes combining services with more than 200 million subscribers. Dkt. 34-3 at 10. That worldwide figure illustrates scale, rather than a United States market share. The pertinent competitive evidence is Defendants’ express plan to place substantial independent services under common ownership and combine their platform and infrastructure. The acquisition would remove independent decisions concerning prices, programming, promotions, and investment. It therefore concerns a significant rival and a specific competitive relationship, rather than the elimination of any competitor regardless of significance.

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The FAC alleges that Marazzo and Rubensohn purchase both Paramount+ and HBO Max and make recurring decisions between the services based on price, programming, advertising, and value. Dkt. 81 ¶¶ 142–150, APP 274–276. Their limited verifications address personal subscription, payment, use, and threatened-injury facts in the original complaint. Dkt. 45 ¶ 3, APP 353; Dkt. 47 ¶ 3, APP 349. Petitioners rely on those verified personal facts, rather than treating the verifications as blanket verification of the later FAC. Defendants’ independent evidence corroborates the combination that threatens the competitive terms of these purchases.

Section 16 permits protection against a significant threat of antitrust injury before actual injury occurs. 15 U.S.C. § 26; *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (1969). Here, the asserted injury concerns the economic value of services these consumers purchase, is traceable to Defendants’ announced combination, and would be prevented by maintaining separate ownership. The precise future price increase or content reduction need not already be announced for the identified threat to warrant preventive consideration.

III Closing before review would impair effective preventive relief

The announced closing would replace separate ownership with common control before this Court considers the petition. The sworn record describes the integration that would follow. Dkt. 35 ¶¶ 8, 17. *Boardman v. Pacific Seafood*

Case: 26-6423, 10/01/2026, DktEntry: 6.1, (9 of 14)

Group, 822 F.3d 1011, 1023–24 (9th Cir. 2016), recognizes competitive harm as irreparable injury when supported by the record. In *California v. American Stores Co.*, 492 U.S. 1301, 1304–08 (1989) (O’Connor, J., in chambers), Justice O’Connor preserved an injunction against integration during review after acquisition. A restraint before closing would protect the opportunity for prevention and avoid intervening injury and the complexity of separating integrated businesses.

The district court warned that further requests submitted without evidentiary support would face summary denial. Dkt. 96 at 2, APP 4. Because it treated this existing record as unsupported, repeating the request on the same evidence offers no adequate assurance of timely protection. Petitioners submit that ordinary review after consummation would not adequately protect the opportunity to prevent the threatened change. A brief injunction permits this Court to determine the petition and any appropriate procedural avenue while separate ownership remains intact.

IV The equities and public interest favor a brief injunction

Defendants identify approximately \$6.9 million in daily ticking consideration and separate financing burdens. Dkt. 35 ¶¶ 22–23. The ticking amount is additional purchase consideration voluntarily negotiated by the parties. States Dkt. 204-3, Annex A, APP 229. September 30 triggers that consideration; it is not the contractual outside date. Section 8.1(b)(i) specifies March 4, 2027, with

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extension under stated conditions. *Id.*, APP 201. These financial costs warrant expedited review, but should not outweigh temporary protection against the competitive injury supported by the record.

The requested injunction lasts only through this Court's consideration of the petition, subject to further order. Prompt consideration accommodates Defendants' costs while preserving effective antitrust enforcement and adjudication on the existing record. Petitioners request an expedited response schedule if needed and waiver of security, or expedited determination of appropriate security.

Conclusion

Petitioners request an immediate order enjoining Paramount Skydance Corporation and Skydance Media, LLC, and persons acting in concert with them who receive actual notice, from consummating the proposed acquisition of Warner Bros. Discovery, Inc., or integrating the businesses, pending disposition of the petition or further order of this Court. Petitioners request entry today, with a decision no later than October 5, 2026, at 5:00 p.m. Pacific Time.

Dated: October 1, 2026
Respectfully submitted,
ALIOTO LAW FIRM
s/ Joseph M. Alioto
Joseph M. Alioto
Attorneys for Petitioners

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Certificate of Compliance

This motion contains 1,198 words, including its substantive headings and signature block, and excluding the items exempted by Federal Rule of Appellate Procedure 32(f). It complies with the 5,200-word limit under Rule 27(d)(2)(A).

This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6), as applicable through Rules 27(d) and 32(c)(2). It was prepared in 14-point Times New Roman, a proportionally spaced serif typeface.

Dated: October 1, 2026

s/ Joseph M. Alioto

Joseph M. Alioto

Case: 26-6423, 10/01/2026, DktEntry: 6.1, (12 of 14)

Exhibit A

Closing date statement from the September 30 company announcement

Source: Joint company announcement distributed by Warner Bros. Discovery, Inc., through PR Newswire on September 30, 2026, at 6:49 p.m. Eastern Time. Accessed October 1, 2026.

The following quotation reproduces the closing-date statement from the first paragraph, with the preceding transaction description omitted:

“... is expected to close on October 6, 2026 (the ‘Anticipated Closing Date’), subject to customary closing conditions.”

This excerpt is submitted concerning the announcement’s existence and stated anticipated timing. It does not establish a guaranteed closing date or hour.

<https://www.prnewswire.com/news-releases/paramount-skydance-and-warner-bros-discovery-announce-anticipated-closing-date-of-paramount-merger-302895095.html>

Appendix D

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Exhibit B September 30 denial order

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United States District Court
Northern District of California1
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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPAMELA FAUST, et al.,
Plaintiffs,

v.

PARAMOUNT SKYDANCE
CORPORATION, et al.,
Defendants.

Case No. 26-cv-03790-AMO

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 92

Before the Court is a motion for temporary restraining order (“TRO”) from Plaintiffs Pamela Faust, Len Marazzo, Lisa McCarthy, Deborah Rubensohn, and Gary Talewsky. Plaintiffs request a TRO enjoining Defendants from closing, consummating, or otherwise completing one of the two merger transactions underlying this lawsuit, Defendant Paramount Skydance Corporation’s proposed acquisition of Warner Bros. Discovery. The motion follows the Court’s earlier consideration and rejection of Plaintiffs’ motion for preliminary injunction seeking similar relief. *See* Dkt. Nos. 12 & 69.

To obtain the extraordinary remedy of preliminary injunctive relief, such as the TRO sought here, the moving party must show: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief, (3) the balance of equities tips in the favor of the moving party, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To grant preliminary injunctive relief, a court must find that “a certain threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam).

The Court weighed the *Winter* factors in addressing Plaintiffs’ motion for preliminary injunction. The Court denied the motion because Plaintiffs did not offer any evidence in support

Appendix D

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United States District Court
Northern District of California

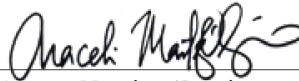
Case 4:26-cv-03790-AMO Document 96 Filed 09/30/26 Page 2 of 2

1 of their request for extraordinary relief, which fell far short of the “clear showing” necessary to
 2 support each relevant preliminary injunction factor. *See* Hrg. Tr. (Dkt. No. 74). Plaintiffs again
 3 fail to proffer any evidence in support of the extraordinary relief requested in the instant
 4 submission. *See generally* Dkt. No. 92; *cf.* Civil L.R. 7-5. Plaintiffs rely on evidence and legal
 5 analysis from a separate case, which alleges different antitrust markets inapplicable in this case.
 6 *See, e.g.*, Dkt. No. 92 at 3 (citing *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-
 7 AMO, Dkt. No. 141 at 6-8 (N.D. Cal. July 20, 2026)). Evidence used in one antitrust case does
 8 not automatically apply with equal import in another antitrust case just as one party’s success does
 9 not bear on these Plaintiffs’ likelihood of success. And absent any evidence proffered in support
 10 of preliminary injunctive relief in this case, Plaintiffs are left with nothing more than allegations of
 11 antitrust violations and harm, which do not suffice for the extraordinary relief sought. *See*
 12 *Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1065 (N.D. Cal. 2023) (“Merely alleging the
 13 elimination of a rival does not plausibly support an inference of an appreciable danger of
 14 anticompetitive effects in a relevant market.”). Moreover, Plaintiffs’ likelihood of success
 15 remains unclear given the serious concerns regarding Plaintiffs’ standing as identified in the
 16 Court’s order granting Defendant’s motion to dismiss, Dkt. No. 79 at 4-9, and renewed in
 17 Defendant’s pending motion to dismiss the amended complaint, Dkt. No. 87 at 13-21. Thus,
 18 Plaintiffs do not meet the “clear showing” necessary to obtain preliminary injunctive relief. *See*
 19 *Winter*, 555 U.S. at 22; *Leiva-Perez*, 640 F.3d at 966.

20 The Court therefore **DENIES** Plaintiffs’ motion for TRO. In light of Plaintiffs’ repeated
 21 failures to advance any evidence in support of their motions for preliminary relief in this case to
 22 date, the Court cautions Plaintiffs that future motions for TRO or preliminary injunction submitted
 23 without evidentiary support will face summary denial.

24 **IT IS SO ORDERED.**

25 Dated: September 30, 2026

26 
 27 ARACELI MARTÍNEZ-OLGUÍN
 28 United States District Judge

**APPENDIX E - RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR A
TEMPORARY INJUNCTION, FILED OCTOBER 2, 2026**

Case: 26-6423, 10/02/2026, DktEntry: 9.1, (1 of 20)

No. 26-6423

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PAMELA FAUST, LEN MARAZZO, LISA McCARTHY, DEBORAH
RUBINSOHN, and GARY TALEWSKY, *Petitioners*,
v.
PARAMOUNT SKYDANCE CORPORATION and SKYDANCE MEDIA, LLC,
Respondents

On Appeal from the United States District Court
Northern District of California, Oakland Division
The Honorable Araceli Martínez-Olguín
D.C. No. 4:26-cv-03790-AMO

**RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR A
TEMPORARY INJUNCTION PENDING CONSIDERATION OF THE
PETITION**

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INTRODUCTION

The Court should reject Petitioners' frivolous and last-minute attempt to block the \$110 billion merger of Paramount Skydance and Warner Bros. Discovery. At this eleventh hour, that merger has already been heavily scrutinized and approved by dozens of antitrust enforcers around the world, and the concerns of the State antitrust enforcers who challenged it have been resolved in a consent decree that the District Court approved as fair, reasonable, and procedurally sound. All legal barriers to consummation of the merger have been removed. That leaves Petitioners, five consumers who have already been adjudicated as lacking both Article III and antitrust standing, as the lone opponents seeking the extraordinary remedy of a temporary injunction by this Court to halt the merger. But Petitioners have not come close to making the clear factual showing that would be necessary to obtain such relief under the Clayton Act or to have the Court grant their underlying petition for mandamus. The motion is also in violation of this Court's procedures. The Court should deny Petitioners' motion and dismiss their appeal.

STANDARD OF REVIEW

In evaluating a motion for an injunction pending appeal, this Court considers the traditional factors governing interim injunctive relief: "whether the moving party has demonstrated that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest." *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020); *see also*

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Feldman v. Arizona Sec’y of State’s Off., 843 F.3d 366, 367 (9th Cir. 2016) (“The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction.”). Injunctive relief is an “extraordinary” remedy that is “never awarded as of right.” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024). Where, as here, a party seeks an injunction pending a petition for writ of mandamus, it is even more difficult to show a likelihood of success on the merits because mandamus is itself “a drastic and extraordinary remedy.” *In re Boon Global Ltd.*, 923 F.3d 643, 649 (9th Cir. 2019).

ARGUMENT

I. PETITIONERS’ MOTION IS PROCEDURALLY IMPROPER

The threshold reason Petitioners’ motion should be denied is because it is an improper attempt to circumvent this Court’s normal appellate procedures. Petitioners purport to seek relief under the All Writs Act, 28 U.S.C. § 1651(a), but that is an authority “to be used sparingly and only in the most critical and exigent circumstances,” *Wis. Right to Life, Inc. v. FEC*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (cleaned up). The Act is only exercised “when it is necessary or appropriate in aid of [this Court’s] jurisdiction and the legal rights at issue are indisputably clear,” *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1403 (2012) (Sotomayor, J., in chambers) (cleaned up). This is not that case.

Here, Petitioners have tried and failed for months to mount a viable case. They moved for a preliminary injunction against the merger on May 20, 2026. *Faust v. Paramount Skydance Corp.*, 4:26-cv-03790-AMO (N.D. Cal. May 20, 2026), Dkt.

Case: 26-6423, 10/02/2026, DktEntry: 9.1, (9 of 20)

12. The District Court denied that motion and granted Defendants’ motion to dismiss Petitioners’ complaint for lack of standing and failure to state a claim, with leave to amend. Dkt. 79, App. 295–303. Petitioners did not appeal either of those rulings. Petitioners filed an amended complaint on August 14, 2026, *see* Dkt. 81, App. 235–287, and a second motion for a temporary restraining order on September 21, 2026, Dkt. 92, App. 54–59, which the District Court also denied, Dkt. 96; App. 3–4. The District Court has repeatedly found Petitioners’ antitrust claims and requests for interim relief to be bereft of merit, without standing, and unsupported by any evidence. The fact that Petitioners, after months of trying, cannot muster a case for the extraordinary relief they seek is not an emergency that qualifies for their invocation of this Court’s powers under the All Writs Act.¹

The All Writs Act also does not apply because it is only “a residual source of authority to issue writs that are not otherwise covered by statute,” not an authority

¹ Petitioners’ counsel have made a habit of filing meritless emergency motions in this Court seeking to enjoin high-profile mergers after failing at the district court. *See* Order, *Fry v. Cap. One Fin. Corp.*, No. 25-3153 (9th Cir. May 16, 2025), Dkt. 6.1 (denying “Emergency Motion Under Circuit Rules 27-3 and 8 to Stay the Acquisition of Discover Pending Appeal”); Order, *Yoshimoto v. Alaska Airlines, Inc.*, No. 24-6692 (9th Cir. Dec. 17, 2024), Dkt. 19.1 (denying an “emergency motion . . . for injunctive relief and to expedite”); Order, *Demartini v. Microsoft Corp.*, No. 23-15846 (9th Cir. July 14, 2023), Dkt. 46 (denying “Motion for Temporary Injunction Pending Appeal” and “Emergency Motion Under Circuit Rule 27-3”); Order, *Taleff v. Sw. Airlines Co.*, No. 11-16173 (9th Cir. June 2, 2011), Dkt. 22 (dismissing appeal, which included an “Emergency Motion for Injunction Seeking Temporary ‘Hold Separate’ Order”); Order, *Malaney v. UAL Corp.*, No. 10-17208 (9th Cir. Oct. 6, 2010), Dkt. 5 (denying “Emergency Motion for Injunction Pending Appeal Seeking Temporary ‘Hold Separate’ Order”).

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“to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient.” *Pa. Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985). Where, as here, a party seeks what amounts to a temporary restraining order or preliminary injunction, Federal Rule of Civil Procedure 65 “addresses the . . . issue at hand,” making the All Writs Act inapplicable. *In re Est. of Ferdinand Marcos Hum. Rts. Litig.*, 94 F.3d 539, 545 n. 9 (9th Cir. 1996); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1229 (11th Cir. 2005) (“[W]here the relief sought is in essence a preliminary injunction, the All Writs Act is not available because other, adequate remedies at law exist, namely Fed. R. Civ. P. 65.”).

Even if this Court were to construe Petitioners’ motion as seeking an injunction under Federal Rule of Appellate Procedure 8 (which Petitioners do not invoke), Petitioners have not satisfied that Rule’s requirements. They have never sought an injunction or stay pending appeal from the District Court, which they “must ordinarily” do before they can seek such relief before this Court under Rule 8. *See* Fed. R. App. P. 8(a)(1). Nor have Petitioners made any showing that seeking such relief in the District Court “would be impracticable.” Fed. R. App. P. 8(a)(2)(A)(i). These procedural failures require denial. *See* Order, *Vazquez Perdomo v. Noem*, No. 25-4312 (9th Cir. July 16, 2025), Dkt. 9.

II. PETITIONERS DO NOT MEET ANY APPLICABLE STANDARD FOR PRELIMINARY RELIEF

Petitioners also come nowhere close to satisfying the demanding standards for obtaining an injunction pending appeal.

Case: 26-6423, 10/02/2026, DktEntry: 9.1, (11 of 20)

A. PETITIONERS DO NOT HAVE STANDING

Petitioners lack Article III standing, which, by itself, is a basis to deny their motion and dismiss their appeal. *See, e.g., In re Grand Jury Subpoena Issued to Chesnoff*, 62 F.3d 1144, 1145 (9th Cir. 1995) (dismissing appeal for lack of standing). Petitioners acknowledge that “the district court denied relief, citing . . . standing concerns.” Mot. 5. In fact, the District Court dismissed Petitioners’ initial complaint for lack of standing, concluding that their “generalized asserted competitive harms” were “insufficient,” and citing the “extreme liberality” of Federal Rule of Civil Procedure 15 in allowing Petitioners to amend their complaint. Dkt. 79 at 6, 9; App. 300, 303.

Yet Petitioners fail to address their standing in this Court. That failure is fatal because Petitioners must make a “clear showing of each element of standing” to obtain preliminary relief. *Washington v. Trump*, 847 F.3d 1151, 1159 (9th Cir. 2017). They establish no injury-in-fact to them personally that is fairly traceable to the Paramount-Warner Bros. merger they seek to enjoin. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Indeed, the only concrete injury that Petitioners even allege is a price increase for the Paramount+ streaming service in January 2026—an increase that took place before the Paramount-Warner Bros. merger agreement was even signed. *See* Dkt. 87 at 4 & n.1; App. 101.

Petitioners also lack antitrust standing. They are neither customers nor competitors of Defendants in any of the markets they have alleged. *Malheur Forest Fairness Coal. v. Iron Triangle, LLC*, 164 F.4th 710, 733 (9th Cir. 2026) (party

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alleging antitrust injury must be either “a consumer or a competitor” of defendant); *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013) (party alleging antitrust injury “must be either a consumer of the alleged violator’s goods or services or a competitor of the alleged violator”). And they seek to vindicate non-economic political complaints that are outside the bounds of the antitrust laws. *Malheur Forest*, 164 F.4th at 733 (antitrust injury must be “of the type the antitrust laws were intended to prevent”); *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1195 (N.D. Cal. 2000) (antitrust laws “exclusively confine their scope to matters of economic consequence”). Thus, even if Petitioners had Article III standing (they do not), their independent lack of antitrust standing would still preclude them from pursuing their claims, let alone obtaining extraordinary relief in furtherance of those claims.

B. PETITIONERS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR MANDAMUS PETITION

Petitioners further fail to make the “clear showing” of likelihood of success on the merits of their mandamus petition that is needed to obtain an injunction. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). Mandamus is a “drastic and extraordinary remedy,” reserved for “exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion.” *Boon Global*, 923 F.3d at 649. Thus, to succeed on the merits of their mandamus petition, Petitioners must, among other things, demonstrate that “the district court’s order is clearly erroneous as a matter of law.” *Id.* A failure to demonstrate clear error “is dispositive” of a

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mandamus petition because “[a] writ of mandamus will not issue merely because the petitioner has identified legal error.” *Id.*

Petitioners establish no error at all, let alone a clear error, in the District Court’s denial of their motion for a TRO to block the merger. The “clear error” they claim on appeal is that the District Court purportedly “disregard[ed]” material they claim to have “identified” in support of their motion for temporary restraining order. Mot. 7. This argument, however, fails for multiple reasons.

First, Petitioners concede that they “identified” this purported “evidence” only in their reply brief below, *id.* at 6 (citing Dkt. 94, App. 41–47), even though presenting “new information” in a reply brief is “improper” and grounds to strike such material from the record. *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993). Thus, the District Court correctly concluded that Petitioners “fail[ed] to proffer any evidence in support” of their motion for temporary restraining order, Dkt. 96 at 2, App. 4, and a plaintiff cannot demonstrate a likelihood of success on the merits when “[t]here is no evidence in the record . . . to support [its] conclusion.” *Gonzalez v. Arizona*, 485 F.3d 1041, 1050 (9th Cir. 2007).

Second, insofar as Petitioners referenced evidence in their TRO motion below, the District Court addressed it in denying the motion, holding that it was “inapplicable” to Petitioners’ claims. *See* Dkt. 96 at 2, App. 4. That is because Petitioners referenced only evidence that was presented in a different case by different parties that alleged different antitrust markets that the District Court found have no relevance to Petitioners’ claims. *See id.*

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Third, the “evidence” Petitioners cited in their reply brief below was far afield from the clear showing of a likely violation of Clayton Act Section 7, 15 U.S.C. § 18 that would have been required to obtain an interim injunction against a merger below. *See Roe v. Critchfield*, 137 F.4th 912, 922, 932 (9th Cir. 2025). Instead, it merely shows, at best, that the challenged merger would combine previously independent assets under common ownership. *See* Mot. 6–8. But that is true of every horizontal merger, and therefore such evidence could not have satisfied Petitioners’ burden below to “meaningfully rely on *evidentiary proof*” demonstrating a substantial lessening of competition. *FTC v. Microsoft Corp.*, 136 F.4th 954, 971 (9th Cir. 2025). Petitioners provided no expert economic analysis or data to substantiate their market definitions, market shares, or claims of anticompetitive harms, as is required to temporarily halt a merger for purportedly violating Section 7 of the Clayton Act. *See Fry v. Cap. One Fin. Corp.*, 2025 WL 1397163, at *3 (N.D. Cal. May 14, 2025) (plaintiffs must “provide some evidentiary support going to the merits of their prima facie burden under Section 7, as opposed to . . . rely[ing] solely on conclusory allegations pled in their unverified complaint”). Petitioners’ conclusory and “generalized claims of injury to consumers and competition” without “evidence of threatened or actual specific injuries” do not support injunctive relief. *Taleff v. Sw. Airlines Co.*, 554 F. App’x 598, 598 (9th Cir. 2014).

Fourth, even if the District Court had disregarded any evidence (it did not), that would not make Petitioners’ right to mandamus “clear and indisputable.” *Boon Global*, 923 F.3d at 649. The District Court enjoys discretion in ruling on a motion

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for preliminary injunctive relief, and “it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of the case.” *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012). In light of this “limited and deferential” standard of review, *id.*, the evidence Petitioners cite does not come close to showing the “clear abuse of discretion” by the District Court that would be necessary to obtain the extraordinary relief they seek here. *See Boon Global*, 923 F.3d at 649.

C. THE BALANCE OF EQUITIES FAVORS RESPONDENTS

The balance of equities also tips sharply in favor of denying Petitioners’ motion. At this point, every day the requested injunction would be in effect to delay the closing of the merger would cost Paramount nearly \$7 million in contractual fees, impose significant ongoing carrying costs, and deny the public the procompetitive benefits the merger promises. *See* Dkt. 33 at 23–25, App. 459–61. By contrast, there is no equity on Petitioners’ side of the ledger because they have not shown any harm to competition or to themselves personally from the closing of the merger.

III. IF AN INJUNCTION WERE GRANTED, A SUBSTANTIAL BOND WOULD BE REQUIRED TO PROTECT PARAMOUNT

If Petitioners could make a clear showing of entitlement to extraordinary injunctive relief (they cannot), the Court should impose a bond to protect Paramount from the risk that the injunction is improvidently granted. The Court may do so under its “inherent power” to “impos[e] terms and conditions” on injunctive relief. *Russell v. Farley*, 105 U.S. 433, 438–41 (1881). This power “is essential to ensure that

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extraordinary equitable remedies will not become the engines of injustice.” *Bhd. of Locomotive Eng’rs v. Mo-Kan.-Tex. R. Co.*, 363 U.S. 528, 532 (1960); *see Russell*, 105 U.S. at 442 (power includes requirement “that a sum of money should be paid into court”). The Supreme Court has expressly recognized that a bond is appropriate to protect the merging parties while a higher court considers an appeal. *See California v. Am. Stores Co.*, 492 U.S. 1301, 1307–8 (1989) (conditioning stay pending disposition of petition for certiorari on “a good and sufficient bond” recognizing that “the cost of enjoining a merger . . . is staggering”). The Court may also do so under Rule 8, which permits the Court to “condition relief on a party’s filing a bond or other security in the district court.” Fed. R. App. P. 8(a)(2)(E).

A bond is an express statutory requirement when private plaintiffs seek to obtain equitable relief under the Clayton Act to enjoin a merger. Petitioners seek injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. § 26. Dkt. 81, ¶ 1, App. 236. Section 16 provides that a preliminary injunction “may issue” “upon the execution of proper bond against damages for an injunction improvidently granted.” 15 U.S.C. § 26. Section 16 thus permits an injunction to issue at the discretion of the court, but it requires a bond to protect the enjoined party from damages caused by the injunction. *Id.*; *see H. E. Fletcher Co. v. Rock of Ages Corp.*, 326 F.2d 13, 16 (2d Cir. 1963) (stating that a “bond” is “specifically required by” Section 16 of the Clayton Act). Petitioners cannot evade that bond requirement on this mandamus appeal when they would have been required to provide such security if they had obtained an injunction in the District Court.

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The need to provide Paramount with the protection of a substantial bond is acute here because the costs of an improvidently granted injunction would be significant. Paramount has obtained regulatory approvals from the United States and regulatory authorities representing nearly 70 other jurisdictions, and it has now reached a fair settlement with the 12 States that served as the last barrier to closing this transformative merger. Now that the last roadblock has been removed, Petitioners seek to erect a new barrier with an injunction pending appeal. The harm to Paramount arising from even a short delay in the closing of the merger is sizable and would be directly attributable to Petitioners. Petitioners do not dispute that Paramount is responsible for paying Warner Bros. shareholders a “ticking fee” of approximately \$6.97 million per day from October 1, 2026, until the merger closes. Mot. at 9; *see also California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-AMO (N.D. Cal. Aug. 17, 2026), Dkt. 204-2 ¶¶ 3–4 (“Brandon-Gordon Decl.”).

Petitioners downplay the significance of these costs, arguing that they were “voluntarily negotiated.” Mot. at 9. But the ticking fee was part of the bargain struck between Paramount and Warner Bros. after a highly competitive auction and constitutes an indispensable part of the consideration that was necessary to secure the transaction that Paramount cannot unilaterally avoid. Nor is the ticking fee Paramount’s only cost from a delayed closing. Paramount also accrues financing costs of at least \$8 million per month, Brandon-Gordon Decl. ¶ 6, which are in no sense voluntary.

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For these reasons, if Petitioners' motion for an injunction is granted, they should be required to post a \$118 million bond by October 6, 2026.²

CONCLUSION

For all the foregoing reasons, Petitioners' motion should be denied. These five consumers, who have no standing and who have not made the clear showing required to obtain the extraordinary remedy of interim relief, should not be able to evade the ordinary appellate procedures of this Court to seek to block this merger pending their ill-conceived mandamus appeal.

² Petitioners' mandamus petition requests "an order . . . preserving separate ownership through the district court's disposition of the pending motion to dismiss, set for hearing October 22, 2026." Dkt. 1.1 at 1. Assuming that this Court rules by no later than October 22, 2026, Paramount would accrue \$118 million of ticking fees from October 6, 2026 (the anticipated closing date) to October 22, 2026. Respondents reserve the right to amend their bond request if an injunction remains in place past October 22, 2026.

Appendix E

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DATED: October 2, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

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2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: October 2, 2026

/s/ Jeffrey L. Kessler

Jeffrey L. Kessler

**APPENDIX F - PETITIONERS' REPLY IN SUPPORT OF MOTION FOR A
TEMPORARY INJUNCTION, FILED OCTOBER 2, 2026**

Case: 26-6423, 10/02/2026, DktEntry: 10.1, (1 of 16)

No. 26-6423

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PAMELA FAUST, LEN MARAZZO, LISA McCARTHY, DEBORAH
RUBINSOHN, and GARY TALEWSKY, *Petitioners*,

v.

PARAMOUNT SKYDANCE CORPORATION and SKYDANCE MEDIA, LLC,
Respondents

On Petition for Writ of Mandamus to the United States District Court
Northern District of California, Oakland Division
The Honorable Araceli Martínez-Olguín
D.C. No. 4:26-cv-03790-AMO

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR A
TEMPORARY INJUNCTION PENDING CONSIDERATION OF THE
PETITION**

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INTRODUCTION

Respondents' Opposition confirms the central error in the order under review. The district court denied temporary relief because Petitioners supposedly "fail[ed] to proffer any evidence" supporting their showing that the proposed Paramount-Warner Bros. Discovery transaction threatens a substantial lessening of competition. Dkt. 96 at 2; App. 4. Yet the record already contained Respondents' sworn declaration, authenticated transaction materials, and statements by Paramount's Chairman and Chief Executive Officer David Ellison describing the combination of Paramount+ and HBO Max, consolidation of their technology and operations, content reductions, and the scale of the resulting direct-to-consumer ("DTC") business. Dkts. 34, 34-3, 35, 80-2; Dkt. 94 at 2-3, App. 41-47.

Respondents do not deny that evidence exists. Instead, they argue it is insufficient. Their Opposition acknowledges that the materials show the transaction "would combine previously independent assets under common ownership." Opp. 8. Their own evidence goes further: Paramount intends to put Paramount+ and HBO Max together, consolidate their streaming technology, place content decisions under common control, and operate at a scale exceeding 200 million subscriptions. Ellison separately described the merger as a means of obtaining greater "strength and resources" to compete every day for audiences against Netflix, Amazon, and Apple. Dkt. 80-2.

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The issue before this Court is therefore not whether Petitioners ultimately prevail on Section 7. It is whether the status quo should be preserved while the Court considers a mandamus petition challenging an emergency ruling resting on a categorical no-evidence premise that Respondents' own submissions disprove. Respondents identify October 6 as the anticipated closing date. Opp. 12 n.2. Temporary relief is necessary to preserve meaningful review.

STANDARD OF REVIEW

A temporary injunction pending consideration of the petition is governed by the traditional factors for interim relief, including likelihood of success, irreparable harm, the equities, and the public interest. *South Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020). The underlying petition seeks mandamus, which requires, among other things, clear error and the absence of an adequate alternative means of relief. *In re Boon Global Ltd.*, 923 F.3d 643, 649 (9th Cir. 2019). Petitioners' showing is narrow: the district court denied emergency relief on the factual premise that Petitioners offered no evidence, even though material evidence was already in the record and was specifically identified to the court.

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ARGUMENT

I. RESPONDENTS' OWN EVIDENCE DISPROVES THE DISTRICT COURT'S NO-EVIDENCE PREMISE.

Respondents contend that Petitioners presented “new information” for the first time in reply below. Opp. 7. That is incorrect. Petitioners did not first create the underlying evidence in reply. The Goldberg declaration and authenticated transaction materials were already filed at Dkts. 34 and 34-3; Respondents’ own Brandon-Gordon declaration was already filed at Dkt. 35; and Ellison’s New York Times statement was already in the record at Dkt. 80-2. Petitioners’ September 23 reply identified the pertinent portions of that existing record. Dkt. 94 at 2-3, App. 41-47. *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993), does not convert previously filed evidence into new evidence merely because a reply explains its significance.

More importantly, Respondents’ own materials confirm the factual predicates Petitioners relied upon. Ellison stated that Paramount “do[es] plan to put the 2 services together.” Dkt. 34-3 at 10. Respondents’ sworn declaration describes consolidating the technology infrastructure supporting the services into a single stack, anticipated content savings including “pruning” programming, and combining Paramount+ and HBO Max on one platform. Dkt. 35 ¶¶ 8, 12, 17. Ellison described the resulting operation as exceeding 200 million subscriptions and competing with the largest DTC platforms. Dkt. 34-3 at 10, 15.

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Ellison's New York Times statement supplies the competitive explanation for those operational admissions. He identifies Netflix, Amazon, and Apple as competitors of the combined company; states that their resources "dwarf ours"; says the transaction provides greater "strength and resources" to compete for audiences; and states that the combined company would account for nearly 20 percent of American television watch time. Dkt. 80-2; Alioto Decl. ¶¶ 5-6, App. 464. Ellison also identifies "the audience - the American people" as having the final say over whether entertainment and news products succeed. Dkt. 80-2. Paramount itself thus describes the transaction as a response to competition for consumers and audience attention.

Respondents may characterize integration, scale, and content pruning as efficiencies. That is an inference from evidence. Petitioners draw a different inference: two independent DTC services will cease making independent pricing, programming, promotional, technology, and quality decisions. The dispute is over competitive significance, not the existence of evidence. The district court did not say it considered this evidence and found it unpersuasive; it said Petitioners failed to proffer evidence. Dkt. 96 at 2; App. 4. Respondents' own submissions demonstrate otherwise.

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II. THE RECORD SUPPORTS ELIMINATION OF A SIGNIFICANT RIVAL IN AN INDUSTRY MOVING TOWARD CONCENTRATION.

Respondents dismiss the evidence because every horizontal merger combines previously independent assets. Opp. 8. Section 7 asks more. Binding Supreme Court precedent requires consideration of whether a transaction eliminates a meaningful independent rival against the structure and direction of the industry. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317-18, 322-23, 345-46 & n.72 (1962); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 362-64 (1963); *United States v. Pabst Brewing Co.*, 384 U.S. 546, 550-53 (1966); *United States v. Von's Grocery Co.*, 384 U.S. 270, 272-79 (1966). Brown Shoe emphasized Congress's concern with the "rising tide of economic concentration" and successive acquisitions that progressively place markets in fewer hands. 370 U.S. at 317, 334, 345 n.72.

The Supreme Court stopped materially smaller combinations. In Pabst, a merger that produced only 4.49% of national beer sales violated Section 7 against a background of declining independent brewers and increasing concentration. 384 U.S. at 550-53. In Von's Grocery, the Court ordered divestiture where the merging firms together accounted for only 7.5% of Los Angeles grocery sales because they were substantial independent competitors in a market experiencing a continuing decline in independent ownership. 384 U.S. at 272-79. *Philadelphia Nat'l Bank* likewise made clear that its 30% presumption did not create a safe harbor below

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30%. 374 U.S. at 364 n.41. The Seventh Circuit later summarized those decisions: “the elimination of a significant rival was thought by itself to infringe” the competitive values protected by Section 7, and “[n]one of these decisions has been overruled.” *Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1386-87 (7th Cir. 1986).

The record here presents substantially more than the abstract elimination of any rival. The FAC alleges a Direct-to-Consumer Subscription Streaming Market in which Paramount+ and HBO Max compete for subscribers, viewing time, renewals, and household subscription spending. Dkt. 81 ¶¶ 21-26, 82-89. Warner Bros. Discovery reports approximately \$10.3 billion in streaming revenue and Paramount approximately \$7.6 billion, for approximately \$17.9 billion combined. FAC ¶ 138. HBO Max reports approximately 128 million subscriptions and Paramount+ approximately 79.1 million, approximately 207.1 million gross subscriptions before accounting for overlap. FAC ¶ 141. Ellison’s own statements independently corroborate the combined scale.

The consolidation backdrop is also alleged in the FAC: Disney’s acquisition of 21st Century Fox, Amazon’s acquisition of MGM, Skydance’s acquisition of Paramount, and now Paramount’s proposed acquisition of Warner Bros. Discovery. Dkt. 81 ¶¶ 9-10. The theatrical evidence separately shows a combined share of approximately 23.6% and a post-merger top-four share of approximately

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76.3%. FAC ¶ 184; Dkt. 94 at 3-4, App. 41-47. Respondents do not dispute those figures in their Opposition. Those market facts substantially exceed the 4.49% national share in *Pabst* and the 7.5% local share in *Von's Grocery*.

Petitioners do not contend that acquisition of any competitor automatically violates Section 7. The point is that the record contains the very circumstances the cases identify as significant: substantial independent rivals, successive consolidation, an admitted plan to integrate competing operations, and evidence of substantial resulting scale. Respondents may dispute the ultimate Section 7 inference. They cannot defend an order stating there was no evidence of threatened competitive harm.

III. PETITIONERS ARE DIRECT PURCHASERS IN THE ALLEGED DTC MARKET.

Respondents assert that Petitioners “are neither customers nor competitors of Defendants in any of the markets they have alleged.” Opp. 5-6. The record says otherwise. The FAC defines the relevant market as the Direct-to-Consumer Subscription Streaming Market, consisting of premium subscription streaming services sold directly to consumers in the United States. Dkt. 81 ¶¶ 21-26. Paramount+ is Paramount’s DTC subscription product; HBO Max is Warner Bros. Discovery’s DTC subscription product. Marazzo and Rubinsohn purchase subscriptions to both products and therefore participate directly in the very market alleged. Dkt. 81 ¶¶ 5, 10-11, 171-73; App. 262-63.

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The sworn declarations reinforce that showing. Marazzo verified under penalty of perjury the allegations concerning his subscriptions, Paramount+ subscription and payments, streaming-service use, paid video-service use, purchasing habits, and threatened injury. Dkt. 45; App. 274-75. Rubinsohn did the same. Dkt. 47; App. 278-79. The FAC specifies the products those consumers purchase: both Paramount+ and HBO Max, whose recurring subscription payments and viewing time the two companies presently compete to obtain. Dkt. 81 ¶ 171; App. 262. Common ownership would place both recurring purchases under one seller and eliminate the independent pricing and consumer-retention constraint the two services now impose on each other. *Id.* ¶¶ 171-73; App. 262-63.

That is direct market participation, not injury in a collateral market. Respondents' reliance on *Malheur Forest Fairness Coalition v. Iron Triangle, LLC*, 164 F.4th 710, 733 (9th Cir. 2026), therefore supports rather than defeats standing: the relevant inquiry is whether plaintiffs participate in the restrained market as consumers or competitors. Marazzo and Rubinsohn participate as consumers who buy the competing DTC subscriptions themselves.

Respondents separately emphasize that the January 2026 Paramount+ price increase preceded the later Paramount-Warner Bros. Discovery agreement. Opp. 5. Petitioners do not claim otherwise. The earlier increase demonstrates actual purchase of the product and an economic injury in the DTC market. The Section 16

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injury from the proposed transaction is prospective: loss of the independent rivalry between the two services and the resulting threat to price, output, quality, and consumer choice. See 15 U.S.C. § 26; *California v. American Stores Co.*, 495 U.S. 271, 284, 296 (1990); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (1969).

IV. TEMPORARY RELIEF MAY PRESERVE THIS COURT’S MANDAMUS JURISDICTION.

Respondents argue that Petitioners should have proceeded under Federal Rule of Appellate Procedure 8. Opp. 2-4. Petitioners filed an original mandamus proceeding under Rule 21 and seek temporary relief preserving this Court’s ability to consider that petition before the transaction closes. The Ninth Circuit’s Rule 21 procedures expressly contemplate a stay or injunction while a mandamus petition is under consideration. Ninth Cir. Advisory Comm. Note to Rules 21-1 to 21-4.

In any event, Rule 8 permits an application directly to this Court where first seeking relief below would be impracticable. Fed. R. App. P. 8(a)(2)(A)(i). The district court had denied emergency relief on September 30 on the precise premise challenged here, stating that Petitioners had “fail[ed] to proffer any evidence” supporting preliminary relief. Dkt. 96 at 2; App. 4. The court went further and cautioned that “future motions for TRO or preliminary injunction submitted without evidentiary support will face summary denial.” *Id.* Petitioners’ position is that the record already contained the very evidentiary support the court said was

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absent. Under those circumstances, requiring Petitioners to return immediately to the district court with yet another application based on the same existing record would have served no practical purpose, particularly given Respondents' identification of October 6 as the anticipated closing date. See Fed. R. App. P. 8(a)(2)(A)(i).

V. THE EQUITIES FAVOR PRESERVING THE STATUS QUO, AND THE \$118 MILLION BOND DEMAND SHOULD NOT FORECLOSE REVIEW.

Respondents rely on a contractual ticking fee of approximately \$6.97 million per day. Opp. 9, 11-12. That asserted cost demonstrates urgency, not a right to consummate the transaction before this Court can review the petition. The merging parties negotiated the allocation of delay risk while regulatory and judicial review remained possible. *California v. American Stores Co.*, 492 U.S. 1301, 1307-08 (1989) (O'Connor, J., in chambers), confirms that temporary merger relief may preserve meaningful review despite substantial asserted delay costs.

Respondents also request a \$118 million bond by multiplying the ticking fee through October 22. Opp. 12. Section 16 requires a "proper bond against damages for an injunction improvidently granted." 15 U.S.C. § 26. Respondents have not shown that every dollar of their negotiated ticking fee constitutes recoverable damages attributable to a short preservation order. If security is required, it should

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be tailored to demonstrated damages and the limited duration of relief, not set at a level that effectively eliminates judicial review for five individual consumers.

CONCLUSION

The Opposition confirms that the district court's no-evidence premise cannot be sustained. Respondents' own evidence establishes the planned integration of Paramount+ and HBO Max, the consolidation of technology and content decisions, the scale of the combined DTC operation, and the competitive purpose Ellison himself describes. Supreme Court precedent treats elimination of a significant independent rival against a consolidation trend as a core Section 7 concern, including in mergers involving shares far smaller than those alleged here. Petitioners respectfully request that the Court temporarily enjoin consummation and integration of the proposed transaction pending consideration of the petition.

DATED: October 2, 2026

Respectfully submitted,
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Case: 26-6423, 10/02/2026, DktEntry: 10.1, (16 of 16)

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Dated: October 2, 2026

/s/ Joseph M. Alioto
Joseph M. Alioto

**APPENDIX G - RECORD APPENDIX FILED IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 30, 2026**

[Case: 26-6423, 09/30/2026, DktEntry: 2.1, \(1 of 466\)](#)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, et al.

RECORD APPENDIX
CONSOLIDATED VOLUMES 1-4

District Court No. 4:26-cv-03790-AMO

APP 1-463

September 30, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, et al.

RECORD APPENDIX
VOLUME 1

District Court No. 4:26-cv-03790-AMO

APP 1-119

September 30, 2026

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, et al.,
Plaintiffs,

v.

PARAMOUNT SKYDANCE
CORPORATION, et al.,
Defendants.

Case No. 26-cv-03790-AMO

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 92

Before the Court is a motion for temporary restraining order (“TRO”) from Plaintiffs Pamela Faust, Len Marazzo, Lisa McCarthy, Deborah Rubinsohn, and Gary Talewsky. Plaintiffs request a TRO enjoining Defendants from closing, consummating, or otherwise completing one of the two merger transactions underlying this lawsuit, Defendant Paramount Skydance Corporation’s proposed acquisition of Warner Bros. Discovery. The motion follows the Court’s earlier consideration and rejection of Plaintiffs’ motion for preliminary injunction seeking similar relief. *See* Dkt. Nos. 12 & 69.

To obtain the extraordinary remedy of preliminary injunctive relief, such as the TRO sought here, the moving party must show: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief, (3) the balance of equities tips in the favor of the moving party, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To grant preliminary injunctive relief, a court must find that “a certain threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam).

The Court weighed the *Winter* factors in addressing Plaintiffs’ motion for preliminary injunction. The Court denied the motion because Plaintiffs did not offer any evidence in support

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United States District Court
Northern District of California

1 of their request for extraordinary relief, which fell far short of the “clear showing” necessary to
2 support each relevant preliminary injunction factor. *See* Hrg. Tr. (Dkt. No. 74). Plaintiffs again
3 fail to proffer any evidence in support of the extraordinary relief requested in the instant
4 submission. *See generally* Dkt. No. 92; *cf.* Civil L.R. 7-5. Plaintiffs rely on evidence and legal
5 analysis from a separate case, which alleges different antitrust markets inapplicable in this case.
6 *See, e.g.*, Dkt. No. 92 at 3 (citing *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-
7 AMO, Dkt. No. 141 at 6-8 (N.D. Cal. July 20, 2026)). Evidence used in one antitrust case does
8 not automatically apply with equal import in another antitrust case just as one party’s success does
9 not bear on these Plaintiffs’ likelihood of success. And absent any evidence proffered in support
10 of preliminary injunctive relief in this case, Plaintiffs are left with nothing more than allegations of
11 antitrust violations and harm, which do not suffice for the extraordinary relief sought. *See*
12 *Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1065 (N.D. Cal. 2023) (“Merely alleging the
13 elimination of a rival does not plausibly support an inference of an appreciable danger of
14 anticompetitive effects in a relevant market.”). Moreover, Plaintiffs’ likelihood of success
15 remains unclear given the serious concerns regarding Plaintiffs’ standing as identified in the
16 Court’s order granting Defendant’s motion to dismiss, Dkt. No. 79 at 4-9, and renewed in
17 Defendant’s pending motion to dismiss the amended complaint, Dkt. No. 87 at 13-21. Thus,
18 Plaintiffs do not meet the “clear showing” necessary to obtain preliminary injunctive relief. *See*
19 *Winter*, 555 U.S. at 22; *Leiva-Perez*, 640 F.3d at 966.

20 The Court therefore **DENIES** Plaintiffs’ motion for TRO. In light of Plaintiffs’ repeated
21 failures to advance any evidence in support of their motions for preliminary relief in this case to
22 date, the Court cautions Plaintiffs that future motions for TRO or preliminary injunction submitted
23 without evidentiary support will face summary denial.

24 **IT IS SO ORDERED.**

25 Dated: September 30, 2026

26 
27 ARACELI MARTÍNEZ-OLGUÍN
28 United States District Judge

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

PARAMOUNT SKYDANCE CORP., and
WARNER BROS. DISCOVERY, INC.,

Defendants.

Case No.: 4:26-cv-07116-AMO

[PROPOSED] CONSENT DECREE

Judge: Honorable Araceli Martínez-
Olguín

This Consent Decree (“**Consent Decree**”) is entered into by and between the State of California, the State of Arizona, the State of Colorado, the State of Connecticut, the Commonwealth of Massachusetts, the State of Minnesota, the State of Nevada, the State of New Jersey, the State of New Mexico, the State of New York, the State of Oregon, and the State of Washington, by and through their respective Attorneys General (collectively, “**Plaintiff States**”), on the one hand, and Paramount Skydance Corporation (“**Paramount**”), Warner Bros. Discovery, Inc. (“**Warner Bros.**” or “**WBD**”), the Combined Entity (as defined below), and their respective affiliates, (collectively, the “**Defendants**” or the “**Companies**”), on the other. “**Parties**” refers collectively to the Companies and the States, and “**Party**” refers to any one of the Parties, as the context requires.

The Parties, by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Consent Decree, hereby warrant, represent, acknowledge, covenant, stipulate and agree, subject to Court approval pursuant to applicable federal and state law, as follows:

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I. RECITALS

- A. **WHEREAS**, on February 27, 2026, the Companies announced that they had entered into an agreement and plan of merger, pursuant to which Paramount will acquire Warner Bros. upon closing of the Merger;
- B. **WHEREAS**, on July 13, 2026, after conducting an investigation of the Companies' proposed Merger and its potential effects on competition under federal and state antitrust laws, the Plaintiff States filed a complaint in the Federal District Court for the Northern District of California alleging that the effect of the proposed Merger may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. §18, in three alleged markets, and on that basis the Plaintiff States sought an order to permanently enjoin the proposed Merger amongst other relief;
- C. **WHEREAS**, the Defendants deny that the Merger violates any applicable law but recognize the Plaintiff States' legitimate interest in protecting competition and consumers, and the Defendants desire to resolve the Plaintiff States' Complaint without the further cost, delay, and uncertainty of litigation;
- D. **WHEREAS**, the Parties have engaged in good-faith negotiations and have agreed to the terms and conditions set forth herein to address the Plaintiff States' concerns regarding the competitive effects of the Merger alleged in the Complaint;
- E. **WHEREAS**, this Consent Decree is for settlement purposes only and does not constitute an admission by the Companies that any law has been violated;
- F. **NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

II. DEFINITIONS

- A. **"Consent Decree"** means this Consent Decree, including any amendments or modifications made in accordance with Section VIII.A hereof.
- B. **"Attorneys General"** means, collectively, the Attorneys General of the Plaintiff States and their respective authorized designees.
- C. **"Closing" or "Close"** means the closing of the Merger.
- D. **"CBS News"** means the CBS Network News division within Paramount.
- E. **"CNN"** means the CNN Worldwide division within Warner Bros.
- F. **"Combined Entity"** means Paramount Skydance Corporation, a Delaware corporation, together with its subsidiaries, controlled affiliates, successors, and assigns, after the Merger Closes.

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- G. **“Commitment Period”** means the period of time that commences on the Closing and concludes on the fifth (5th) calendar year that follows the Closing. (For illustration purposes only, if the Closing occurs on September 30, 2026, the Commitment Period would run from September 30, 2026, to December 31, 2031.)
- H. **“Commitment Year”** means each of the five consecutive calendar years following the calendar year in which the Closing occurs. (For illustration purposes only, if the Closing occurs at any time during calendar year 2026, then the Commitment Years would be 2027, 2028, 2029, 2030 and 2031.)
- I. **“Distributor”** means any U.S. multichannel video programming distributor, including any virtual multichannel video programming distributor excluding any virtual multichannel video programming distributor that (1) is not affiliated with an MVPD and has never offered traditional MVPD services; and (2) as of the Effective date has more than five million (5,000,000) subscribers.
- J. **“Divestiture Channels”** means collectively, BET (Black Entertainment Television, including BET, BET Gospel, BET Her, BET Hip-Hop, BET Jams, and BET Soul), VH1, Comedy Central, Smithsonian, Destination America, and Science, including all tangible and intangible assets reasonably necessary for a Divestiture Buyer to operate effectively, including the Divestiture Channels’ copyrights, trademarks, other intellectual property rights, and licenses. For the avoidance of doubt, where a Divestiture Channel licenses content for distribution, the ownership rights of the underlying content remain the property of the license-granting entity and are not Distribution Channel assets to be divested, provided that the existing content license agreements with the Divestiture Channel will remain in place for the remainder of the license term.
- K. **“Compliance Monitor”** has the meaning defined in Article VI.A of this Consent Decree.
- L. **“Effective Date”** means the date on which this Consent Decree is entered by the Court.
- M. **“Exhibitor”** means a person or legal entity that, as of the Effective Date, operates one or more theaters or cinemas in the United States for the primary purpose of publicly screening first-run Films for audiences.
- N. **“Film”** means a feature-length motion picture (of at least seventy-five (75) minutes in running time) produced or distributed by the Combined Entity or its subsidiaries and intended for initial release in commercial movie theaters in the United States.
- O. **“Independent Film”** means a Film that is either (i) based on an original screenplay or (ii) originated from Film producers outside of the Combined Entity, Disney, Universal, or Sony.
- P. **“Lot”** means, with respect to Paramount, the studio lot Paramount operates at 5555 Melrose Avenue, in Los Angeles, California; and, with respect to Warner Bros., the

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studio lot that Warner Bros. operates at 4000 Warner Boulevard in Burbank, California.

- Q. “Merger” or “Transaction”** means the Agreement and Plan of Merger entered into on February 27, 2026, between Paramount and Warner Bros., pursuant to which Paramount will acquire Warner Bros. upon Closing.
- R. “Miramax Studios”** means Miramax, LLC, and all of its subsidiaries, assets, and affiliated operations in which the Combined Entity holds a direct or indirect ownership interest.
- S. “Monitoring Trustee”** has the meaning defined in Article VI.B of this Consent Decree.
- T. “Motion Pictures & Television Fund”** means the Motion Picture & Television Fund, a California nonprofit corporation, or any successor organization.
- U. “National Association of Attorneys General Fund”** means a fund that is administered by the National Association of Attorneys General and that is designated for antitrust enforcement, as identified by the State Committee.
- V. “Paramount Basic Cable Channels”** means the basic cable channels owned by Paramount at the time of the Closing.
- W. “PVOD” or “Premium Video-on-Demand”** means access to audiovisual content for on-demand streaming via the internet or other digital distribution platforms immediately after Theatrical Release for a limited period of time for a one-off fee.
- X. “State”** means any one of the Plaintiff States, acting by and through its Attorney General, as the context requires.
- Y. “State Committee”** means a group of no more than five (5) Attorneys General offices appointed by the States, as modified from time to time. The State Committee will consult with and provide regular updates to the Plaintiff States.
- Z. “SVOD”** means subscription video-on-demand, being any service that provides access to audiovisual content on a subscription basis for on-demand streaming via the internet or other digital distribution platforms, including but not limited to Paramount+ and any successor service operated by the Combined Entity.
- AA. “Theatrical-Release Window”** means the period commencing on the date of a Film’s initial public exhibition in commercial movie theaters in the United States (such exhibition, a **“Theatrical Release”**) and during which such Film is made available exclusively through theatrical exhibition and is not to be made available on any SVOD or home entertainment platform.
- BB. “Warner Bros. Basic Cable Channels”** means the basic cable channels owned by Warner Bros. at the time of the Closing.

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- CC. **“Wide Release Film”** means a Film that is released on at least two thousand (2,000) screens.

III. COMMITMENTS

A. Theatrical Film Exhibition Commitments

1. **Annual Film Release Commitment.** During each Commitment Year, the Combined Entity shall cause to be released for Theatrical Release in the United States a minimum of thirty (30) Films for the first and second Commitment Years and thirty-two (32) Films for the third, fourth, and fifth Commitment Years (the **“Annual Film Release Commitment”**). Of those Films:
 - a. For the first and second Commitment Years, at least twenty (20) of the thirty (30) Films must be Wide Release Films;
 - b. For the third, fourth, and fifth Commitment Years, at least twenty-one (21) of the thirty-two (32) Films must be Wide Release Films;
 - c. For each of the Commitment Years, at least four (4) of the Films subject to this Section must be Independent Films; and
 - d. For each of the Commitment Years, at least fifty percent (50%) of the Films subject to this section shall be produced or jointly produced by the Combined Entity.
2. **Theatrical-Release Window.** For each Film counted toward the Annual Film Release Commitment, the Combined Entity shall maintain a Theatrical-Release Window of not less than forty-five (45) days from the date of initial theatrical exhibition in the United States and shall not market or promote the Film as being available on any PVOD, SVOD, or other streaming platform prior to the thirtieth (30th) day of the Theatrical Release Window.
3. **SVOD Holdback Period.** For each Film counted toward the Annual Film Release Commitment, the Combined Entity shall not make such Film available on any SVOD platform, including Paramount+ or any successor service, for a period of not less than ninety (90) days from the date of the Film’s initial theatrical exhibition in the United States.
4. **Marketing Budget Requirement.** The Combined Entity shall support each Film counted toward the Annual Film Release Commitment with a marketing spend consistent with typical practice for similar films and release patterns.
5. **Tentpole Films Requirement.** At least twenty percent (20%) of the Combined Entity’s Films for each Commitment Year shall have aggregate

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production and acquisition budgets of the equivalent of at least Fifty Million Dollars (\$50 million) in September 2026, adjusted for inflation using the CPI-U based on the prior calendar year, and those Films must be released on a minimum of three thousand (3,000) domestic screens within the first four (4) weekends of initial release.

6. **Rental Rate Terms.** For the first three (3) Commitment Years of the Commitment Period, the Combined Entity shall maintain Film rental terms with Exhibitors for new Film releases that are consistent with the best practices followed by Paramount and Warner Bros. as of the Closing for such Exhibitor. For purposes of this paragraph, best practices include but are not limited to: (i) honoring Paramount's current terms and rental rates as of the Closing for current and planned Paramount Theatrical Releases; (ii) honoring Warner Bros.'s current terms and rental rates as of the Closing for current and planned Warner Bros. Theatrical Releases; and (iii) not offering any terms for Film Theatrical Releases that are less favorable than the higher of the rental rate schedule and associated terms offered by either Paramount or Warner Bros. to the same exhibitor as of the Closing.
7. **Film Catalogue Access.** During the Commitment Period, the Combined Entity will continue to make the film catalogues of both Paramount and Warner Bros. available for license by Exhibitors under similar Film rental terms as have been offered by each Company during the 2025 calendar year for similar grossing titles and situations. From time to time, certain Films may be taken out of release up to ninety (90) days before and up to thirty (30) days after a larger-scale re-issue, including but not limited to anniversary celebrations, so as not to cannibalize box office in close proximity to the larger theatrical release that will be supported by marketing efforts.
8. **United States Production Levels.** During the Commitment Years:
 - a. The Combined Entity will spend at least Three Hundred Million Dollars (\$300,000,000) more annually (totaling at least One Billion Five Hundred Million Dollars (\$1,500,000,000) more across the Commitment Period) in production in the United States as compared to the level that the Companies spent on production in the United States in 2025.
 - b. In the event that, during the Commitment Period, the United States enacts into law an uncapped federal film tax incentive of at least twenty percent (20%) (a "**Federal Film Tax Credit**"), then, for each remaining full calendar year within the Commitment Period for which the Federal Film Tax Credit applies, the Combined Entity's annual average production-day levels in the United States must be at least twenty percent (20%) of all Film production for the first and

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second years, and must be at least thirty percent (30%) for the third, fourth, and fifth years.

- c. In the event that, during the Commitment Period, the United States enacts into law a Federal Film Tax Credit as described in Section III.A.8.b, and either the State of California or the state of New York passes an uncapped state film tax incentive, inclusive of both above- and below-the-line expenses, of at least forty-three percent (43%), stackable with the Federal Film Tax Credit (a “**State Film Tax Credit**”), then, for each remaining full calendar year within the Commitment Period for which the State Film Tax Credit and Federal Film Tax Credit applies, the Combined Entity’s annual average production-day levels in the United States must be at least forty percent (40%) of all Film production.

9. Divestiture Remedy for Breach. In the event that the Combined Entity fails to meet the Annual Film Release Commitment in any Commitment Year:

- a. The Combined Entity shall have a cure period of six (6) months from the end of such Commitment Year (the “**Theatrical Cure Period**”) in which to release a sufficient number of additional Films to bring the total to the required minimum of Films under the Annual Film Release Commitment for that Commitment Year. A Film may only be counted toward the Annual Film Release Commitment for one Commitment Year.
- b. If, upon the expiration of the Theatrical Cure Period, the Combined Entity has failed to cure the shortfall, the Combined Entity shall divest its entire direct and indirect ownership interest in Miramax Studios (“**Miramax Divestiture Assets**”), on commercially reasonable terms, to a bona fide acquirer approved by the State Committee (such approval not to be unreasonably withheld or delayed) within twelve (12) months of the expiration of the Theatrical Cure Period (the “**Miramax Divestiture**”).
- c. The Combined Entity may not reacquire any part of or interest in the Miramax Divestiture Assets during the Commitment Period.

10. Fund Contributions for Shortfalls. In addition to and independent of the divestiture remedy set forth in Section A.9 of this Article, for each Film by which the Combined Entity falls below the Annual Film Release Commitment in any Commitment Year, the Combined Entity shall contribute thirty million dollars (\$30,000,000), split fifty percent / forty percent / ten percent (50%/40%/10%) to (i) health care and retirement trust funds for the WGA, IATSE, DGA, International Brotherhood of Teamsters, and other unions that work on production of Films (as selected by the State

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Committee), (ii) the Motion Pictures & Television Fund, and (iii) the National Association of Attorneys General Fund (collectively, the “**Contribution Funds**”), respectively. Such contributions shall be made within sixty (60) days of the end of the applicable Commitment Year (or the Theatrical Cure Period, whichever is later) and shall be non-refundable. The Contribution Fund obligations under this paragraph shall apply regardless of whether the Combined Entity subsequently cures the shortfall during the Theatrical Cure Period.

11. **Counting Methodology.** For purposes of this Article, a Film shall be counted toward the Annual Film Release Commitment for the Commitment Year in which its initial date of theatrical exhibition in the United States occurs, except that a Film released during the Cure Period shall be counted toward the Annual Film Release Commitment for the Commitment Year prior to its initial date of theatrical exhibition in the United States occurs. Films that receive a limited release (defined as fewer than six hundred (600) screens in the United States) shall not be counted toward the minimum unless they are subsequently expanded to one thousand (1,000) screens within thirty (30) days. For the avoidance of doubt, any re-releases of previously released films, commemorative editions, or otherwise repackaged versions of previously released intellectual property shall not count towards the Annual Film Release Commitment described in Section III.A.1.

B. Basic Cable Commitments

For the duration of the Commitment Period:

1. In negotiations between the Combined Entity and a Distributor concerning affiliation agreement terms for the Combined Entity’s basic cable network portfolio, the Combined Entity shall separately negotiate affiliation agreement terms for the Paramount Basic Cable Channels and the Warner Bros. Basic Cable Channels. For the avoidance of doubt, this paragraph does not apply to other Combined Entity offerings (*e.g.*, premium cable channels, streaming services, or broadcast).
2. The Combined Entity will not alter the existing schedules for renegotiation of affiliate fee agreements covering basic cable channels, except at the written request of a Distributor, which the Combined Entity will not unreasonably reject or deny.
3. The Combined Entity shall not make any affiliation agreement or its terms for the Warner Bros. Basic Cable channels contingent on the Distributor’s agreement to terms for the affiliation agreement for the Paramount Basic Cable Channels; or vice versa.

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4. In separately negotiating affiliation agreement terms under this Section, the Combined Entity will not use confidential Paramount Basic Cable Channel affiliate fee data in any way to determine, influence, or impact negotiating Warner Bros. Basic Cable Channel affiliate fees, or vice versa.
5. Within 60 days after the Effective Date, the Combined Entity shall implement procedures and protections to ensure that the Combined Entity complies with the requirements of this Section III.B., and will provide those policies and protections to the Monitoring Trustee and the State Committee.
6. This commitment shall not apply where a Distributor affirmatively requests, in writing, that the Combined Entity negotiate basic cable affiliation agreement terms together for the Paramount Basic Cable Channels, Warner Bros. Basic Cable Channels, or any product or service offering from the Combined Entity; provided however, the Combined Entity may not solicit, encourage, or condition other terms on a Distributor making such a request.
7. **Divestiture Remedy for Breach.** In the event that the Combined Entity materially breaches the cable negotiation provisions in this section:
 - a. The Combined Entity shall have a cure period of six (6) months from the date the State Committee and the Monitoring Trustee notify the Court that they believe a material violation has occurred (the “Cable Cure Period”) in which to re-negotiate and come into compliance with those provisions. The Combined Entity must make any revised agreements retroactive to the date of the violation and take any other steps necessary such that the Distributor is put in the same position as if the violation had not occurred.
 - b. If, upon the expiration of the Cable Cure Period, the Court has found that the Combined Entity has violated this Section III.B and has failed to cure said violation as determined by the Court in a final order, the Combined Entity shall, in addition to any remedies necessary to put the Distributor in the same position as if the violation had not occurred, divest its entire direct and indirect ownership interest in the Divestiture Channels.
 1. The Combined Entity shall, within one hundred and twenty (120) days after the expiration of the Cable Cure Period, divest the Divestiture Channels to a bona fide divestiture buyer approved by the State Committee (such approval not to be unreasonably withheld or delayed) (a “**Divestiture Buyer**”) in a manner consistent with this Consent Decree. The Combined Entity will use their best efforts to divest the Divestiture Channels as expeditiously as possible. In exercising the State Committee approval authority described in this paragraph, in the event that multiple bona fide entities bid to acquire the Divestiture Channels, the Combined Entity presumptively may

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sell the Divestiture Channels to the highest bidder; however, the State Committee may direct the sale to a Divestiture Bidder that is within five percent (5%) of the highest bidder's bid price.

2. **Transition Services** (at Divestiture Buyer's Option). At the option of the Divestiture Buyer(s), on or before the closing date of any divestiture, the Combined Entity shall enter into one or more transition services agreements to provide any transition services reasonably necessary to operate any Divestiture Channels as viable, ongoing programming assets.
3. The Combined Entity may not reacquire any part of or interest in the Divestiture Channels during the Commitment Period.

C. Entertainment Industry Investment Commitments

1. **Lot Operations.** For the duration of the Commitment Period, the Combined Entity shall not sell or close the Paramount or Warner Bros. Lots and shall use commercially reasonable efforts to operate the Lots in a manner consistent with past practices, including leasing use to third parties and producing films and television shows.
2. **Committed Development Operations.** To the extent that either Paramount or Warner Bros. entered into contracts prior to the Effective Date to lease or develop studio facilities within a Plaintiff State ("**Development Agreements**"), and the development efforts described by those Development Agreements had not been completed prior to Closing, the Combined Entity shall honor the terms of those Development Agreements during the Commitment Period.
3. **Collective Bargaining.** During the Commitment Period, the Combined Entity shall honor existing collective bargaining agreements in the United States in accordance with their terms and shall bargain in good faith with applicable recognized labor organizations with respect to successor agreements, in each case subject to applicable law, the terms of those agreements, and commercially reasonable efforts. In furtherance of the foregoing:
 - a. The Combined Entity shall not unilaterally change any mandatory subject of bargaining affecting represented employees and covered by an existing collective bargaining agreement, except as permitted by such agreement or as otherwise agreed to in writing by the applicable labor organization.
 - b. The Combined Entity shall credit employees with all service, seniority, and accrued status recognized under applicable collective bargaining agreements for all purposes—including but not limited

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to layoff, recall, promotion, benefits eligibility, and vacation accrual—subject to the terms of such agreements.

- c. The Combined Entity shall not unlawfully interfere with employees in the exercise of rights to union representation and collective bargaining and shall respect the role of recognized labor organizations throughout the integration process.

4. **Employee Reapplication.** During the Commitment Period, Company employees who are displaced, laid off, or otherwise terminated as a result of the Transaction (“**Affected Employees**”) shall have the right to apply for any open, vacant, and available positions within the Combined Entity’s organization for which they are qualified, and the Combined Entity shall consider those applications in good faith.
5. **Community Investment.** The Combined Entity shall make an aggregate annual financial commitment of Nine and a Half Million Dollars (\$9,500,000.00) each year for five (5) years following the Closing Date for investments in (1) workforce training and career development programs in film and television production communities at qualified educational institutions; and (2) film programs and community arts organizations.
6. **Independent Film Fund.** Within thirty (30) days of Closing, and for the duration of the Commitment Period, the Combined Entity will form and operate a fund for purchasing independent films (the “**Independent Film Fund**”). The Combined Entity will make an annual contribution to the Independent Film Fund of Five Million Dollars (\$5 million) per annum for each Commitment Year.

D. News Editorial Independence Board Commitments

1. **Formation.** Within one hundred eighty (180) days following Closing, the Combined Entity shall establish the News Editorial Independence Board (the “**Editorial Independence Board**”) and appoint Editorial Independence Board Members in manner that is consistent with this Section III.D.
2. **Composition.** The Editorial Independence Board shall be made up of five (5) established journalists (active or retired), each of whom shall have practiced journalism for a minimum of ten (10) years (including with credentials for at least three (3) years) (“**Journalist**”). (“**Editorial Independence Board Members**”). No more than two (2) Editorial Independence Board Members may be affiliated with the same political party.
3. **Appointment.** Editorial Independence Board Members shall be appointed by the Combined Entity’s Board of Directors (the “**Combined Entity’s Board**”).

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- a. No member of any government or governmental entity may be appointed to the Editorial Independence Board.
 - b. No member of any government or governmental entity, including federal, state, and local governments, may approve or have approval rights over members appointed to the Editorial Independence Board.
 - c. No officer, director, shareholder or non-Journalist employee or contractor of the Combined Entity may be appointed to the Editorial Independence Board.
4. **Board Member Term.** Editorial Independence Board Members are expected to serve for three (3) years from the date of their appointment. The Combined Entity's Board can remove an Editorial Independence Board Member only for good cause, which for purposes of this paragraph shall mean fair and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary, or capricious, unrelated to business needs or goals, or pretextual. When an Editorial Independence Board is vacated, the Combined Entity's Board will fill that vacancy in a manner consistent with this Section III.D.
5. **Role.** The Editorial Independence Board will have the following responsibilities during the Commitment Period:
 - a. Establishing a set of guiding editorial principles based on CBS News and CNN's Standards & Practices policies and principles in effect as of the Effective Date of accuracy, independence, fairness, and journalistic integrity (collectively, "**News Editorial Principles**").
 - b. Resolving any disputes between CBS News employees, CNN employees, and management of the Combined Entity regarding alleged violations of the News Editorial Principles.
 - c. Resolving any disputes between CBS News employees, CNN employees, and management of the Combined Entity regarding alleged reporting bias or failure to meet agreed reporting fairness standards.
 - d. Establishing and monitoring adherence to ethical journalism as defined by journalism industry best practices and to editorial independence, including from the Combined Entity's ownership and shareholders.
6. **Reporting.** The Editorial Independence Board shall report to the Combined Entity's Board through the Combined Entity's Chief Compliance Officer.

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7. **Scope.** The Editorial Independence Board's above-described responsibilities are limited to news and editorial content produced principally for distribution in the United States.
8. **Indemnification.** The Combined Entity shall indemnify and hold harmless Plaintiff States for any claims and litigation related to this section of the Consent Decree.

E. Other Commitments

1. **Pluto TV.** For the Commitment Period:
 - a. The Combined Entity shall continue to maintain and make available a free, ad-supported streaming service under the Pluto TV brand or a successor or substantially equivalent replacement brand or service.
 - b. The Combined Entity will, at a minimum, maintain this service with service and quality levels at or above the service and quality for the service as provided on the Effective Date, and shall make all product and content improvement and additions as contemplated on the Effective Date.
2. **Costs and Attorneys' Fees.** Defendants shall reimburse the Plaintiff States for reasonable attorneys' fees and reasonable economic expert fees (including reasonable expert firm support costs) incurred through the Effective Date, not to exceed Forty Million Dollars (\$40,000,000), subject to review for reasonableness. The amount may be used for any one or more of the following purposes, by the Plaintiff States' Attorneys General as they, in their sole discretion, see fit and for any lawful purpose, including: antitrust or consumer protection law enforcement, including fees and expenses; for deposit into a state antitrust or consumer protection account (e.g., revolving account, trust account), for use in accordance with the state laws governing that account; for deposit into a fund exclusively dedicated to assisting state attorneys general to enforce the antitrust laws by defraying the costs of (a) experts, economists, and consultants in multistate antitrust investigations and litigation, (b) training or continuing education in antitrust for attorneys in state attorney general offices, or (c) information management systems used in multistate antitrust investigations and litigation; or for any other purpose as the attorneys general deem appropriate, consistent with, or required by, the various states' laws.
 - a. Any payment the Companies make pursuant to this Consent Decree to the Colorado Department of Law is to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorney's fees, the payment of restitution, if any,

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and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

3. **Anti-Retaliation.** The Combined Entity shall not take any adverse action against any exhibitor, distributor, employee, contractor, or other person in retaliation for reporting a compliance concern to the Monitoring Trustee or Plaintiff States, for cooperating with any investigation or inquiry related to compliance with this Consent Decree, or for cooperating with the investigation of or litigation challenging this Merger.
4. **Discharge.** The Plaintiff States affirm that this Consent Decree discharges as to the Defendants all competition claims, related consumer protection claims, and known related investigations by the Plaintiff States arising from the Merger and the related transactions. Related transactions include agreements that are ancillary to the Merger, for example equity commitments made in order to provide funding for the merger.

IV. REPRESENTATIONS AND WARRANTIES

- A. **Representations of the Plaintiff States.** The Plaintiff States represent and warrant that each of their respective Attorneys General has the authority to enter into this Consent Decree and to bind the applicable Plaintiff State to the terms hereof, provided, however, that the (1) State of Colorado does not join and does not bind its State to Section III.C.1 or III.D of this Consent Decree and (2) State of Washington does not join and does not bind its State to Section III.D of this Consent Decree.
- B. **Representations of the Defendants.** Each Defendant represents and warrants that:
 1. It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified to do business in the each of the Plaintiff States;
 2. It has full corporate power and authority to execute, deliver, and perform this Consent Decree;
 3. The execution, delivery, and performance of this Consent Decree have been duly authorized by all necessary corporate action; and
 4. This Consent Decree constitutes a valid and binding obligation of the Defendants and the Combined Entity (as applicable), enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, and similar laws affecting creditors' rights generally and to general principles of equity.

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V. TERM AND DURATION

- A. Term.** This Consent Decree shall become effective on the Effective Date and shall remain in full force and effect for the Commitment Period, unless earlier terminated or extended by mutual written agreement of the Parties (the “**Term**”). Upon valid termination, this Consent Decree shall forthwith become null and void and there shall be no liability or obligation on the part of the Parties (other than as set forth in Section V.B. below). Notwithstanding the foregoing, at any time after the completion of the second full Commitment Year of the Commitment Period, the Combined Entity may, for good cause, petition the Court, by motion pursuant to Federal Rule of Civil Procedure 60(b) or as otherwise permitted by law, for relief from or modification to the requirements of this Consent Decree (a “**Petition**”). In such Petition, the Combined Entity bears the burden to show that, absent relief or modification, the Consent Decree impairs the Combined Entity’s ability to successfully operate the business and to compete effectively, and that the requested relief or modification is not substantially likely to lessen competition. Prior to submitting a Petition, the Combined Entity will meet and confer with the State Committee in good faith to determine whether the Plaintiff States will consent to the requested relief or modification.
- B. Survival.** The representations, warranties, covenants and agreements in this Consent Decree shall not survive the termination of this Consent Decree, except that any obligations of the Combined Entity under this Consent Decree that by their nature are intended to survive termination, including completing the Miramax Divestiture (if required), any ongoing cure obligations, any accrued Contribution Fund contribution obligations, shall survive the termination of this Consent Decree until fully performed or discharged.

VI. COMPLIANCE MONITORING AND REPORTING

- A. Internal Compliance Monitor.** Within twenty-one (21) days of Closing, Defendants shall: (i) appoint a “**Compliance Monitor**” who is an internal employee or officer of the Combined Entity and who reports directly to the Combined Entity’s Chief Compliance Officer, and (ii) identify to the State Committee and the Monitoring Trustee the Compliance Monitor’s name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in the Compliance Monitor position, the Combined Entity shall appoint a replacement, and shall identify to States Committee the replacement Compliance Monitor’s name, business address, telephone number, and email address. During the Commitment Period, the Compliance Monitor shall:
1. Within one hundred twenty (120) days of the Closing, and annually thereafter for the duration of the Commitment Period, provide a report to the Combined Entity’s Chief Compliance Officer describing the efforts the Combined Entity has made to comply with this Consent Decree.

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2. Provide annual compliance training to employees of the Combined Entity whose day-to-day work responsibilities are directly affected by this Consent Decree (“**Relevant Personnel**”) regarding the Combined Entity’s obligations under this Consent Decree.
3. Provide supplemental compliance training to newly hired Relevant Personnel regarding the Combined Entity’s obligations under this Consent Decree.
4. Semiannually communicate to Relevant Personnel that they may disclose to the Compliance Monitor or the Chief Compliance Officer, without reprisal or adverse consequence for such disclosure, information concerning any violation or potential violation of this Consent Decree by the Combined Entity.

B. Monitoring Trustee.

1. Within ninety (90) days of the Closing, the Combined Entity and the State Committee shall jointly select a mutually agreed-upon “**Monitoring Trustee**” to monitor the Combined Entity’s compliance with this Consent Decree (excluding Article III.D) during the Commitment Period. The Combined Entity shall bear the reasonable costs of the Monitoring Trustee and any consultants reasonably retained by the Monitoring Trustee.
2. The Monitoring Trustee shall:
 - a. Have the powers and authority reasonably necessary to monitor the Combined Entity’s compliance with the terms of this Consent Decree;
 - b. Serve as an independent third party and not as an employee or agent of either the State Committee or the Combined Entity;
 - c. Employ any reasonably necessary consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities (as mutually agreed with the State Committee and the Combined Entity, that agreement not to be unreasonably withheld);
 - d. Submit semiannual reports to the State Committee regarding the Combined Entity’s compliance, as well as any ad hoc reports of its conclusions regarding the Combined Entity’s alleged failure to meet any term of this Consent Decree, including the Annual Film Release Commitment in any Commitment Year. These reports shall receive a proper confidentiality designation, if any, consistent with the Modified Stipulated Protective Order in force in this case, and shall not disclose business secrets or documents marked business confidential of the Combined Entity.

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- e. The Monitoring Trustee and any reasonably necessary agents or consultants retained by the Monitoring Trustee shall, and upon reasonable notice to the Combined Entity, have full and complete access to the relevant personnel, records, and facilities that the Monitoring Trustee reasonably needs to ascertain the Combined Entity's compliance with this Consent Decree (provided, that this shall not imply that the Monitoring Trustee shall be permitted to access any document that would likely jeopardize legal privilege (including attorney-client privilege)).
3. The Combined Entity shall:
 - a. Cooperate with and assist the Monitoring Trustee in performing his or her duties for the purpose of reviewing compliance under this Consent Decree;
 - b. Not interfere with the ability of the Monitoring Trustee to perform any duties pursuant to this Consent Decree;
 - c. Not require the Monitoring Trustee to disclose to the Combined Entity the substance of the Monitor's communications with the State Committee or any other person, or the substance of any reports submitted pursuant to this Consent Decree provided, however, that the Monitoring Trustee shall keep the State Committee and the Combined Entity apprised of the scope and substance of the Monitoring Trustee's investigations or reviews, consistent with due process;
 - d. Indemnify and hold the Monitoring Trustee harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connect with, a claim concerning the performance of the Monitoring Trustee's duties pursuant to this Consent Decree, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitoring Trustee.
 4. The Combined Entity may require the Monitoring Trustee and each of its consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities, to provide information to the State Committee, or to otherwise observe and report on the Combined Entity's compliance with this Consent Decree.
 5. If the Monitoring Trustee resigns or the State Committee determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as the Monitoring Trustee, the State Committee may require a new Monitoring Trustee be appointed in the same manner as

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the initial appointment of the Monitoring Trustee. The substitute Monitoring Trustee shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitoring Trustee section of this Consent Decree. The Monitoring Trustee shall have no role or authority in day-to-day operations of the Combined Entity.

6. The Monitoring Trustee shall have no role or authority relating to the Combined Entity's news operations.
 7. The Monitoring Trustee shall have no role or authority in the selection or production of content by the Combined Entity.
- C. **Annual Certification.** The Combined Entity shall cause its Chief Executive Officer and General Counsel to certify to the State Committee, on an annual basis and within ninety (90) days of the end of each calendar year during the Term, that the Combined Entity is in compliance with all material terms of this Consent Decree, or shall identify any areas of non-compliance and the steps being taken to cure such non-compliance. On the same day the Combined Entity certifies compliance to the State Committee, the Combined Entity shall cause that certification to be filed on the docket in the United States District Court for the Northern District of California (the "**Court**") in Case No. 4:26-cv-7116.

VII. ENFORCEMENT AND DISPUTE RESOLUTION

- A. **Enforcement.** This Consent Decree shall be enforceable by any Plaintiff State, acting by and through its Attorney General, through any action or proceeding in the Court in Case No. 4:26-cv-7116. The Court shall retain jurisdiction to enforce this Consent Decree, and the Combined Entity consents to the jurisdiction of that Court for such purposes.
- B. **Equitable Relief.** The Parties acknowledge that a breach of this Consent Decree may cause irreparable harm for which monetary damages would be an inadequate remedy. Accordingly, any Plaintiff State, acting by and through its Attorney General, shall be entitled to seek specific performance, injunctive relief, or any other equitable remedy available at law or in equity, in addition to any other remedies provided herein or available at law.
- C. **Meet and Confer.** Prior to commencing any enforcement action, the complaining Party shall provide written notice to the other Party specifying the alleged breach or dispute in reasonable detail. The Parties shall meet and confer in good faith within thirty (30) days of receipt of such notice in an effort to resolve the dispute without resort to litigation.
- D. **Mediation.** If the dispute is not resolved through the meet-and-confer process within thirty (30) days, either Party may submit the dispute to non-binding mediation before a mediator mutually agreed upon by the Parties. The costs of mediation shall be shared equally by the Parties.

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- E. **Reservation of Rights.** Nothing in this Article shall limit, waive, or otherwise affect the authority of any Plaintiff State, acting by and through its Attorney General, to enforce the Clayton Act, including Section 16, 15 U.S.C. § 26, or any applicable state antitrust, unfair competition, consumer-protection, or other statute, regulation, or common-law principle.

VIII. GENERAL PROVISIONS

- A. **Modification and Waiver.** No amendment, modification, or supplement to this Consent Decree shall be valid or binding unless (i) made in writing and signed by both Parties and (ii) approved by the Court. No waiver of any provision of this Consent Decree shall be effective unless in writing and signed by the Party granting such waiver. No failure or delay by either Party in exercising any right, power, or remedy under this Consent Decree shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.
- B. **Severability.** If any provision of this Consent Decree is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be modified to the minimum extent necessary to make it valid, legal, and enforceable, and the remaining provisions shall continue in full force and effect. If such modification is not possible, the invalid provision shall be severed from this Consent Decree, and the remaining provisions shall remain in full force and effect, provided that the fundamental purposes of this Consent Decree can still be achieved.
- C. **Force Majeure.** The Combined Entity shall not be considered in breach of this Consent Decree to the extent that performance of its obligations is prevented by force majeure events beyond the Parties' reasonable control, including but not limited to war, rebellion, hurricanes and other major storms, earthquakes, fires, terrorism, pandemics, strikes, labor disruptions, economic recessions, riots, insurrections, civil commotions, blockades, law or order of any federal government body exercising jurisdiction over the Parties, significant interference by or significant failures of state or local governmental authorities, significant interruptions in the supply chain, or acts of God. The Combined Entity shall promptly notify the Plaintiff States if this Force Majeure provision is invoked. For clarity, Plaintiff States may petition the Court with respect the invocation of the Force Majeure provision.
- D. **Governing Law.** This Consent Decree shall be governed by and construed in accordance with applicable federal law. To the extent federal law does not govern a procedural or other ancillary matter, the laws of the State of California shall apply, without regard to its conflict-of-laws principles.
- E. **Conflicts.** If any statute or regulation pertaining to the subject matter of this Consent Decree is enacted, promulgated, or modified after the Effective Date and a court of competent jurisdiction holds that such statute or regulation is in conflict

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with any provision of this Consent Decree, the Companies' compliance with such statute or regulation shall not be deemed a breach of this Consent Decree to the extent of the conflict.

- F. **Jurisdiction and Venue.** The Parties consent to the exclusive jurisdiction and venue of the United States District Court for the Northern District of California for any action or proceeding arising out of or relating to this Consent Decree, including enforcement, and acknowledge that the Court shall retain jurisdiction for those purposes.
- G. **Entire Agreement.** This Consent Decree, together with any exhibits, schedules, or attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the Parties relating to the subject matter hereof.
- H. **Successors and Assigns.** This Consent Decree shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Combined Entity may not assign its rights or delegate its obligations under this Consent Decree without the prior written consent of the Attorneys General, which consent shall not be unreasonably withheld. None of the Plaintiff States may assign its rights or delegate its obligations Consent Decree without the prior written consent of the Combined Entity, which consent shall not be unreasonably withheld.
- I. **Counterparts.** This Consent Decree may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Execution and delivery of this Consent Decree by electronic means, including by facsimile, PDF, or other electronic signature, shall be valid and sufficient.
- J. **No Third-Party Beneficiaries.** The Parties agree and acknowledge that this Consent Decree is solely for the benefit of the Parties, and that no person or entity is intended to be a third-party beneficiary of any provision of this Consent Decree for any reason, including for the purposes of any civil, criminal, or administrative action in any court or before any other authority. No other person or entity shall be permitted to assert any claim or right as a beneficiary or protected class under this Consent Decree, provided that nothing in this Consent Decree shall be construed to deprive any person, corporation, association, agency, or other entity of any right provided by law, regulation, or administrative pronouncement independent of this Consent Decree.
- K. **Notices.** All notices or other communications under this Consent Decree shall be in writing (including but not limited to electronic communications) and shall be given to the recipients indicated below:

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For Plaintiff States:

Each Plaintiff State can be contacted via the offices and personnel listed in the signature blocks.

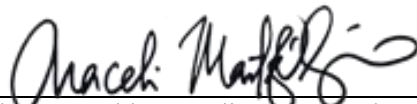
For Paramount, Warner Bros. or the Combined Entity, as applicable:

Paramount Skydance Corporation
5555 Melrose Avenue
Los Angeles, CA 90038
Attention: Chief Legal Officer
Email: md@paramount.com

- L. No Admission of Liability.** This Consent Decree does not constitute an admission by the Combined Entity that it has violated any federal or state antitrust law, unfair competition law, or any other applicable law. The Combined Entity enters into this Consent Decree solely for the purpose of resolving the joint investigation conducted by the Attorneys General and avoiding the cost, delay, and uncertainty of litigation.
- M. Construction.** This Consent Decree shall be construed without regard to any presumption or rule requiring construction against the Party causing it to be drafted. The headings and captions of the Articles and Sections of this Consent Decree are inserted for convenience of reference only and shall not affect the interpretation or construction of this Consent Decree.
- N.** This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. For purposes of this Consent Decree, a signature page that is transmitted electronically (*e.g.*, by DocuSign or emailed “PDF”) shall have the same effect as an original.

SO ORDERED.

Dated: September 30, 2026



The Honorable Araceli Martinez-Olguin
United States District Judge

IN WITNESS WHEREOF, the Parties have caused this Consent Decree to be executed by their duly authorized representatives.

[Signatures follow]

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FOR PLAINTIFF STATE OF CALIFORNIA:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

PARAMOUNT SKYDANCE
CORPORATION, et al.,

Defendants.

Case No. 26-cv-07116-AMO

**ORDER GRANTING JOINT MOTION
TO ENTER CONSENT DECREE**

Re: Dkt. No. 243

This Order assumes familiarity with the facts and procedural history of this antitrust case brought by twelve state Attorneys General challenging the proposed merger between two major media corporations. Before the Court is a joint motion to enter a consent decree. The motion additionally requests that the Court dissolve the stipulation and order not to close. The Court **GRANTS** the joint motion for the following reasons.

It is well-settled that the Court may approve a consent decree if it determines that “it is fair, reasonable and equitable and does not violate the law or public policy.” *Turtle Island Restoration Network v. U.S. Dep’t of Com.*, 672 F.3d 1160, 1165 (9th Cir. 2012). The Court must independently scrutinize the proposed consent decree’s terms, and “eschew any rubber stamp approval.” *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 747 (9th Cir. 1995). Indeed, “a federal court is more than a recorder of contracts from whom parties can purchase injunctions; it is an organ of government constituted to make judicial decisions.” *Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 525 (1986). “However, a consent decree need not impose all the obligations authorized by law.” *United States v. State of Oregon*, 913 F.2d 576, 581 (9th Cir. 1990) (citing *Local 93*, 478 U.S. at 522-23). “Rather, the court’s approval is nothing more than an amalgam of delicate balancing, gross approximations and rough

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United States District Court
Northern District of California

1 justice. The court need only be satisfied that the decree represents a reasonable factual and legal
2 determination.” *Oregon*, 913 F.2d at 581 (internal quotation marks & citations omitted).

3 Here, the Court finds the proposed consent decree represents a reasonable factual and legal
4 resolution of the dispute. The parties’ proposed consent decree falls within the scope of the case
5 made by the pleadings. Plaintiffs advance three U.S. markets for antitrust purposes:
6 (1) distribution of wide-release theatrical films, (2) distribution of top-grossing theatrical films,
7 and (3) licensing of basic cable channels to distributors. *See* Compl. ¶ 36. The parties’ proposed
8 production, distribution, and funding of films, including particular provisions for “tentpole” and
9 “independent” films, ostensibly addresses potential harms to the first two markets by requiring
10 certain minimum thresholds of investment and release of domestic films. And the parties’
11 proposed requirements for continued, separate negotiations of distribution for the two entities’
12 basic cable holdings addresses concerns related to the third market. The proposed consent decree
13 imposes these requirements and includes important backstops requiring divestment of studios
14 and/or cable channels in case of the combined entity’s failure to comply with the proposed consent
15 decree’s terms. Further, the proposed consent decree imposes these requirements on film
16 distribution and basic cable negotiations in the midst of a rapidly-changing marketplace. The
17 Court therefore finds that the proposed consent decree reflects a settlement between the parties
18 that is a fair, reasonable, and good faith approach to address the competitive harms alleged in the
19 Complaint, and does not violate the law or public policy.¹

20 Further, the Court finds the proposed settlement agreement reflects a procedurally sound
21 resolution. The parties reached their agreement following highly contested, however brief,
22 litigation, and they reached their agreement following what they report to have been several
23 rounds of in-depth negotiations. Importantly, the participation of twelve state attorneys general
24

25 ¹ Though amici aver that the “News Editorial Independence Board” risks violating the First
26 Amendment by embroiling the Plaintiff States and/or the Court in enforcement of press standards,
27 Dkt. Nos. 259 & 60, the Court disagrees. The proposed consent decree governs the News
28 Editorial Independence Board’s creation and structure, not its speech, which is substantively
different than several of the cases regarding compelled speech cited by amici. *See* Dkt. No. 260 at
8 (citing *NRA of Am. v. Vullo*, 602 U.S. 175, 189 (2024); *Moody v. NetChoice, LLC*, 603 U.S. 707,
727 (2024)). Accordingly, the Court does not find that the News Editorial Independence Board
provision renders the proposed consent decree contrary to law.

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United States District Court
Northern District of California

1 supports a finding of fairness. *See Moreno v. San Francisco Bay Area Rapid Transit Dist.*, Case
2 No. 17-cv-02911-JSC, 2019 WL 343472, at *5 (N.D. Cal. Jan. 28, 2019) (recognizing that a
3 government agency’s participation in seeking a consent decree “weighs in favor of approving the
4 settlement”); *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (“[C]ourts should pay
5 deference to the judgment of the government agency which has negotiated and submitted the
6 proposed judgment.”). Particularly recognizing that these government officials assent to the
7 consent decree and recognizing, as Defendants have repeated throughout the case, that antitrust
8 regulators across the globe have cleared the transaction before now, the Court concludes the
9 proposed consent decree was the product of procedural fairness.

10 Amici express dismay at many of the proposed consent decree’s provisions. *See* Dkt. Nos.
11 259 & 260.² However, a proposed consent decree like this one represents a negotiated settlement
12 that does not fully remediate an alleged violation or even necessarily resolve the ultimate factual
13 and legal issues of a case. As the Supreme Court has described,

14 Consent decrees are entered into by parties to a case after careful
15 negotiation has produced agreement on their precise terms. The
16 parties waive their right to litigate the issues involved in the case
17 and thus save themselves the time, expense, and inevitable risk of
18 litigation. Naturally, the agreement reached normally embodies a
19 compromise; in exchange for the saving of cost and elimination of
20 risk, the parties each give up something they might have won had
21 they proceeded with litigation [T]he parties have purposes,
22 generally opposed to each other, and the resultant decree embodies
23 as much of those opposing purposes as the respective parties have
24 the bargaining power and skill to achieve.

25 *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971); *see also Officers for Just. v. Civ.*
26 *Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (quoting
27 same).

28 Here, the Court recognizes that this proposed consent decree reflects a compromise of the
claims short of full adjudication – compromise that may leave some dissatisfaction for both sides
and the public but a compromise that saves the risk, time, and expense of litigating through trial.
The potential for greater investment in “documentaries and other nonfiction works, films by and

² The Court GRANTS the motion to amend/correct the amicus brief. Dkt. No. 261.

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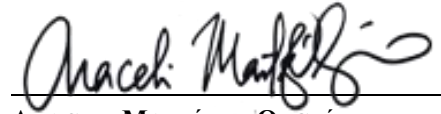
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about Black and Latino communities, or other distinctive projects that might have been greenlit by one of two independently competing studios,” Dkt. No. 259 at 5, and the concerns regarding news editorial independence, Dkt. No. 260 at 7-9, represent just some of the meaningful grounds for disappointment with the proposed consent decree. *See also* Dkt. No. 255 at 5 (letter from Sen. Cory A. Booker quoting a state Attorney General’s statement that they were “deeply disappointed” they did not secure certain remedies in the proposed consent decree). But these hopes and desires for the proposed consent decree to reach farther – to achieve more – do not rise to the level of legal violations upon which the Court can reject the parties’ negotiated resolution. “Unless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.” *Randolph*, 736 F.2d at 529.

For the foregoing reasons, the Court **GRANTS** the parties’ joint motion. The Court **DISSOLVES** the parties’ stipulation and the Court’s Order Not to Close, Dkt. No. 170, effective upon entry of this Order. In accordance with the parties’ joint request, the Court will issue the consent decree as judgment and as a standalone docket entry.

IT IS SO ORDERED.

Dated: September 30, 2026



ARACELI MARTÍNEZ-OLGUÍN
United States District Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**PLAINTIFFS' REPLY IN SUPPORT OF
 EMERGENCY APPLICATION FOR
 TEMPORARY RESTRAINING ORDER**

Judge: Hon. Araceli Martinez-Olguin

Defendants’ opposition is without merit. Their own CEO identifies the consumers whose standing they deny and the rivalry this acquisition will extinguish. David Ellison says the combined company cannot dictate “what audiences watch,” promises more work because “nobody can dictate what audiences will love,” says Hollywood succeeds only when “we connect with our audience,” and concludes: “It’s the audience—the American people—that has the final say” whether movies and news organizations succeed or fail. Alioto Decl. Ex. 2 at 1–2 (Dkt. 80-2). The evidence shows Paramount’s own materials use “DTC” as shorthand for “direct-to-consumer.” *See* Goldberg Decl., Ex. 2 (Dkt. 34-2) at 9 (describing a “premier direct-to-consumer platform” and, in the same transaction materials, the combination of Paramount+, HBO Max, and Pluto as “a highly competitive DTC business”); Goldberg Decl., Ex. 3 (Dkt. 34-3) at 10 (Ellison explaining that combining the services would produce “a little over 200 million direct-to-consumer subscribers”); Goldberg Decl., Ex. 4 [Dkt. 34-4] at 5–6 (identifying “Direct-to-Consumer” as a Paramount business segment and reporting “DTC revenue” and “DTC revenue and profit”). Plaintiffs are those consumers. The Court should preserve the status quo now and set a prompt hearing.

Standing is concrete. Plaintiffs are consumers and direct purchasers in the affected markets, and their sworn declarations verify their respective subscriptions, streaming use, moviegoing, purchasing habits, and threatened injury. Dkts. 44–48. Under Section 16, consumers need only show a significant threat of injury from an impending violation; they need not wait for the merger to close or prove that the threatened harm is certain. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (1969); *California v. American Stores Co.*, 495 U.S. 271, 284, 296 (1990); *DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 762–64 (9th Cir. 2018). The threat here is direct: the merger will eliminate independent competition between Paramount+ and HBO Max and expose Plaintiffs to the threat of higher prices, reduced output and choice, and diminished quality. Defendants’ reliance on the earlier *DeMartini* ruling also **omits the subsequent order finding consumer standing** and permitting the Section 7 theory to proceed. *DeMartini v. Microsoft Corp.*, No. 22-cv-08991-JSC, Dkt. 228 at 2–5, 8–9 (N.D. Cal. June 27,

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2023).

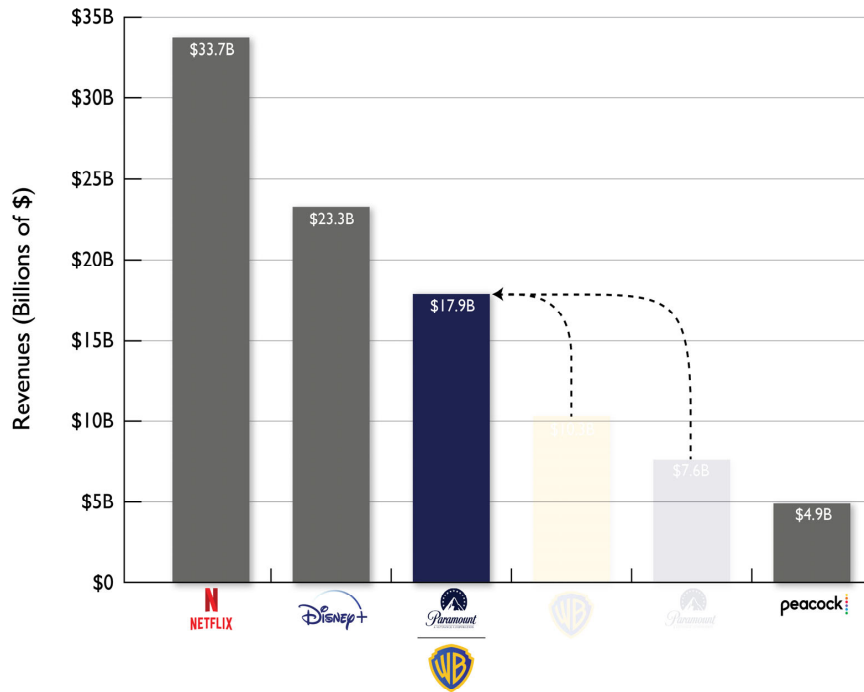
Binding Supreme Court precedent states that Section 7’s purpose is to arrest concentration in its incipency for the benefit of the consumer. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317–18, 322–23 (1962). No “elaborate proof” is required. *United States v. Philadelphia National Bank*, 374 U.S. 321, 362–64 (1963). Judge Posner distilled the still-binding Supreme Court cases: “The elimination of a significant rival was thought by itself to infringe” Section 7, and “[n]one of these decisions has been overruled.” *Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1386–87 (7th Cir. 1986).

That rule controls. Paramount+ and HBO Max are significant independent rivals. Defendants admit they will combine the services on one technology stack and prune content after closing. Goldberg Decl., Ex. 1 at 3, 5, 8–9 (Dkt. 34-1); *id.*, Ex. 3 at 10, 15 (Dkt. 34-3); Brandon-Gordon Decl. ¶¶ 8, 12, 17 (Dkt. 35). Ellison identifies Netflix, Amazon, and Apple as the combined firm’s competitors. Alioto Decl., Ex. 2 at 1 (Dkt. 80-2). These admissions alone identify the competitive arena, the consumers, and the elimination of a significant independent rival.¹

The charts filed with the amended complaint make the scale unmistakable. First, \$10.3 billion in WBD domestic streaming revenue plus \$7.6 billion for Paramount becomes \$17.9 billion, third among the services shown. FAC ¶ 138.

¹ Paramount’s judicially noticeable SEC statements remove any market-definition doubt. Paramount distinguished premium subscription streaming from YouTube, TikTok, Instagram, and Facebook because those platforms do not substitute for professional programming on Netflix or HBO Max. Paramount Skydance Corp., Ex. (a)(5)(Y) to Schedule TO (Jan. 7, 2026). Those statements are party admissions. Fed. R. Evid. 801(d)(2).

Domestic Rankings of Top U.S. Video Streaming Services Revenues (Post-Merger)

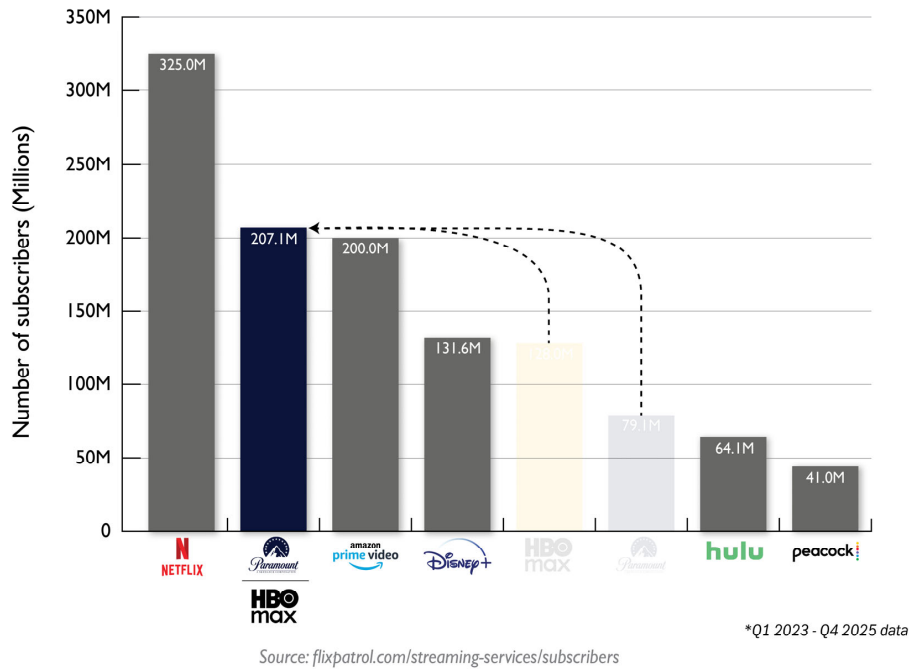


Source: hollywoodreporter.com

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Second, HBO Max's 128 million subscriptions plus Paramount+'s 79.1 million becomes approximately 207.1 million, moving the two services from fifth and sixth to second, behind only Netflix, subject to subscriber overlap. FAC ¶ 141. Third, Paramount's 10.2% studio share plus WBD's 13.4% becomes **23.6%**, the largest share among named services; the top-four share becomes 76.3%. FAC ¶ 184.

Domestic Rankings of Top U.S. Video Streaming Services Number of Subscribers (Post-Merger)



WBD's 13.4-point increment alone dwarfs the 1.3% increment condemned in *United States v. Aluminum Co. of America*, 377 U.S. 271, 277–81 (1964), the 4.49% combined national share in *United States v. Pabst Brewing Co.*, 384 U.S. 546, 550–52 (1966), and the 7.5% combined local share in *United States v. Von's Grocery Co.*, 384 U.S. 270, 272–78 (1966). The industry compilations cited in the complaint are the kind of commercial publications covered by Rule 803(17), and the Court may consider them at the TRO stage. Fed. R. Evid. 803(17); see also *Flynt Distributing Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial).

This Court has already applied the law to this same \$110 billion transaction. *State of California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-AMO, Dkt. 141 at 2, 5–7 (N.D.

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Cal. July 20, 2026) (“States TRO Order”). It found “compelling evidence,” held that the combined share alone supported the presumption of illegality, and found a strong showing of substantially lessened competition. *Id.* at 5–6. After considering the competing Lee and Murphy expert evidence, the Court held Defendants at most created factual disputes and serious merits questions. *Id.* at 6–7; Lee Decl. ¶¶ 83–89 & figs. 10–12 (States Dkt. 29).

The threatened injury is not speculative. Paramount has already demonstrated both the ability and willingness to raise DTC prices, and Marazzo and Rubinsohn have already paid those higher prices. FAC ¶¶ 64–65, 201–04. The threatened injury from further consolidation follows from a basic economic inference: reducing the number of independent competitors reduces competitive constraints and increases the risk of higher prices. The proposed merger would eliminate HBO Max as an independent DTC competitor while leaving the combined company with approximately \$79 billion in net debt, aggressive deleveraging targets, and a stated dependence on increased DTC revenue and profitability. Fewer competitors, greater pricing power, and extraordinary debt pressure create the significant threat Section 16 addresses.

Closing will end independent ownership and permit integration and content pruning. Money damages cannot recreate lost rivalry. This Court already held that the transaction’s lessened competition is irreparable, unwinding would be difficult or impossible, and the public interest outweighs Defendants’ economic harm. States TRO Order at 7–8. Plaintiffs seek only a short standstill. Rule 65(c) is discretionary, and this Court waived security for the same transaction. States TRO Order at 9.

CONCLUSION

The Court should immediately restrain Defendants from consummating or integrating the transaction, preserve the status quo pending determination of Plaintiffs’ motions, and set a prompt hearing.

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1 DATED: September 23, 2026

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

PAMELA FAUST, LEN MARAZZO, LISA
McCARTHY, DEBORAH RUBINSOHN, and
GARY TALEWSKY

Plaintiffs,

vs.

PARAMOUNT SKYDANCE CORPORATION
(formerly Paramount Global), and SKYDANCE
MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' EMERGENCY APPLICATION
FOR TEMPORARY RESTRAINING ORDER**

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The Plaintiffs in this case now stand alone in challenging the Paramount-WBD merger. But they have no Article III or antitrust standing to pursue their claims, and they have not submitted a single piece of evidence—expert or otherwise—to support their motion for a TRO. These are the same fatal defects that caused the Court to previously deny Plaintiffs’ request for preliminary relief from the bench. Hr’g Tr. at 26:1–26:16 (July 16, 2026) (“[A] preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that plaintiff is entitled to such relief. Here, plaintiffs fail to meet that standard.”). “A TRO is an ‘extraordinary and drastic remedy,’” *Reyna v. Walt Disney Co.*, 2026 WL 1785119, at *1 (N.D. Cal. June 22, 2026), and Plaintiffs must make a clear showing of their likelihood of success to warrant such extraordinary relief. *Roe v. Critchfield*, 137 F.4th 912, 922 (9th Cir. 2025). Plaintiffs make no such showing here, and therefore their motion should be denied.

First, to obtain preliminary relief, Plaintiffs bear the burden to make a “clear showing of each element of standing.” *Washington v. Trump*, 847 F.3d 1151, 1159 (9th Cir. 2017). Ignoring this burden, Plaintiffs have made *no showing* of standing at all. This is fatal. The Court previously dismissed Plaintiffs’ Complaint due to these same defects. *See* ECF No. 79 (“MTD Order”). And, Defendants have demonstrated that Plaintiffs lack Article III or antitrust standing to bring their First Amended Complaint (“FAC”) because: (1) they allege no injury-in-fact that is fairly traceable to either challenged merger, (2) they are neither customers nor competitors of Defendants in any of their alleged markets, and (3) they seek to vindicate non-economic political complaints that the antitrust laws were not designed to protect. *See* ECF No. 87 at 4–12; ECF No. 91 at 2–8. This lack of standing is especially pronounced for Plaintiffs’ motion to enjoin the Paramount-WBD merger because the “only . . . concrete and particularized injury” Plaintiffs allege—a single Paramount+ price increase in January 2026, *see* MTD Order at 4, took place before the Paramount-WBD merger agreement was even signed, *see* ECF No. 87 at 4 n.1. Preliminary relief to enjoin a merger cannot be granted to individuals without any standing to bring such a claim.

Second, Plaintiffs have not shown a likelihood of success on the merits, which “is a threshold inquiry,” such that “[i]n the absence of ‘serious questions going to the merits,’” the court “need not consider the other [TRO] factors.” *Roe*, 137 F.4th at 922. Plaintiffs have once again “failed to submit a single item of evidence in support of” their request for extraordinary relief, Hr’g Tr. at 5:13–15 (July 16, 2026), instead relying only on their unverified (and deficient) complaint allegations and attorney

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argument. This failure to offer any “evidentiary support” dooms their motion. *See, e.g., Fry v. Capital One Fin. Corp.*, 2025 WL 1397163, at *3 (N.D. Cal. May 14, 2025); *Shaterian v. Wells Fargo Bank, Nat’l Ass’n*, 2011 WL 2314151, at *4 (N.D. Cal. June 10, 2011) (“[P]laintiff may not support a motion for a preliminary injunction by merely pointing to his complaint and the facts alleged therein.”); *see also Washington*, 847 F.3d at 1159 n.3 (“[T]he legal standards applicable to TROs and preliminary injunctions are ‘substantially identical.’”). In the absence of any factual support (economic or otherwise) or expert testimony, Plaintiffs have not come close to meeting their burden to demonstrate a likelihood of success. *See, e.g., St. Alphonsus Med. Ctr.-Nampa, Inc. v. St. Luke’s Health Sys., Ltd.*, 778 F.3d 775, 785 (9th Cir. 2015) (Section 7 plaintiff must “prove[] that the merger will probably lead to anticompetitive effects in [the relevant] market.”). Indeed, even if Plaintiffs’ unverified allegations were considered as evidence (they should not be), they fail even to state a claim, let alone to clearly demonstrate a likelihood of success on the merits. *See* ECF No. 87 at 12–21; ECF No. 91 at 9–15.

Plaintiffs assert that they have a “materially expanded evidentiary record” in support of their claims, ECF No. 92 (“Mot.”) at 2, but this is false. The only “new” evidence they reference in their brief is recent public statements by Paramount and its CEO, David Ellison, that lend no support to their claims. *See id.* As Defendants have demonstrated, the *New York Times* guest essay by Mr. Ellison explains why the Paramount-WBD merger will *enhance* competition and *increase* output “because making more is the whole point of the company we are building.” ECF No. 80-2 at 2. And the other statements they reference about the combined firm having 20% of video on-demand viewing—but only if YouTube is not counted—do nothing to show a likely substantial lessening of competition in any of the three markets Plaintiffs have alleged. *See* ECF No. 91 at 8–9.

Nor can Plaintiffs find any support for their motion from the Court’s prior conclusions about “the States’ evidentiary record” in support of their TRO request. Mot. at 3. Here, Plaintiffs allege markets that are different than the ones the State Plaintiffs alleged, rendering the factual and expert evidence offered by the States inapplicable to this action. The State Plaintiffs alleged two distribution markets related to theatrical film in which the customers are movie theaters, *see State of California, et al. v. Paramount Skydance Corp., et al.*, No. 4:26-cv-07116 (July 13, 2026), ECF No. 6-4 ¶¶ 36–61, whereas the Plaintiffs here allege a different consumer-facing theatrical film market, ECF No. 81 (“FAC”) ¶¶ 112–134. The

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State Plaintiffs also alleged a market for basic cable channels in which television distributors are the customers, *California*, ECF No. 6-4 ¶¶ 62–68, whereas the Plaintiffs here allege a consumer-facing television news market and a consumer-facing streaming market that were not alleged by the States. FAC ¶¶ 92–111. As a result of these different market allegations, the evidence the State Plaintiffs submitted in seeking a TRO is no help to Plaintiffs in satisfying their independent burden to clearly show a likelihood of success on the merits of their claims.¹ No case in history has ever enjoined a merger in a situation like this, where the plaintiffs have failed to come forward with any evidentiary or expert showing to demonstrate a likelihood of success.

Third, for the same reasons Plaintiffs fail to establish their standing to sue, they have failed to make a “clear showing” of any injury at all, let alone a showing that Plaintiffs are “likely to suffer irreparable harm” without injunctive relief. *Roe*, 137 F.4th at 922. To meet this burden, Plaintiffs must do more than “merely allege” an irreparable injury; they must “*demonstrate*” it. *DeMartini v. Microsoft Corp.*, 2023 WL 3569993, at *2 (N.D. Cal. May 19, 2023) (emphasis in original). Plaintiffs give emphasis to “the transaction clos[ing],” Mot. at 5, but this prospect does not relieve Plaintiffs of their burden to show how such a closing will cause them specific and identifiable irreparable harm. *See, e.g., Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1065 (N.D. Cal. 2023) (“Merely alleging the elimination of a rival does not plausibly support an inference of an appreciable danger of anticompetitive effects in a relevant market.”).

Fourth, though the Court need not reach the balancing of equities because of Plaintiffs’ complete failure to establish standing, a likelihood of success on the merits, or irreparable harm, *see, e.g., Malaney v. UAL Corp.*, 2010 WL 3790296, at *14 (N.D. Cal. Sept. 27, 2010), the gargantuan harm an injunction would inflict on Defendants from a delayed closing of the merger—now that all requirements to close have been satisfied and all legal barriers have been removed—would significantly outweigh any conceivable harm to these individual Plaintiffs if their requested relief is denied. As Defendants have previously shown, delaying the merger’s closing past September 30, 2026—a mere eight days from now—would require Paramount to pay nearly \$7 million per day to Warner Bros.’ shareholders through closing.

¹ Nor can Plaintiffs find any support in the WGA’s Motion for a Preliminary Injunction, which was directed at labor markets for screenwriters that appear nowhere in Plaintiffs’ FAC. *See WGA, West, Inc., et al. v. Paramount Skydance Corp., et al.*, No. 4:26-cv-07212 (July 22, 2026), ECF No. 58 at 20–23.

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See ECF No. 33 at 23–24. Delay would also impose continued carrying costs on Paramount and, if the delay lasts long enough, it could scuttle the merger altogether. *See id.* Because Plaintiffs have failed to present any evidence that they would suffer any concrete, personal harm from the merger, there is no equity on Plaintiffs’ side of the ledger for the Court to balance. *See Malaney*, 2010 WL 3790296, at *13.

Finally, if the Court were to issue a TRO (which, respectfully, it should not), the Court would have to order Plaintiffs to obtain a very significant bond in light of the substantial costs that Paramount would incur if the merger is delayed. Both the Clayton Act and the Federal Rules of Civil Procedure require Plaintiffs to provide adequate security to obtain preliminary relief. *See* 15 U.S.C. § 26 (requiring “execution of a proper bond”); Fed. R. Civ. P. 65(c) (requiring one seeking “a temporary restraining order” to “give[] security . . . to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained”). Such security should be in “an amount sufficient to cover defendant’s incidental and consequential costs arising from the injunction.” *Sony Computer Ent. Inc. v. Connectix Corp.*, 48 F. Supp. 2d 1212, 1224 (N.D. Cal. 1999), *rev’d on other grounds*, 203 F.3d 596 (9th Cir. 2000); *see also Steves & Sons, Inc. v. JELD-WEN, Inc.*, 2020 WL 2312030, at *6 (E.D. Va. May 8, 2020) (same in merger context). Here, the law would require that if a TRO is granted, Plaintiffs must, at the very least, post a bond that would “cover” any ticking fee payments Paramount would need to make while any TRO is pending because such payments would be “incidental and consequential costs arising from the injunction.” *Sony*, 48 F. Supp. 2d at 1224; *see also, e.g., Illumina, Inc. v. Qiagen, N.V.*, 207 F. Supp. 3d 1081, 1095 (N.D. Cal. 2016) (\$20 million bond required); *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1384 (Fed. Cir. 2006) (\$400 million bond).

CONCLUSION

For all the reasons set forth above, the Court should deny Plaintiffs’ Emergency Application for a Temporary Restraining Order. The motion here fails on its face because Plaintiffs have no Article III or antitrust standing, they have made no factual or expert showing of a likelihood of success, they cannot show irreparable harm personal to them, and the balance of equities decisively favors the denial of an injunction against this merger, which has cleared every regulatory approval required around the globe, and which promises to provide tremendous competitive benefits to theaters, talent, workers, distributors and consumers once it is permitted to proceed.

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1 Dated: September 22, 2026

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**PLAINTIFFS' EMERGENCY
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER PRESERVING
 STATUS QUO**

**PLAINTIFFS' EMERGENCY APPLICATION FOR TEMPORARY
 RESTRAINING ORDER PRESERVING STATUS QUO**

CASE NO. 4:26-cv-03790-AMO

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Plaintiffs respectfully request an immediate temporary restraining order prohibiting Defendants to “close, consummate, and otherwise complete the transaction” (the proposed acquisition of Warner Bros. Discovery) for the brief period necessary for the Court to consider Plaintiffs’ renewed motion for preliminary injunction and/or trial.

The need for emergency relief arose today. In the related actions, the settling parties have requested immediate entry of judgment and dissolution of the existing Stipulation and Order Not to Close. In their motion at page three, they stated “In light of the parties agreement to resolve the claims of plaintiff states and request to enter the consent decree, the parties request that upon entry of the Consent Decree, the Court dissolve the No-Close Order entered on July 24, 2026, ECF 170, such that Paramount and Warner Brothers may close, consummate, and otherwise complete the transaction as defined in that No-Close Order.” *Joint Motion to Enter Consent Decree and Dissolve Stipulation and Order Not to Close*, ECF 243 at pg 3, line 18-21. (emphasis added.)

In addition, Paramount has publicly represented that all conditions to closing have been satisfied and that Paramount and Warner Bros. Discovery “could and would close today” but for the existing restraint. If that restraint is dissolved, the transaction therefore may be consummated before Plaintiffs can present the materially expanded evidentiary record that has developed since their prior request for preliminary relief.

If in fact the Court signed the Consent Decree and specifically allowed the Defendants to “close, consummate and otherwise complete the transaction” as defined in that No-Close Order. It would be manifest irreparable injury, changing the Plaintiffs case from an injunction prohibiting the unlawful combination to a case of divestiture requiring lengthy litigation to unwind the unlawful combination. Consequently, the Plaintiffs submit that this Court either

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1 continue the “No-Close Order” or enter a new Temporary Restraining Order pending Plaintiffs’
2 motion for a Preliminary Injunction and/or Trial after limited discovery.

3 The present record is not the record previously considered by the Court, especially
4 considering the admissions made by the Chief Executive Officer of Paramount Skydance Corp.
5 delineating relevant markets and their percentages and conceding that the audiences who pay to
6 watch movies, who pay for subscriptions, and even simply watch TV determine the success or
7 failure of any production company.

8 First, this Court subsequently considered the States’ evidentiary record concerning the
9 same transaction and found that the States had raised “serious questions” concerning the merits
10 of their Section 7 claim and made a “strong showing that the Transaction will substantially
11 lessen competition.” *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-AMO, Dkt.
12 141 at 6-8 (N.D. Cal. July 20, 2026). The Court further found that consummation would be
13 difficult, if not impossible, to unwind because of anticipated operational consolidation, sharing
14 of competitively sensitive information, and personnel changes. *Id.* at 7.

15 Second, subsequent public disclosures materially strengthen Plaintiffs’ direct-to-
16 consumer case. Paramount has itself identified ParamountSkydance and HBO Max as competing
17 subscription-streaming services and has relied upon market data placing ParamountSkydance at
18 approximately 9% and HBO Max at approximately 12% of the SVOD market, approximately
19 21% combined. Paramount has further argued publicly that competition among subscription-
20 streaming services restrains consumer prices.

21 Third, the companies’ August 2026 public filings establish that these are substantial and
22 independently growing streaming competitors. Paramount reported 81.6 million
23 ParamountSkydance Corporation subscribers, approximately 12% year-over-year growth in
24

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1 average revenue per user, and approximately 16% growth in Paramount Skydance Corp.
 2 revenue. Warner Bros. Discovery had already exceeded 140 million streaming subscribers and
 3 reported continued subscriber growth, approximately 10% growth in subscriber-related revenue,
 4 and approximately 63% growth in streaming EBITDA. The proposed transaction therefore places
 5 businesses representing more than 221 million streaming subscriptions under common control,
 6 even before accounting for Warner Bros. Discovery's additional second-quarter subscriber
 7 growth.
 8

9 Fourth, Paramount's post-ruling disclosures acknowledged that Paramount and Warner
 10 Bros. Discovery together account for nearly 20% of American television viewing time.
 11 Paramount has also disclosed plans to consolidate streaming technology and operations and
 12 obtain more than \$6 billion in merger synergies, approximately 70% of which it expects to
 13 realize within two years. Those synergies, like most synergies in merger cases, are the savings
 14 attributed to the firing of personnel, closing competitive studios and plants and combining
 15 overlap facilities that were needed for competition.
 16
 17

18 Of course, the Plaintiffs' were the first to file any challenge to the proposed acquisition of
 19 Warner Brothers, but also challenged the acquisition of SkyDance buying Paramount Skydance
 20 Corp., and the real substantial threat of control of significant media including CBS, CNN, and
 21 their important influential programs such as 60 Minutes. In addition, the combination of HBO
 22 Max and Paramount Skydance Corp. can readily expect a price increase in subscriptions just as
 23 SkyDance did when it purchased Paramount.
 24

25 Some of these facts were not before the Court when Plaintiffs' earlier request for
 26 preliminary relief was considered. They bear directly on market definition, the existing
 27 competitive relationship between Paramount Skydance Corp. and HBO Max, market
 28

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concentration, consumer price competition, competitive effects, and the practical consequences of common control.

Immediate relief is necessary because, absent a short preservation order, there may be no opportunity to present this evidence before the transaction closes. The Court has already recognized in the related action that once these companies begin consolidating operations, “it will be too late to preserve competition if no preliminary injunction has issued.” ECF 141 at 7 (quoting *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 352-53 (3d Cir. 2016)). Of course, the Supreme Court has consistently encouraged private parties to bring suit notwithstanding what the government may or may not do in order to ensure that competition, rather than combination, is the system of trade in the United States.

Plaintiffs therefore respectfully request that the Court temporarily restrain Defendants from consummating the transaction or commencing integration for at least ten (10) days, or until the Court can hear Plaintiffs’ renewed motion for preliminary injunction, whichever occurs first. Plaintiffs further request an expedited schedule permitting submission of the renewed motion and supporting evidence within 48 hours.

DATED: September 21, 2026

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PLAINTIFFS’ EMERGENCY APPLICATION FOR TEMPORARY
RESTRAINING ORDER PRESERVING STATUS QUO

CASE NO. 4:26-cv-03790-AMO

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STATE OF CALIFORNIA, *et al.*,
Plaintiffs,

v.

PARAMOUNT SKYDANCE CORP., and
WARNER BROS. DISCOVERY, INC.,
Defendants.

Case No.: 4:26-cv-07116-AMO
Case No.: 4:26-cv-07212-AMO

**PLAINTIFFS' OPPOSITION TO
PARAMOUNT'S MOTION TO MODIFY
THE STIPULATION AND ORDER
NOT TO CLOSE TO REQUIRE BOND**

WRITERS GUILD OF AMERICA, WEST,
INC., *et al.*,

Plaintiffs,

v.

PARAMOUNT SKYDANCE CORP., and
WARNER BROS. DISCOVERY, INC.,
Defendants.

Date: September 24, 2026
Time: 10:00am
Judge: Honorable Araceli Martínez-Olguín

PLAINTIFFS' OPPOSITION TO
PARAMOUNT'S MOTION TO MODIFY
THE STIPULATION AND ORDER NOT TO
CLOSE TO REQUIRE BOND

Case No.: 4:26-cv-07116-AMO
Case No.: 4:26-cv-07212-AMO

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PLAINTIFFS' OPPOSITION TO
PARAMOUNT'S MOTION TO MODIFY
THE STIPULATION AND ORDER NOT TO
CLOSE TO REQUIRE BOND

v

Case No.: 4:26-cv-07116-AMO
Case No.: 4:26-cv-07212-AMO

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Defendant Paramount Skydance seeks to extract \$1.88 billion from the public and a non-profit labor union to underwrite the costs of two private contracts it entered willfully, with advice of counsel, and for its own benefit. The first is the merger agreement, in which Paramount chose to pay Warner Bros. Discovery shareholders a ticking fee as part of the consideration for Defendants' proposed merger. The second is the stipulation to voluntarily refrain from closing the merger, which Paramount itself proposed, negotiated, and then presented to this Court for signature.

Paramount now wishes to offload its responsibility for the first agreement by materially modifying the second. But whatever regret Paramount may feel for its commitments to Warner Bros., to Plaintiff States, to the WGA,¹ and to the Court, it cannot show that the Court acted "improvidently" in signing the joint stipulation. Nor can Paramount show why the public or a non-profit labor union should underwrite its acquisition of Warner Bros.

Rule 65(c)'s bond requirement protects a party that has been "wrongfully enjoined or restrained." This language contemplates a party compelled by judicial authority to act against its will. Paramount is no such party. Paramount proposed, agreed to, and submitted the stipulation to the Court. Paramount cannot now claim that same stipulation is "wrongful." Nor can Paramount now recast a stipulation as an "injunction." It is not and never was intended to be an injunction. In fact, Paramount itself insisted that the parties' submission to the Court was not an injunction.

Paramount's reliance on *Las Vegas Sun v. Adelson*, 147 F.4th 1103 (9th Cir. 2025), is misplaced. Nothing in that decision equates a voluntary agreement to maintain the status quo on the one hand with a preliminary injunction imposed by a court after adjudication of the merits on the other. Allowing Paramount to materially revise its agreement would unfairly penalize Plaintiff States and the WGA, who justifiably relied on terms negotiated less than a month ago.

Stipulation or "injunction" notwithstanding, Paramount cannot show any change in circumstances justifying a material modification in terms. From the outset, Paramount knew the economics of its merger agreement. It strategically negotiated a "ticking fee" to "enhance" its bid to acquire Warner Bros. and defeat a rival offer. It agreed to an outside date of June 4, 2027, the

¹ "The WGA" refers collectively to Plaintiffs Writers Guild of America, West, Inc. and Writers Guild of America East, Inc.

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purpose of which plainly was to accommodate an extended antitrust review. Paramount also knew when it negotiated and entered the stipulation that Plaintiff States were seeking a trial date in April 2027. Paramount, with that knowledge, nevertheless proposed an agreement not to close the acquisition until the Court rendered a decision on June 1, 2027.

Paramount's request for a bond should be denied. But at most, the Court should impose a nominal bond only. Rule 65(c) and Section 16 of the Clayton Act accord courts wide discretion to impose bonds or to waive them, particularly where, as here, the litigation enforces public interests. Granting Paramount's request would incentivize merging parties to negotiate extraordinary fees to inoculate themselves from state and private antitrust enforcement.

BACKGROUND

The \$1.88 billion cost that Paramount asks the public and a non-profit union to bear is the predictable result of its own business decisions. In February 2026, as consideration for its proposed merger with Warner Bros., Paramount agreed to pay Warner Bros. shareholders a ticking fee if the merger did not close by September 30, 2026. Decl. of Andrew Brandon-Gordon in Supp. of Mot. to Modify (ECF No. 204-2)² ¶¶ 2–4; *see* Paramount Skydance Corp., Current Report (Form 8-K), Ex. 99.1 (Feb. 10, 2026).

Paramount offered the ticking fee to win a bidding war against Netflix to acquire Warner Bros. *See* Paramount Skydance Corp., Proxy Statement (Schedule 14A), at 37 (Feb. 17, 2026) (Paramount telling Warner Bros. board that the ticking fee “enhance[d]” Paramount's bid, making it “undoubtedly superior to the Netflix transaction”). Paramount anticipated that antitrust review could last until at least June 2027. *See* Merger Agreement (ECF No. 204-3) § 6.14. In fact, Paramount specifically provided for an automatic extension of the agreement from March 4, 2027, until June 4, 2027, if antitrust review remained an outstanding closing condition. *Id.* § 8.1(b)(i).

On July 13, 2026, Plaintiff States filed suit to enjoin the merger as a violation of Section 7 of the Clayton Act. *See* Compl. (ECF No. 1) ¶¶ 14–15. Plaintiff States did so as *parens patriae* on behalf of and to protect their general economies and the health and welfare of their residents. *Id.*

² Unless otherwise noted, all docket entries refer to the docket in *California v. Paramount Skydance Corp.*, No. 4:26-cv-07116-AMO (N.D. Cal.).

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¶ 15. Plaintiff States also sought a temporary restraining order to enjoin Defendants from closing the merger. *See* Mot. for TRO (ECF No. 27) at 2. The WGA filed suit on behalf of its thousands of members the following day, on July 14, 2026. *See* Compl. (ECF No. 1, Dkt. 4:26-cv-07212-AMO).

On July 20, 2026, following briefing and oral argument, the Court entered the temporary restraining order. Order Granting Mot. for TRO (ECF No. 141) (“TRO Order”) at 9. The temporary restraining order enjoined the merger for fourteen days. *Id.* The Court declined to set a bond because “Plaintiffs have demonstrated that Plaintiff States bring suit to enforce important public interests.” *Id.* The Court later extended that injunction to twenty-eight days. *See* Order re Scheduling (ECF No. 166) at 3. The Court also set a July 23, 2026, deadline for Plaintiff States to file a motion for a preliminary injunction. TRO Order at 9. The WGA moved for a preliminary injunction on July 22, 2026. *See* Mot. for Prelim. Inj. (ECF No. 58, Dkt. 4:26-cv-07212-AMO).

On the night Plaintiff States’ preliminary injunction motion was due, Paramount’s outside counsel called outside counsel for Plaintiff States. Decl. of Richard Parker in Supp. of Pls.’ Opp’n to Mot. to Modify ¶ 1 (“Parker Decl.”). Paramount’s counsel proposed that Defendants would agree not to close their merger until the earlier of a decision on the merits or June 1, 2027. *Id.* ¶ 2. Paramount made this offer knowing that Plaintiff States were seeking a trial beginning in April 2027. *See, e.g.,* Joint Mot. for Status Conference re Pls.’ Mot. for TRO & Prelim. Inj. (ECF No. 64) at 5 (Plaintiff States seeking an April 2027 trial date).

The next day, the parties negotiated a joint stipulation. During these discussions, Paramount’s outside counsel adamantly denied that the stipulation was—in form or substance—an injunction. *See, e.g.,* Decl. of Julia May in Supp. of Pls.’ Opp’n to Mot. to Modify (“May Decl.”) Ex. 1, at 1 (Paramount counsel email of July 24, 2026, 11:57 a.m. ET: “[w]e do not believe a preliminary injunction should be entered as opposed to a stipulation not to close until the agreed upon dates”); May Decl. Ex. 2, at 1 (Paramount counsel email of July 24, 2026, 12:48 p.m. ET: “Defendants do not agree that the requirements for a PI have been met but as we are stipulating to not close until after a trial there is no longer any need to have a PI motion heard”); May Decl. Ex. 3, at 1 (Paramount counsel email of July 24, 2026, 2:18 p.m. ET: “we are saying Defendants agree

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not to take any steps, rather than ‘prohibited’ because this is a stipulation”).

The parties reached agreement on a stipulation not to close, which Paramount presented to the Court for signature. *See* Stipulation & [Proposed] Order Not to Close (ECF No. 169) at 2, 10. Paramount’s counsel had raised the concept of a bond in the context of a temporary restraining order when Plaintiff States first filed suit, but at no point during negotiation of the stipulation did Paramount ever suggest that it was entitled to a bond. Parker Decl. ¶ 3. The Court signed the stipulation, as Defendants requested. *See* Stipulation & Order Not to Close (ECF No. 170) at 10. Paramount then publicly stated that its joint stipulation, which it now suggests was improvidently entered, was a “significant win.” Joe Flint, *Paramount Agrees to Pause Its Warner Bros. Merger*, Wall St. J. (July 24, 2026), <https://perma.cc/LMX5-52QG>.

Twenty-four days later, Paramount performed an about-face. With no notice or effort to meet and confer, it filed the present motion for a bond. *See* Paramount’s Mot. to Modify Stipulation & Order Not to Close to Require Bond (ECF No. 204) (“Mot. to Modify”) at 1, 3. Contrary to its prior position, Paramount now claims the stipulation “qualifies as a preliminary injunction.” *Id.* at 5. Paramount asks this Court to order the use of public and non-profit funds to protect Paramount from the ticking fee it offered to win its bidding war for Warner Bros. *See id.* at 16, 18–19. And despite presenting the stipulation to the Court for signature, Paramount advises the Court that it may have “improvidently granted” Defendants’ stipulation not to close. *See id.* at 16, 19. The motion is meritless and should be denied.

ARGUMENT

I. Paramount Has Not Been “Wrongfully Enjoined or Restrained”

Nothing in law or fact entitles Paramount to a bond. Under Rule 65(c), a party is entitled to a bond only if it may have been “wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Similarly, the Clayton Act entitles a party to a bond only if an injunction may have been “improvidently granted.” 15 U.S.C. § 26. Paramount cannot meet either requirement.

“Defendants agreed to enter an agreement with Plaintiffs not to close the transaction.” Mot. to Modify at 4; *see* Stipulation & [Proposed] Order Not to Close at 2; *see also* Mot. to Modify at 6 (Court’s “order arose from the agreement of the parties”). Having stipulated not to close,

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Paramount cannot now claim the Court’s endorsement of that agreement means it may have been “wrongfully enjoined or restrained.” Paramount fails to cite any case in which a court has ever accepted such an argument.

Instead, courts reject such tactics. In *Audi of America, Inc. v. Bronsberg & Hughes Pontiac, Inc.*, the court drafted and entered an order “memorializing” an agreement between the parties. 481 F. Supp. 3d 370, 373 (M.D. Pa. 2020), *aff’d*, 2021 WL 5320848 (3d Cir. Nov. 16, 2021). There, as here, one of those parties later claimed that the same order it had previously presented to a court as an agreement was now a preliminary injunction. *Id.* at 373–74. The court flatly rejected that argument. *Id.* at 374–75.

Courts treat stipulations differently than contested orders. “[W]hatever the limitations Congress placed . . . on the power of federal courts to impose obligations . . . , these simply do not apply when the obligations are created by” the parties’ stipulated agreement. *Loc. No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 522–23 (1986). Fundamentally, this is because “it is the parties’ agreement that serves as the source of the court’s authority to enter” an agreed-upon order. *Id.* at 522.

Entry by a court—even drafting by a court—does not convert a joint stipulation into an injunction. *Cf. Audi of Am.*, 481 F. Supp. 3d at 373–75 (rejecting the argument that an order written by the court was a “preliminary injunction” in part because it “was the result of a bargained-for exchange”); *New Educ. Dev. Sys., Inc. v. Boitano*, 573 F. Supp. 594, 596 (N.D. Cal. 1983) (even where the parties entered an agreement “with the Court’s encouragement, it d[id] not constitute an order of the Court. Rather, it [wa]s a private stipulation of the parties, and must be interpreted and enforced by reference to the rules that govern such stipulations”); *see also Marietta Mem’l Hosp. v. W. Va. Health Care Auth.*, 2016 WL 7363052, at *10 & n.6 (S.D. W. Va. Dec. 19, 2016) (declining to require a bond where the preliminary injunction “extend[ed] the effect of” an existing stipulation “to which both parties agreed”).

In discussions with Plaintiffs, Paramount’s counsel categorically denied that the stipulation was an injunction, let alone an order requiring a bond. Paramount’s counsel “d[id] not believe a preliminary injunction should be entered as opposed to a stipulation not to close until the agreed

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1 upon dates.” May Decl. Ex. 1, at 1. Paramount “d[id] not agree that the requirements for a PI have
 2 been met” and simply was “stipulating not to close until after a trial” so “there is no longer any
 3 need to have a PI motion heard.” May Decl. Ex. 2, at 1. Paramount stated that “Defendants agree
 4 not to take any steps, rather than ‘prohibited’ because this is a stipulation.” May Decl. Ex. 3, at 1.
 5 In sum, Paramount vehemently denied its stipulation was an injunction and never demanded a bond.
 6 *See* Parker Decl. ¶ 3.

7 Paramount now claims the stipulation is an injunction for purposes of Rule 65 and Section
 8 16, so a bond is needed. But none of the cases Paramount cites support that view. *Turtle Island*
 9 *Restoration Network v. United States Department of Commerce*, 672 F.3d 1160 (9th Cir. 2012),
 10 *Gon v. First State Insurance Co.*, 871 F.2d 863 (9th Cir. 1989), *United States v. Cal-Almond, Inc.*,
 11 102 F.3d 999 (9th Cir. 1996), and *Las Vegas Sun v. Adelson*, 147 F.4th 1103 (9th Cir. 2025) all
 12 addressed whether an order qualified as an injunction amenable to appellate jurisdiction under 28
 13 U.S.C. § 1292(a)(1). *See Turtle Island*, 672 F.3d at 1164–65 (considering “the appealability of an
 14 interlocutory order under 28 U.S.C. § 1292(a)(1)”; *Gon*, 871 F.2d at 865–66 (same); *Cal-Almond*,
 15 102 F.3d at 1002–03 (same); *L.V. Sun*, 147 F.4th at 1112–13 (same). The cases do not address
 16 whether a stipulated order may “wrongfully” or “improvidently” enjoin a party. None so much as
 17 mentions a bond.

18 Paramount also cites cases involving judicial enforcement of stipulations through
 19 contempt—again, a factor relevant to interlocutory appealability under § 1292(a)(1). Mot. to
 20 Modify at 5–6 (discussing *TNT Mktg., Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986); *Gates v.*
 21 *Shinn*, 98 F.3d 463, 468 (9th Cir. 1996)). Neither case addresses whether a stipulation qualifies as
 22 an injunction for purposes of imposing a bond.

23 In any event, Paramount has waived its right to argue that the stipulation is a preliminary
 24 injunction entitling it to a bond. Waiver, “the intentional relinquishment of a known right,” *CBS,*
 25 *Inc. v. Merrick*, 716 F.2d 1292, 1295 (9th Cir. 1983), is found where a party engages in “‘clear,
 26 decisive and unequivocal’ conduct” that shows its purpose was to waive, *Move, Inc. v. Real Est.*
 27 *All., Ltd.*, 2016 WL 9080238, at *2 (C.D. Cal. Apr. 25, 2016) (quoting *United States v. Amwest*
 28 *Sur. Ins. Co.*, 54 F.3d 601, 602–03 (9th Cir. 1995)). Paramount repeatedly said that the stipulation

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1 was not an injunction. *See* May Decl. Exs. 1–3 (Paramount’s counsel maintaining that the
 2 stipulation was not a preliminary injunction).

3 Paramount also is estopped from arguing that the stipulation is a preliminary injunction
 4 entitling it to a bond. Judicial estoppel prevents a party from taking a position in litigation,
 5 convincing a court to accept that position, and then taking a “clearly inconsistent . . . position” to
 6 derive an “unfair advantage.” *United Nat’l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772,
 7 779 (9th Cir. 2009); *see Helfand v. Gerson*, 105 F.3d 530, 535 (9th Cir. 1997) (“The integrity of
 8 the judicial process is threatened when a litigant is permitted to gain an advantage by the
 9 manipulative assertion of inconsistent positions, factual or legal.”). Paramount submitted to this
 10 Court a “Stipulation and [Proposed] Order,” which the Court entered as a “Stipulation and
 11 Order.” Paramount now argues the “Stipulation” was in fact a preliminary injunction, for which
 12 the Court was obliged to impose a bond. And it does so to gain unfair advantage against Plaintiffs.
 13 The Court should reject Paramount’s new, clearly inconsistent position. *See United Nat’l Ins. Co.*,
 14 555 F.3d at 779; *Audi of Am.*, 481 F. Supp. 3d at 373–75.

15 Equitable estoppel—a similar doctrine, but “aimed at protecting litigants”—applies because
 16 of Paramount’s inconsistent negotiations in its dealings with Plaintiff States. *Shropshire v. Fred*
 17 *Rappoport Co.*, 294 F. Supp. 2d 1085, 1097 (N.D. Cal. 2003). “Equitable estoppel prevents a party
 18 from assuming inconsistent positions to the detriment of another party.” *United States v. Georgia-*
 19 *Pacific Co.*, 421 F.2d 92, 96 (9th Cir 1970). A party may not, as here, take a position before its
 20 counterparty, intending and causing that counterparty to act, and later change its position. *See*
 21 *Estate of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011); May Decl. Exs. 1–3; *see*
 22 *also Georgia-Pacific Co.*, 421 F.2d at 97 & n.6 (explaining that a “party’s silence . . . will work an
 23 estoppel if, under the circumstances, he has a duty to speak”).

24 **II. Paramount Fails to Demonstrate Any “Significant Change” Requiring Modification**

25 Even assuming arguendo that the stipulation were an injunction, “[a] party seeking
 26 modification or dissolution of an injunction bears the burden of establishing that a significant
 27 change in facts or law warrants revision or dissolution of the injunction.” *Sharp v. Weston*, 233
 28

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1 F.3d 1166, 1170 (9th Cir. 2000). Paramount fails to meet this burden. Paramount knew about the
 2 risks of the ticking fee and the possibility of a March 2027 trial when it agreed to the stipulation.

3 Where, as here, “it is clear that a party anticipated changing conditions that would make
 4 performance of the decree more onerous but nevertheless agreed to the decree, that party would
 5 have to satisfy a heavy burden to convince a court that it agreed to the decree in good faith . . . and
 6 should be relieved of” compliance. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 385 (1992).
 7 “A court should not ordinarily modify a decree . . . ‘where a party relies upon events that actually
 8 were anticipated at the time it entered into a decree.’” *United States v. Asarco Inc.*, 430 F.3d 972,
 9 979 (9th Cir. 2005) (quoting *Rufo*, 502 U.S. at 385). The anticipated change need not be certain or
 10 even probable—merely possible. *See id.* at 980 (concluding defendants anticipated a change in
 11 circumstances where they knew the government “might take . . . action”); *United States v. Baroid*
 12 *Corp.*, 130 F. Supp. 2d 101, 105 (D.D.C. 2001) (“[A] party seeking a modification to an antitrust
 13 consent decree cannot rely on a change in circumstances that were anticipated, *or should have been*
 14 *anticipated*, at the time the consent decree was signed.” (emphasis added)).

15 Paramount agreed to the ticking fee more than six months ago. *See* Paramount Skydance
 16 Corp., Current Report (Form 8-K), Ex. 99.1 (Feb. 10, 2026). Paramount knew it may have to pay
 17 the fee. It even warned its investors. *See* Paramount Skydance Corp., Quarterly Report (Form 10-
 18 Q), at 69 (May 4, 2026) (“If the WBD Merger is not completed by September 30, 2026, we have
 19 agreed in the WBD Merger Agreement to pay as merger consideration to WBD stockholders an
 20 additional amount in cash equal to \$0.00277778 multiplied by the number of calendar days elapsed
 21 after September 30, 2026.”). Paramount highlighted the ticking fee to Warner Bros. as an advantage
 22 of merging with Paramount rather than Netflix. *See* Paramount Skydance Corp., Proxy Statement
 23 (Schedule 14A), at 37 (Feb. 17, 2026) (“[O]ur Revised Offer compensates WBD shareholders for
 24 any unanticipated delay in closing through an incremental ticking fee.”).

25 Paramount even chose to “accelerate” the effective date of the fee, so that it would accrue
 26 starting after September 30, rather after December 31, 2026. *Compare* Paramount Skydance Corp.,
 27 Annual Report (Form 10-K), at I-1–2 (Feb. 25, 2026) (“On February 24, 2026, we submitted a
 28 revised proposal to the Warner Bros. Board that . . . accelerated the timing of the daily ticking

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fee . . . to commence after September 30, 2026 . . .”), *with* Paramount Skydance Corp., Current Report (Form 8-K), Ex. 99.1 (Feb. 10, 2026) (proposing an “enhanced . . . offer” including “a \$0.25 per share ‘ticking fee,’ payable to WBD shareholders for each quarter its transaction has not closed beyond December 31, 2026”).

Paramount also knew when it entered the stipulation that trial could be scheduled in March 2027. Nine days before the parties executed the stipulation, Plaintiff States told Paramount they were seeking a trial date *even later than* March 2027. *See* Joint Mot. for Status Conference re Pls.’ Mot. for TRO & Prelim. Inj. at 5 (“Plaintiff States attempted to negotiate a trial date with Defendants” and “proposed that the trial of this action commence in April 2027.”); *see also* Tr. of Proceedings, July 17, 2026 (ECF No. 138) 30:15-19 (repeating that Plaintiff States’ “proposed date” in April fit “right in the middle” of relevant precedent). Under the parties’ stipulation, it was clear that Defendants might not be able to consummate the merger before June 1, 2027. *See* Stipulation & [Proposed] Order Not to Close at 2. And Paramount’s merger agreement includes an outside date that anticipates the need to extend closing until June 4, 2027, to permit antitrust review. Merger Agreement § 8.1(b)(i).

Paramount warned its investors that litigation could delay closing. *See* Paramount Skydance Corp., Quarterly Report (Form 10-Q), at 70 (May 4, 2026) (“[F]ederal, state, and/or foreign governmental authorities could initiate one or more enforcement actions challenging the WBD Merger. Any such actions could delay or prevent the Closing”); *id.* at 65 (“[L]itigation relating to the WBD Merger could prevent or delay the closing of the WBD Merger”); *id.* at 69 (“If the conditions to completion of the WBD Merger are not satisfied or waived, we may be unable to complete the WBD Merger in the timeframe . . . currently anticipated”).

Las Vegas Sun does not help Paramount evade its burden to demonstrate a “significant change.” In that case, the defendants sought to dissolve the stipulated injunction after completing “several years of discovery” and “reasonably wait[ing]” to file their motion. 147 F.4th at 1111–12, 1113 n.2. The defendants had “explicitly” and specifically reserved their right to seek “judicial termination” in the very same stipulation they sought to dissolve. *Id.* at 1113 n.2. “*Under th[o]se circumstances,*” the Ninth Circuit held that no “further showing of a change” was “required.”

1 *Id.* (emphasis added). Finally, the court agreed that the basis for the dissolution motion was correct
2 because the underlying contract was invalid. *See id.* at 1121–22.

3 None of those circumstances exists here. Paramount waited twenty-four days to ask this
4 Court to rewrite the stipulation it had just signed. Paramount conducted no intervening discovery.
5 Paramount seeks not to dissolve the stipulation, but to expand it to include new, onerous terms that
6 were never agreed upon by Plaintiffs or ordered by the Court. And Paramount’s general reservation
7 of rights makes no specific mention of modifying the same agreement in which it appears. No
8 court in this case has made a final merits determination on the lawfulness of Paramount’s proposed
9 merger. Paramount must demonstrate a significant change, and it cannot.

10 Permitting Paramount to enter the stipulation and then rewrite it almost immediately would
11 allow it to unfairly renege on its commitments without the required showing. “Allowing parties
12 easily to set aside or modify stipulations would . . . wast[e] judicial resources and undermin[e]
13 future confidence in such agreements.” *Waldorf v. Shuta*, 142 F.3d 601, 616 (3d Cir.
14 1998). Paramount has failed to show any change in circumstances that would justify its attempt
15 now to rewrite the terms of the stipulation it submitted to the Court.

16 **III. Only a Nominal Bond Is Appropriate At Most**

17 “Rule 65(c) invests the district court with discretion as to the amount of security required,
18 *if any.*” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgenson v. Cassiday*,
19 320 F.3d 906, 919 (9th Cir. 2003)) (emphasis in original); *see, e.g., Nat’l Urb. League v. Ross*,
20 484 F. Supp. 3d 802, 808 (N.D. Cal. 2020) (exercising discretion to conclude “no security [wa]s
21 necessary”).

22 This litigation implicates “important public interests.” TRO Order at 9; *see id.* at 7
23 (“[A]ppropriate enforcement of the antitrust laws for the protection of competition is ‘vital to the
24 public interest.’” (quoting *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016))).
25 No bond is required in these circumstances. *See Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir.
26 2011); *Crowley v. Loc. No. 82, Furniture & Piano Moving*, 679 F.2d 978, 1000 (1st Cir. 1982),
27 *rev’d on other grounds*, 467 U.S. 526 (1984) (“[N]o bond is required in suits to enforce important
28 federal rights or ‘public interests,’” including those arising from “federal health and welfare

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statutes.”); *see, e.g., Washington v. U.S. Dep’t of Educ.*, 807 F. Supp. 3d 1275, 1293 (W.D. Wash. 2025) (waiving bond requirement where states sought to keep mental health professionals in schools); *Cal. Hosp. Ass’n v. Maxwell-Jolly*, 776 F. Supp. 2d 1129, 1160 (E.D. Cal. 2011) (waiving bond requirement where Medicaid providers “br[ought] suit to enforce important federal and public interests”).

Where courts do not waive bonds in litigation implicating public interests, only nominal bonds are imposed. *See, e.g., In re Nexstar-TEGNA Merger Litig.*, 2026 WL 1049295, at *28 (E.D. Cal. Apr. 17, 2026) (setting nominal \$10,000 bond in merger challenge brought by states under Section 7 of Clayton Act); *Am. Fed’n of State Cnty. & Mun. Emps. v. U.S. Off. of Mgmt. & Budget*, 813 F. Supp. 3d 944, 968 (N.D. Cal. 2025) (imposing “nominal bond of \$10 total (not per plaintiff)” because of “the public interest at stake in this dispute” over federal employee layoffs).

Paramount’s citations to bonds imposed in patent infringement cases between private pharmaceutical and technology companies are irrelevant. *See* Mot. to Modify at 19; *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1372, 1384-85 (Fed. Cir. 2006) (affirming imposition of injunction bond in private patent infringement case); *Pfizer, Inc. v. Teva Pharms., USA, Inc.*, 429 F.3d 1364, 1368, 1372 (Fed. Cir. 2005) (same); *Momenta Pharms., Inc. v. Amphastar Pharms., Inc.*, 834 F. Supp. 2d 29, 30, 31 (D. Mass. 2011) (imposing injunction bond in private patent infringement case); *Apple, Inc. v. Samsung Elecs. Co.*, 877 F. Supp. 2d 838, 854 (N.D. Cal. 2012), *rev’d*, 695 F.3d 1370 (Fed. Cir.) (same). These are not cases where, as here, the plaintiffs advanced “important public interests.” TRO Order at 9; *Boardman*, 822 F.3d at 1024.

Paramount also says the nominal bond in *Nexstar-TEGNA* is inapt because the defendants had already merged and did not “face extraordinary losses.” Mot. to Modify at 20. That is incorrect. The defendants sought a \$150 million bond. *See In re Nexstar-TEGNA*, 2026 WL 1049295, at *28. They claimed “significant operational, financial, and competitive harm.” Defs.’ Opp’n to Pls.’ Mots. for Prelim. Injunction at 18, *In re Nexstar-TEGNA Merger Litig.*, No. 2:26-cv-00976 (E.D. Cal. Apr. 1, 2026), Dkt. No. 76. The court imposed a nominal bond because, as here, the case promoted the “public interests.” *See In re Nexstar-TEGNA*, 2026 WL 1049295, at *28.

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Nothing in Section 16 of the Clayton Act compels a different result than Rule 65(c). Section 16 “is not a mandate to require a bond in every anti-trust case in which an injunction is issued. It also leaves wide discretion with the trial judge.” *Cont’l Oil Co. v. Frontier Refin. Co.*, 338 F.2d 780, 782–83 (10th Cir. 1964). Like Rule 65(c), Section 16 calls for a court to impose a “proper bond” to protect against “an injunction improvidently granted.” 15 U.S.C. § 26. A court may conclude that a “proper” bond is no bond, or a nominal one. *See, e.g., Washington v. Texaco Refin. & Mktg., Inc.*, 1991 WL 47081, at *1, *3 (W.D. Wash. Jan. 11, 1991) (imposing no bond where State sued as *parens patriae* under Section 16); *In re Nexstar-TEGNA*, 2026 WL 1049295, at *28 (collecting cases and explaining that “where plaintiffs ‘bring suit to enforce important federal and public interests,’ like Plaintiffs here, courts commonly waive the bond requirement” (quoting *Cal. Hosp. Ass’n*, 776 F. Supp. 2d at 1160)).

This interpretation comports with statutory history. The Ninth Circuit has explained that “Rule 65(c) borrows substantially the same language used in Section 382 of the Judicial Code of 1926, . . . which in turn employed the language of” what was then codified as “[S]ection 18 of the Clayton Act.” *Buddy Sys., Inc. v. Exer-Genie, Inc.*, 545 F.2d 1164, 1168 n.8 (9th Cir. 1976). That section, like the current Section 16, permitted injunctions upon issuance of “proper” bonds. *Id.* (quoting Section 18 of the Clayton Act, ch. 323, 38 Stat. 738 (1914)). Courts have interpreted “proper” the same way in Section 16 and Rule 65(c). *See Cont’l Oil Co.*, 338 F.2d at 782–83; *Texaco Refin.*, 1991 WL 47081, at *3; *In re Nexstar-TEGNA*, 2026 WL 1049295, at *28.

To require more than a nominal bond would incentivize merging parties to conveniently craft financial commitments designed to burden state or private antitrust enforcement. *See Arevalo v. Trump*, 785 F. Supp. 3d 644, 668 (C.D. Cal. 2025) (“[A] district court ‘has discretion to dispense with the security requirement’ altogether if ‘requiring security would effectively deny access to judicial review,’ and courts ‘routinely impose either no bond or a minimal bond’ in cases involving public interests.” (quoting *City of S. Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1148 (C.D. Cal. 1999))); *see California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990) (recognizing the independent right of state attorneys general and private plaintiffs “to serve as well the high purpose of enforcing the antitrust laws” by complementing federal enforcement). Such a holding would gut the same

statute Defendants invoke as the purported basis of their motion. *See* 15 U.S.C. § 26 (entitling “any person . . . to sue for and have injunctive relief” under the Clayton Act).

CONCLUSION

For the foregoing reasons, the Court should deny Paramount’s motion and decline to modify the stipulation to require a bond. In the alternative, if the Court grants Paramount’s motion, it should impose a nominal bond of \$10,000.

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1 Dated: August 31, 2026

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FILER'S ATTESTATION

I, Ashley Kaplan, am the ECF User whose ID and password are being used to file this Opposition to Paramount's Motion to Modify the Stipulation and Order Not to Close to Require Bond. In compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Ashley Kaplan
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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **OAKLAND DIVISION**

16 PAMELA FAUST, LEN MARAZZO, LISA
 17 McCARTHY, DEBORAH RUBINSOHN, and
 GARY TALEWSKY

18 Plaintiffs,

19 vs.

20 PARAMOUNT SKYDANCE CORPORATION
 21 (formerly Paramount Global), and SKYDANCE
 MEDIA, LLC,

22 Defendants.

Case No. 4:26-cv-03790-AMO

**DEFENDANTS PARAMOUNT SKYDANCE
 CORPORATION AND SKYDANCE MEDIA,
 LLC'S NOTICE OF MOTION AND MOTION
 TO DISMISS PLAINTIFFS' FIRST
 AMENDED COMPLAINT; MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT**

Hearing Date: October 15, 2026
 Time: 2:00 p.m.
 Judge: Hon. Araceli Martínez-Olgún
 Courtroom: 5

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE on October 15, 2026, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Araceli Martínez-Olgún, in Courtroom 5 of the United States District Court, Northern District of California, located at 1301 Clay Street, Oakland, CA 94612, Defendants Paramount Skydance Corporation and Skydance Media, LLC (“Defendants”) will and hereby do move to dismiss with prejudice Plaintiffs Pamela Faust, Len Marazzo, Lisa McCarthy, Deborah Rubinsohn, and Gary Talewsky’s (“Plaintiffs”) First Amended Complaint, ECF No. 81.

This Motion is made pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that Plaintiffs lack standing to assert their claims and have failed to state any claim. The Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, declaration, and exhibits; the pleadings and other papers on file in this action; any argument; and any other evidence that the Court may consider.

Dated: August 28, 2026

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs’ First Amended Complaint fails to establish Article III or antitrust standing or to state a Section 7 claim for the same reasons the Court dismissed their original Complaint. Plaintiffs remain unable to allege any concrete and particularized injury that either challenged merger has or will imminently inflict upon them. They continue to pursue vindication of non-economic interests the antitrust laws do not protect, and they press claims in alleged markets where they are neither customers nor competitors of Defendants. Plaintiffs also continue to allege fanciful markets that do not account for commercial realities or basic economic principles. And they continue to persist in asserting that a merger with any nontrivial rival violates Section 7 despite failing to allege concrete economic facts to support a substantial lessening of competition. That dubious legal contention has long been rejected by the courts, and it cannot be saved with allegations of competitive harm that are conclusory and implausible. For all these reasons, the Court should dismiss the First Amended Complaint—this time, with prejudice.

ISSUES TO BE DECIDED

Whether Plaintiffs have standing to assert, and have stated a claim for, violation of Section 7 of the Clayton Act with respect to the Skydance-Paramount merger and/or the Paramount-Warner Bros. Discovery (“WBD”) merger.

BACKGROUND

Plaintiffs originally filed this action on April 30, 2026. ECF No. 1 (“Compl.”). Defendants moved to dismiss the original Complaint on June 3, 2026, contending that Plaintiffs lacked Article III standing and antitrust standing and had failed to state a claim upon which relief can be granted. ECF No. 36. The Court heard oral argument on the motion on July 16, 2026, and on August 5, 2026, the Court granted the motion and dismissed Plaintiffs’ claims for lack of Article III and antitrust standing. ECF No. 79 (“MTD Order”). The Court found that “Plaintiffs allege only one concrete and particularized injury – a single, historical price increase on Paramount+,” and that such alleged injury did not confer Article III standing because (1) Plaintiffs Faust and McCarthy do not claim to pay for Paramount+, and (2) for the other Plaintiffs, the price increase is not fairly traceable to either challenged merger. *Id.* at 4–5. The Court also held that Plaintiffs’ other “boilerplate” allegations of harm from the mergers “fail[] to allege any facts to plausibly show how those claimed harms have materialized or would materialize.” *Id.* at 6. Such

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allegations, the Court held, “are too vague and speculative to establish standing,” and the Court “must dismiss” Plaintiffs’ complaint because they had not made “allegations that plausibly show how the merger has caused or would cause injury to any of the Plaintiffs ‘in a personal and individual way.’” *Id.*

The Court also held that Plaintiffs lacked antitrust standing in their alleged “National Television News” and “Theatrical Distribution” markets. *See id.* at 7–9. In the alleged “National Television News” market, the Court held that Plaintiffs failed to allege antitrust injury because the alleged losses of “editorial independence” and “viewpoint diversity” are not “cognizable economic harms protected by antitrust laws.” *Id.* at 8. Similarly, the Court found that concerns about loss of editorial independence and viewpoint diversity potentially diminishing news “quality, variety, and innovation” do not “give rise to antitrust injury.” *Id.* In the alleged “Theatrical Distribution Market,” the Court held that Plaintiffs failed to allege antitrust injury because, as moviegoers rather than movie theater owners, Plaintiffs are not participants in a market for theatrical distribution, but instead “participate in a market ‘downstream’” from the allegedly harmed market. *Id.*

The Court granted Plaintiffs leave to amend, affording them an opportunity “to proffer factual allegations that support standing to prosecute these antitrust claims.” *Id.* at 9. Plaintiffs filed their First Amended Complaint on August 14, 2026, ECF No. 81 (the “FAC”), but their amendments do not cure any of the fatal defects in their original Complaint.

The FAC modifies the definitions of the alleged markets. First, instead of a “premium video distribution” market, Plaintiffs now allege a narrower market that includes only “direct-to-consumer subscription streaming services.” *Id.* ¶ 63. Without explanation, the FAC no longer includes “cable television and related offerings” as competitors in that market. *Compare id.*, with Compl. ¶ 86. Second, instead of a “national television news programming” market, Plaintiffs now allege a narrower market for “paid national television news,” which includes only news “supplied to consumers through paid cable, satellite, and live-TV streaming packages.” FAC ¶ 92. Likewise, without explanation, this new market definition no longer includes national news distributed via broadcast television. *Compare id.*, with Compl. ¶ 99. Finally, instead of a “theatrical distribution” market in which theaters were the licensees of films, Plaintiffs now allege a “Consumer Market for First-Run Theatrical Motion Pictures,” which consists of

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“the sale of admission to differentiated first-run theatrical motion pictures to consumers in the United States.” FAC ¶ 112.

In addition, Plaintiffs have made two other changes in the FAC allegations to which they give emphasis. First, in an apparent effort to connect the Skydance-Paramount merger to the January 2026 Paramount+ price increase, the FAC alleges that Paramount’s “new management” adopted a “post-acquisition change in pricing and monetization policy” which “emphasiz[ed] average revenue per user and profitability.” *See id.* ¶¶ 23–24, 26, 136–137, 139. Second, Plaintiffs allege that “editorial independence,” “credibility,” and “audience trust” are “competitive attributes of national television news,” rather than “abstract political concepts.” *Id.* ¶ 98; *see also id.* ¶ 155 (alleging these “attributes have economic value to consumers”).

LEGAL STANDARDS

A court must dismiss a complaint for lack of subject matter jurisdiction under Article III of the Constitution if plaintiffs lack standing. *See* Fed. R. Civ. P. 12(b)(1). “A Rule 12(b)(1) jurisdictional attack may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a factual attack, such as here, “the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* “In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint,” and “need not presume the truthfulness of the plaintiff’s allegations.” *Id.* Here, Defendants make both a facial and a factual attack on Plaintiffs’ allegation that they have Article III standing to bring their antitrust claims.

A court must dismiss a complaint that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive dismissal, plaintiffs must plead “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). The plausibility requirement “asks for more than a sheer possibility that a defendant has acted unlawfully”; the well-pleaded facts must show that plaintiffs are entitled to relief. *Id.* Allegations that are merely “labels and conclusions” or “‘naked assertion[s]’ devoid of ‘further factual enhancement’” are not well-pleaded facts entitled to be credited. *Id.* Rather, the complaint must include sufficient “evidentiary facts,” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008), to permit a “reasonable inference that the defendant is liable for the misconduct alleged,” *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. PLAINTIFFS DO NOT HAVE STANDING TO CHALLENGE EITHER MERGER

The FAC, like the original Complaint, fails to establish Article III standing for either of Plaintiffs' claims in any of the three alleged antitrust markets. The Court can and should dismiss the FAC on that basis alone. *See* MTD Order at 3 (plaintiffs must demonstrate standing "for each claim," "for each form of relief they seek," and "in each alleged market" (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) and *In re Apple iPhone Antitrust Litig.*, 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013)). Plaintiffs also fail to establish antitrust standing in their alleged national television news and first-run theatrical motion pictures markets, which continues to provide an independent basis for dismissing Plaintiffs' claims based on either of these revised markets.

A. Plaintiffs' Amendments Do Not Establish Article III Standing

1. The Jan. 2026 Paramount+ Price Increase Still Does Not Establish Standing

As in the original Complaint, Plaintiffs continue to allege only one concrete and particularized harm, which is the Paramount+ price increase that occurred in January 2026, five months after the Skydance-Paramount merger. FAC ¶¶ 137–38. None of Plaintiffs' amendments cure the problems that made the Paramount+ price increase an insufficient basis to establish Article III standing in the original Complaint. Plaintiffs have withdrawn their claim that Plaintiffs Faust, McCarthy, and Talewsky were injured by the alleged price increase, leaving only Plaintiffs Marazzo and Rubinsohn. *See, e.g.*, FAC ¶¶ 19, 25, 76, 79, 135, 138–39, 171–73, 183 (alleging only Marazzo and Rubinsohn subscribe to Paramount+ or have paid a price increase). But the single alleged price increase remains incapable of providing Marazzo and Rubinsohn with Article III standing because there is still no plausible basis to connect this alleged price increase with any lessening of competition purportedly caused by either merger.

Specifically, the January 2026 Paramount+ price increase does not establish Plaintiffs' standing to bring a Section 7 claim against either merger because it is not fairly traceable to any lessening of competition purportedly caused by the Skydance-Paramount merger (or the Paramount-WBD merger).¹

¹ Plaintiffs appear to concede that the pending Paramount-WBD merger has nothing to do with the alleged Paramount+ price increase. As the FAC acknowledges, the price increase in question was announced in November 2025 and implemented in January 2026, *see* FAC ¶¶ 24–25, before Paramount and WBD signed their merger agreement in February 2026, *see* Compl. ¶¶ 69–70.

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To begin with, the Skydance-Paramount merger could not have plausibly eliminated any competition or increased concentration in the alleged direct-to-consumer subscription streaming services market because Skydance operated no streaming service pre-merger. It is implausible to trace a consumer price increase to a purported lessening of competition by a merger that resulted in no change in market shares or concentration. *See, e.g., Yoshimoto v. Alaska Airlines, Inc.*, 2026 WL 1121960, at *8–9 (D. Haw. Apr. 24, 2026) (dismissing merger challenge where one party was not a competitor pre-merger); *Freeland v. Nippon Steel Corp.*, 2025 WL 1724997, at *6 (N.D. Cal. June 20, 2025) (same); *see also DeHoog v. InBev, SA/NV*, 2016 WL 5853733, at *3 (D. Or. July 22, 2016) (recommending dismissal of Section 7 claim where post-acquisition world would not cause change in market share percentage), *adopted by*, 2016 WL 5858663 (D. Or. Oct. 3, 2016) (dismissing with prejudice).

Further, Plaintiffs cannot supply the missing Article III causal connection by claiming a “post-acquisition monetization strategy” allegedly adopted by management following the Paramount-Skydance merger, *see* FAC ¶¶ 26, 173, because such a purported management strategy would have nothing to do with any alleged lessening of competition caused by the merger. Instead, insofar as any such “strategy” existed, there are no facts to connect it to any purported reduction in competition, or even to the merger itself. The “causal connection” needed for Article III standing is “between the injury and *the conduct complained of*,” not separate alleged conduct of the defendant. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (emphasis added); *see also Wash. Environmental Council v. Bellon*, 732 F.3d 1131, 1142–43 (9th Cir. 2013) (plaintiffs established “a litany of adverse environmental effects” from climate change but failed to connect them to “the conduct complained of,” *i.e.*, agencies’ failure to set emission limits). Here, the conduct complained of is an alleged violation of Section 7 of the Clayton Act, which requires that there be an Article III causal connection between Plaintiffs’ alleged injury and the merger’s claimed substantial lessening of competition. No such connection is alleged in the FAC.

The shareholder letter Plaintiffs rely on attributed the price increase not to the merger, but rather to “ongoing investments in Paramount+.” Ex. A at 5 (cited in FAC ¶¶ 24, 78).² Similarly, the FAC does not allege any facts to plausibly suggest that the purportedly new monetization strategy was merger-specific, as opposed to a strategy that was being adopted by management of streaming services throughout

² “Ex.” refers to the exhibits to the concurrently filed Declaration of Jeffrey L. Kessler.

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the industry. The FAC alleges that the “new” strategy “emphasiz[ed] average revenue per user and profitability.” FAC ¶ 26. But such a strategy is indistinguishable from every streaming service’s profit-maximizing business strategy, including legacy Paramount before it was acquired by Skydance. Legacy Paramount management regularly and prominently discussed average revenue per user (or “ARPU”) as an important measure of streaming performance and profitability prior to the merger with Skydance. *See, e.g.,* Ex. B (Paramount Global Q4 2023 Earnings Call) (Feb. 28, 2024) (Paramount CFO: “[T]he ability to drive deeper engagement and ARPU growth . . . is the path to profitability in streaming.”); Ex. C (Paramount Global Q3 2023 Earnings Call) (Nov. 2, 2023) (Paramount CFO citing “Paramount+ global ARPU growth” as part of company’s “execution of our streaming strategy”). At bottom, Plaintiffs continue to ask the Court to infer Article III causation from a mere temporal sequence, which is legally insufficient. *Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000) (post hoc reasoning is a “logical fallacy”); MTD Order at 5.

Other facts Plaintiffs omitted from the FAC only underscore the conclusion that the price increase was a manifestation of ongoing commercial dynamics in the streaming industry and “fully consistent with a free, competitive market,” rather than any alleged lessening of competition caused by the merger. *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1202 (9th Cir. 2012). As before, any alleged connection between the merger and the price increase is “severely undermined,” MTD Order at 5, by the prevalence of incremental price increases across the streaming industry. For example, Netflix implemented four incremental price increases in its streaming service between January 2022 and March 2026, Disney+ implemented five incremental price increases between March 2021 and October 2025, and Peacock implemented four incremental price increases between July 2023 and August 2026.³ The FAC acknowledges the reality of these “[o]ther streaming companies’ price increases,” FAC ¶ 140, but alleges no facts that plausibly distinguish the January 2026 Paramount+ price increase or suggest it was caused by the Skydance merger as opposed to industry dynamics. Plaintiffs cannot avoid these fatal facts on a Rule 12(b)(1) motion for lack of Article III standing by simply removing their prior allegation that “prices for all ‘leading streaming services . . . have increased materially over time,’ independent of the merger.”

³ *Streaming Price Tracker*, <https://streamingpricetracker.com> (last visited Aug. 21, 2026).

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MTD Order at 5 (quoting Compl. ¶ 98). As this Court held, these facts cause Plaintiffs to “fail *Lujan*’s traceability requirement.” *Id.*

Finally, Plaintiffs fare no better with their FAC allegations about a possible vertical impact of the Skydance-Paramount merger causing the alleged price increase. Plaintiffs allege a theoretical possibility of Paramount withholding Skydance content from streaming rivals that would somehow lead to a price increase, *see* FAC ¶¶ 70–75, 80–81, but they allege no facts to suggest such a foreclosure occurred and resulted in the alleged price increase. This renders Plaintiffs’ theoretical claim implausible. *See, e.g., FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1089–100 (N.D. Cal. 2023) (discussing standard for evaluating vertical mergers). Absent plausible allegations of a substantial foreclosure and a linkage of that foreclosure to the alleged price increase, Plaintiffs’ vertical claims cannot supply any basis for finding that the single alleged price increase is plausibly traceable to any alleged lessening of competition purportedly caused by the merger. *Id.*; *see also Brown Shoe Co. v. United States*, 370 U.S. 294, 328–29 (1962) (“size of the share of the market foreclosed” is “an important consideration,” but “foreclosure of a de minimis share of the market will not tend ‘substantially to lessen competition’”). Indeed, independent of the January 2026 price increase, the FAC does not allege any facts that (1) identify any specific Skydance content at risk of foreclosure, (2) explain why such content is significant enough to downstream competitors (streaming services) that its withholding would “probably substantially lessen competition” or harm Plaintiffs in any way, *Microsoft*, 681 F. Supp. 3d at 1090, or (3) explain why Paramount would have the incentive to forgo revenue it would earn from licensing Skydance content to competing streaming services, *see id.* at 1090–97 (no incentive to foreclose because, *inter alia*, licensing content to downstream rivals was “critical to [defendant’s] financial success”). Plaintiffs’ vertical theory is thus entirely “conjectural or hypothetical” and not a basis for finding Article III standing. *Lujan*, 504 U.S. at 560.

2. The FAC’s Other Allegations Do Not Establish Article III Standing

As with the original Complaint, the FAC’s “other allegations of harm from the mergers” continue to be “too vague and speculative to establish standing.” MTD Order at 6. Plaintiffs continue to make boilerplate and conclusory allegations of competitive harm, such as higher prices, reduced output, and lower quality, *see, e.g.,* FAC ¶¶ 3, 146, 155, 166, and they also continue to “fail[] to allege any facts to

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1 plausibly show how those claimed harms have materialized or would materialize,” *see* MTD Order at 6.⁴
 2 This combination cannot establish Article III standing for either of their claims. *See Demartini*, 662 F.
 3 Supp. 3d at 1062 (“Plaintiffs’ general allegation that the merger may cause ‘higher prices, less innovation,
 4 less creativity, less consumer choice, decreased output, and other potential anticompetitive effects’ is
 5 insufficient.” (citation omitted)). For example, the FAC makes the conclusory assertion that acquiring
 6 Warner Bros. would “give Paramount the ability and incentive to increase the aggregate price of”
 7 Paramount+ and HBO Max, FAC ¶ 171, but it alleges no facts to suggest why any such price increase is
 8 likely to occur or that any of the Plaintiffs would pay it. Such “naked assertions devoid of further factual
 9 enhancement” are insufficient to establish Article III standing. *Blantz v. Ca. Dep’t Corr. & Rehab.*, 727
 10 F.3d 917, 927 (9th Cir. 2013); MTD Order at 6. There are simply no allegations that plausibly show how
 11 the mergers have caused or would cause injury to any of the Plaintiffs “in a personal and individual way.”
 12 *Kumar v. Koester*, 131 F.4th 746, 751 (9th Cir. 2025).

13 Further, the FAC cannot establish Article III standing by speculating that debt obligations of the
 14 merged firm might generate “pressure to increase subscription revenue, reduce discounts and trials,
 15 increase advertising, consolidate services, eliminate overlapping expenditures, defer investment, or reduce
 16 programming.” FAC ¶ 52. Once again, such a claim is not traceable to any alleged lessening of
 17 competition purportedly caused by the merger because a company’s debt load is not a competitive effect.
 18 And, in any event, these allegations of negative effects caused by the debt load are guesswork and not tied
 19 to any facts plausibly alleged in the FAC. Indeed, the FAC acknowledges that its debt-related speculation
 20 is premised on company projections about “revenue or projected synergies fall[ing] short,” *id.*, even
 21

22 ⁴ Courts in this Circuit have dismissed Section 7 merger challenges brought by Plaintiffs’ counsel for the
 23 same deficiencies as the FAC’s. *See DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 765 (9th
 24 Cir. 2018) (plaintiffs’ assertion that post-merger entity “will adopt the distribution practices of” the
 25 acquiring firm was “a classic speculative conclusion” that “stops short of the line between possibility and
 26 plausibility”); *Fry v. Cap. One Fin. Corp.*, 2026 WL 751422, at *2–3 (N.D. Cal. Mar. 17, 2026) (no Article
 27 III standing because plaintiffs’ “theory of harm is attenuated and conclusory” and lacks “individualized
 28 allegations”); *Whalen v. Albertsons Co.*, 2023 WL 8812882, at *1 (N.D. Cal. Dec. 20, 2023) (no Article
 III standing because plaintiffs “barely say anything” to demonstrate particularized and imminent injuries);
Freeland v. Nippon Steel Corp., 827 F. Supp. 3d 1241, 1249 (N.D. Cal. 2026) (no antitrust standing
 because “no Plaintiff participates in this relevant market, directly or indirectly, either as a consumer or a
 competitor” (cleaned up)); *Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1062–63 (N.D. Cal. 2023)
 (dismissing complaint where plaintiffs made only “general allegation[s] that the merger may cause ‘higher
 prices, less innovation, . . . and other potential anticompetitive effects’”); *Yoshimoto*, 2026 WL 1121960,
 at *8–9 (dismissing merger challenge where one party was not a competitor pre-merger).

though the FAC alleges no facts that make such a shortfall likely. Instead, the FAC’s allegations about the adverse impact of the merged entity’s debt load depend upon “a highly attenuated chain of possibilities,” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013), which cannot provide a basis for finding Article III standing. *See Fry*, 2026 WL 751422, at *3 (dismissing similar complaint on standing grounds because its “theory of harm is attenuated and conclusory”). Forced to concede that the precise mechanism of their injury “cannot be known,” FAC ¶ 149, Plaintiffs are not able to show Article III standing in any of the markets that they have alleged. *See Khamooshi v. Politico LLC*, 786 F. Supp. 3d 1174, 1183 (N.D. Cal. 2025) (“[A]n unmaterialized risk of future harm does not qualify as a concrete injury.”).

B. Plaintiffs’ Amendments Do Not Establish Antitrust Standing

Plaintiffs’ amendments also do not cure the defects in antitrust standing that the Court previously held were fatal to Plaintiffs’ claims in their television news and theatrical film markets. And, to the extent that Plaintiffs are now alleging injuries caused by a change in management philosophy or debt load impacting the streaming market, they do not have antitrust standing to assert a claim in that market either.

1. Plaintiffs Do Not Have Antitrust Standing in Their Alleged Consumer Market for First-Run Theatrical Motion Pictures

In their newly alleged Consumer Market for First-Run Theatrical Motion Pictures, Plaintiffs’ amendments do not fix their lack of antitrust injury. Plaintiffs changed their market definition to be consumer-facing (“sale of admission to differentiated first-run theatrical motion pictures to consumers,” FAC ¶ 112), to try to get around the Court’s holding that one must be a participant in the market one alleges is harmed to have antitrust injury. *See MTD Order* at 8. However, this amendment still does not establish antitrust injury because Defendants do not participate in a consumer-facing theatrical market, and antitrust injury requires that “the injured party be a participant in the same market as the alleged malefactors.” *Malheur Forest Fairness Coal. v. Iron Triangle, LLC*, 164 F.4th 710, 733 (9th Cir. 2026). As the FAC acknowledges, Plaintiffs are allegedly customers of exhibitors, not movie distributors, and movie distributors compete only in an upstream market to license films to exhibitors. *See FAC* ¶¶ 112, 128, 177. Therefore, in an alleged downstream, consumer-facing theatrical film market, Plaintiffs are still neither “consumer[s] of [Paramount’s] goods or services” nor “competitor[s] of [Paramount].” *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013).

Plaintiffs’ new reliance on *Blue Shield of Virginia v. McCready*, 457 U.S. 465 (1982), *see* FAC ¶¶ 161, 179, does not establish antitrust injury. That case held, in relevant part, that an alleged antitrust violation must be the “proximate cause” of a plaintiff’s alleged injury for that plaintiff to have antitrust standing. *See id.* at 477. That holding is consistent with *Malheur Forest* and other post-*McCready* Ninth Circuit precedent that requires private antitrust plaintiffs to participate “in the same market” as the defendants. *See Malheur Forest*, 164 F.4th at 733; *see, e.g., Or. Laborers-Employers Health & Welfare Trust Fund v. Philip Morris Inc.*, 185 F.3d 957, 967 (9th Cir. 1999) (*McCready* “did not hold that there is no ‘consumer’ or ‘market participant’ requirement” for antitrust injury (emphasis in original)).

Moreover, Plaintiffs do not allege facts that plausibly show their alleged injuries are “inextricably intertwined with the injury” the mergers would allegedly cause in an upstream market in the same way the plaintiff’s injuries in *McCready* were. *See* 457 U.S. at 479, 483–84. That case involved a “purposefully anticompetitive scheme” by a health insurer targeting psychologists, and the plaintiff, “a consumer of psychotherapy services,” paid more for those services because the defendant reimbursed physicians and psychiatrists, but not psychologists, for those services. *See id.* at 480, 483. Thus, the harm to the plaintiff was an “integral . . . aspect” and “necessary step in effecting the ends of the alleged illegal conspiracy.” *Id.* at 479. Here, by contrast, there are no allegations to plausibly suggest that any harm to Plaintiffs in an alleged downstream market would be “necessary” or “integral” to “effecting” the challenged mergers.

2. Plaintiffs Do Not Have Antitrust Standing in Their Alleged Paid National Television News Market

In the revised Paid National Television News Market, Plaintiffs continue to lack antitrust standing because (1) they are neither customers nor competitors of Defendants in that alleged market, and (2) the harms they claim in that alleged market are non-economic and therefore not “of the type the antitrust laws were intended to prevent.” *Malheur Forest*, 164 F.4th at 733.

First, Plaintiffs narrowed their alleged news market to a consumer-facing one, *i.e.*, a market for news programming “supplied to consumers through paid cable, satellite, and live-TV streaming packages,” FAC ¶ 92, and they acknowledge that they “purchase and consume the affected national news product through paid distribution channels,” *id.* ¶ 174. In other words, Plaintiffs are customers of television programming distributors that sell linear “cable, satellite, and live-TV streaming packages,” *id.*

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¶ 92, but Plaintiffs do not allege Paramount or Warner Bros. sell those packages. Thus, as in Plaintiffs’ alleged theatrical film market, Plaintiffs are neither “consumer[s] of [Paramount’s] goods or services” in the alleged Paid National Television News Market nor “competitor[s] of [Paramount] in” that market. *Somers*, 729 F.3d at 963; *see also supra* p. 9.

Second, although Plaintiffs have tried to reformulate their alleged injury in this market to sound more economic, their amended allegations just repackage the same “viewpoint diversity” arguments the Court previously rejected. Specifically, the FAC alleges that the “economic value” of news programming depends on characteristics like “journalistic independence,” “credibility,” and “consumer trust.” FAC ¶ 111; *see also id.* ¶¶ 154–55. But alleged decreases in abstract, non-economic concepts like “independence,” “credibility,” and “trust” are not injuries the antitrust laws are designed to protect. *Cont’l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 53 n.21 (1977) (“Competitive economies have social and political as well as economic advantages,” but “an antitrust policy divorced from market considerations would lack any objective benchmark”); *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1195 (N.D. Cal. 2000) (antitrust laws “exclusively confine their scope to matters of economic consequence”); *Berlyn, Inc. v. Gazette Newspapers, Inc.*, 157 F. Supp. 2d 609, 619 (D. Md. 2001) (“stilled independent editorial voices and reduced . . . presentation and discussion of diverse viewpoints” are not antitrust injuries). Crediting the claim in the FAC that Plaintiffs “value” these non-economic factors when consuming news, FAC ¶ 111, their “ideological discomfort” with Paramount’s perceived editorial viewpoint “does not implicate any legally protected interest.” *Brown v. Nat’l Football League, Inc.*, 825 F. Supp. 3d 265, 277 (S.D.N.Y. 2026); *see also Murthy v. Missouri*, 603 U.S. 43, 75 (2024) (rejecting, as “startlingly broad,” standing theory based on right to “hear[] unfettered speech on social media”). The FAC also alleges no facts plausibly to suggest that Paramount’s and Warner Bros.’ actual customers for television news—television distributors—place “economic value” on concepts like “independence” or “trust” when making their licensing decisions. But in any event, Plaintiffs would not have antitrust standing to assert any claim for purported injuries suffered by such distributors.

In addition, the FAC does not allege any facts plausibly suggesting that the combined firm is likely to reduce “original reporting,” “investigative output,” or “live coverage.” *See* FAC ¶¶ 111, 154–55. Rather, Plaintiffs’ amended allegations center on editorial decisions that Paramount has allegedly made—

1 prior to any merger with Warner Bros.—regarding *which* stories to cover and *who* within the company
 2 makes those editorial decisions. *See id.* ¶¶ 98–109. But claims evidencing Plaintiffs’ alleged concern about
 3 the political implications of Paramount controlling the editorial viewpoint of CNN, *see id.*, do not
 4 constitute a cognizable antitrust injury. Indeed, a firm’s “exercise of editorial control over its content” is
 5 protected by the First Amendment. *See McDermott v. Ampersand Pub., LLC*, 593 F.3d 950, 959 (9th Cir.
 6 2010); *see also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (“governmental regulation
 7 of [editorial decisions]” cannot occur “consistent with First Amendment guarantees of a free press”).

8 Lastly, for the reasons discussed *supra* pp. 5–9, the new claims by Plaintiffs about suffering an
 9 injury from an alleged change in management philosophy or debt load do not establish antitrust injury
 10 because neither type of conduct would be the result of any alleged lessening of competition. Changes in
 11 management philosophy or debt load can be and often are put in place without any reduction in
 12 competition, and thus any price increase resulting from these changes does not plausibly “flow[] from” a
 13 lessening of competition. *See Malheur Forest*, 164 F.4th at 733.

14 **II. PLAINTIFFS FAIL TO ALLEGE A RELEVANT ANTITRUST MARKET**

15 Plaintiffs’ claims must also be dismissed for the independent reason that the FAC fails to plausibly
 16 allege a relevant market, which is a “necessary predicate” to a Section 7 claim. *See St. Alphonsus Med.*
 17 *Ctr.-Nampa Inc. v. St. Luke’s Health Sys., Ltd.*, 778 F.3d 775, 783–85 (9th Cir. 2015). “A threshold step
 18 in any antitrust case is to accurately define the relevant market, which refers to the area of effective
 19 competition.” *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020). “Failing to define a relevant
 20 market alone is fatal to an antitrust claim.” *Coronavirus Reporter v. Apple, Inc.*, 85 F.4th 948, 957 (9th
 21 Cir. 2023). “[A] complaint may be dismissed . . . if the complaint’s ‘relevant market’ definition is facially
 22 unsustainable.” *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120 (9th Cir. 2018).

23 Plaintiffs’ three revised alleged markets are variations of the three markets they previously alleged.
 24 *See Compl.* ¶¶ 85–118. Each of them is “facially unsustainable,” *Hicks*, 897 F.3d at 1120, for many of the
 25 same reasons discussed in Defendants’ original motion to dismiss. *See ECF No. 36* at 15–18.

26 As to all three, Plaintiffs fail to allege a cognizable market because they still fail to address cross-
 27 elasticity of demand, *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1108–09 (N.D. Cal. 2022), which is “[t]he
 28 principle most fundamental to product market definition,” *Kaplan v. Burroughs Corp.*, 611 F.2d 286, 291

(9th Cir. 1979). Instead, while Plaintiffs make conclusory assertions about the concepts of “reasonabl[e] interchangeab[ility],” *see* FAC ¶¶ 65, 94–95, and “reasonable substitut[ion],” *see id.* ¶ 113, they do not allege any facts to plausibly apply these principles to any of their alleged markets. The principle of cross-elasticity of demand focuses on whether some products could “deprive” other products “of significant levels of business,” *Hicks*, 897 F.3d at 1120, if those other products increased price materially. *See also St. Alphonsus*, 778 F.3d at 784 (explaining the “hypothetical monopolist” test). The FAC alleges no facts to plausibly suggest that any one of the three alleged markets satisfies the cross-elasticity of demand test. *Coronavirus Reporter*, 85 F.4th at 956. For this reason alone, all three alleged markets are facially deficient. There are also no FAC allegations that could plausibly satisfy any of the “practical indicia” for defining antitrust markets, such as “industry or public recognition” of the boundaries Plaintiffs allege. *See, e.g., Hicks*, 897 F.3d at 1121 (citing *Brown Shoe*, 370 U.S. at 325).⁵

A. Direct-to-Consumer (“DTC”) Subscription Streaming Market

Plaintiffs’ alleged subscription streaming services market is also legally deficient because the FAC fails to allege facts that would explain why other forms of video entertainment (*e.g.*, user-generated content or television programs available without a subscription) are not reasonably interchangeable with programming available on subscription streaming services. Their only discussion of this topic in the FAC is one conclusory sentence alleging that these alternative forms of video entertainment “are not reasonably interchangeable substitutes for a paid, on-demand library of professionally produced premium film and television programming.” FAC ¶ 65. That is legally insufficient. *See, e.g., Iqbal*, 556 U.S. at 678.

Additionally, the FAC fails to define the contours of “professionally produced” or “premium” video content, *see* FAC ¶¶ 63, 65, which are vague adjectives that do not supply any reasoned basis to differentiate films and television programs that fall under those categories from those that do not. *See, e.g., Tundra, Inc. v. Faire Wholesale, Inc.*, 2024 WL 589097, at *1 (N.D. Cal. Feb. 13, 2024) (Martínez-Olguín, J.) (holding that a “fatal defect” in an antitrust complaint was plaintiff’s “fail[ure] to define terms

⁵ In the litigation filed by the Writers Guild of America, all the markets are labor markets for writers, none of which are alleged in the FAC here. *See Writers Guild of Am. W., Inc., et al. v. Paramount Skydance Corp. et al.*, No. 3:26-cv-07212, ECF No. 1 ¶¶ 107–32 (N.D. Cal.). In the litigation by the State of California and eleven other states, the alleged markets are for theatrical distribution (not customer-facing) and basic cable channel licensing, none of which are alleged in the FAC. *See California et al. v. Paramount Skydance Corp. et al.*, No. 4:26-cv-07116, ECF No. 1 ¶¶ 36–66 (N.D. Cal.).

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like ‘local,’ ‘new,’ or ‘emerging,’ adjectives that facially pare down the relevant market to attribute a greater share to [defendant]”); *hiQ Labs, Inc. v. LinkedIn Corp.*, 485 F. Supp. 3d 1137, 1148 (N.D. Cal. 2020) (granting motion to dismiss where “parameters” of alleged market were “vague”).

The FAC also fails to explain why “premium film and television programming” distributed through linear television, theatrical exhibition, or other methods is not reasonably interchangeable for consumers with the same content distributed through subscription streaming services. Indeed, the original Complaint alleged that a “Premium Video Distribution Market” included “cable television, and related offerings” as competitive products within the same market as streaming services, Compl. ¶ 86, yet the FAC excludes such programs from the relevant market without alleging any facts that could justify this exclusion. FAC ¶¶ 63–65. Underscoring this deficiency, the FAC acknowledges that streaming services compete for “viewing attention” and “viewing time” with competing platforms. *Id.* ¶¶ 33, 39, 67, 75; *see also id.* ¶ 31 (discussing “share of consumer viewing”); *id.* ¶ 44 (measuring market presence by “share of viewing”). The FAC offers no explanation as to why viewers in the alleged subscription streaming market would not reallocate their “viewing attention” or “viewing time” to other distribution channels if prices in the alleged market were raised. Because the FAC allegations fail to address this commercial reality or explain why only one subset of these viewing options is distinct from the others, their relevant market allegations fail. *See Reilly*, 578 F. Supp. 3d at 1107 (“A plaintiff cannot ignore economic reality and arbitrarily choose the product market relevant to its claims.” (cleaned up)).

B. Paid National Television News Market

Plaintiffs’ “Paid National Television News Market” is also facially unsustainable. Even assuming that end-consumers like Plaintiffs were customers of Defendants in an alleged “Paid National Television News” market (they are not, *see supra* pp. 10–11), the FAC, like the original Complaint, does not allege facts that would explain why, from the perspective of an end-consumer, other forms of news media are not reasonable substitutes for “Paid National Television News.”⁶ *See Coronavirus Reporter*, 85 F.4th at 955. The FAC’s only allegation in this regard is that other forms of newsgathering or journalism, such as

⁶ Because Plaintiffs allege a consumer-facing television news market, they do not even attempt to allege facts that would explain why television distributors—Defendants’ actual customers—would have distinct demand for paid national news channels as opposed to other news channels.

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“newspapers” and “digital written journalism,” “do not provide the same combination of” characteristics, such as “nationwide audiovisual newsgathering,” “interviews,” “correspondents and bureaus,” and “immediate live coverage of national and international events.” FAC ¶ 94. Not only are these allegations hopelessly vague, but they are also implausible. Plaintiffs continue to fail to explain why major national newspapers (*e.g.*, *New York Times*, *Washington Post*, *Wall Street Journal*, *USA Today*), wire services (*e.g.*, AP, Reuters), or other prominent online news publications (*e.g.*, Axios, The Atlantic) lack all of the identified attributes and otherwise do not compete against “Paid National Television News.”

Moreover, while Plaintiffs have now excluded from their alleged relevant market any television news sources that are not “paid” (*e.g.*, broadcast news), they do not offer any facts to explain why such news programs are not reasonable substitutes for “Paid National Television News.” A market cannot be gerrymandered in this manner without supporting factual allegations to make the alleged market plausible. *See Tanaka v. Univ. of S. California*, 252 F.3d 1059, 1063 (9th Cir. 2001) (“[Plaintiff]’s conclusory assertion that the ‘UCLA women’s soccer program’ is ‘unique’ and hence ‘not interchangeable with any other program in Los Angeles’ is insufficient.”); *Todd v. Exxon Corp.*, 275 F.3d 191, 200 (2d Cir. 2001) (dismissal on the pleadings is appropriate when a plaintiff fails “even to attempt a plausible explanation as to why a market should be limited in a particular way”).

Finally, the FAC does not allege any facts to plausibly explain how “immediate live coverage,” FAC ¶ 94, is an attribute unique to television news. In today’s digital era, social media feeds and news alerts accessible at all times by smartphone (even when television news is not available) provide consumers with instantaneous access to breaking news coverage, including related video content, by major newspapers, wire services, and online news publications.

C. Consumer Market for First-Run Theatrical Motion Pictures

Plaintiffs’ “Consumer Market for First-Run Theatrical Motion Pictures” is likewise deficient on its face. The FAC fails to allege any facts to plausibly explain why—from a consumer’s perspective—other forms of film distribution, *e.g.*, streaming services, are not reasonable substitutes for the theatrical exhibition of films. Such alternatives make it implausible that theater owners could profitably increase prices within a consumer market limited to theatrical films. *See, e.g., Scaturo v. Fanatics, Inc.*, 2026 WL 810372, at *9 (S.D.N.Y. Mar. 23, 2026) (allegation that defendants “engaged in anticompetitive conduct

1 towards third-party distributors, causing prices to increase” did not support claims “expressly limited to
 2 purchasing cards ‘directly’ from Defendants”). The FAC simply ignores these economic realities of the
 3 film viewing industry, in which the boundaries between theatrical exhibition and other forms of
 4 distribution have been erased, and movie theaters increasingly compete for audience “viewing time”
 5 against streaming services—and other platforms like YouTube—that show films. FAC ¶¶ 31, 90.

6 The FAC alleges that watching any given film in a theater is not reasonably interchangeable with
 7 watching that “same film” through “later home streaming,” FAC ¶¶ 113–114, but that is not the relevant
 8 question for market definition. The relevant question is whether, at any given time, streaming services—
 9 or other video entertainment services like YouTube—as a whole, are reasonable substitutes for theatrical
 10 films as a whole, such that a significant increase in price for theatrical film would shift enough viewing
 11 time to these other services to make the price increase unprofitable. *See, e.g., Epic Games, Inc. v. Apple,*
 12 *Inc.*, 67 F.4th 946, 975 (9th Cir. 2023). The FAC contains only a single paragraph addressing this issue
 13 through the conclusory assertion that “[a] deterioration in the price, availability, variety, or quality of first-
 14 run theatrical offerings would not lead to sufficient substitution into later home streaming to eliminate
 15 competition for first-run theatrical attendance.” FAC ¶ 114. That is insufficient. To make this narrow
 16 market viable in light of obvious commercial realities, the FAC would need to include factual allegations
 17 plausibly showing why consumers of theatrical films would not be expected to switch in sufficient
 18 numbers to streaming services if prices for theatrical films materially increased. Indeed, the FAC
 19 acknowledges the commercial reality that consumers are constantly deciding between watching a film in
 20 the theaters and “later stream[ing] the same film,” *Id.* ¶ 113, but it fails to allege any facts explaining why
 21 such reasonable interchangeability does not make its alleged relevant market definition implausible.

22 **III. THE FAC FAILS TO ALLEGE FACTS PLAUSIBLY SHOWING A LIKELY AND** 23 **SUBSTANTIAL HARM TO COMPETITION FROM EITHER MERGER**

24 Section 7 prohibits only those acquisitions whose effect “may be substantially to lessen
 25 competition.” 15 U.S.C. § 18. Thus, to survive dismissal, Plaintiffs must allege facts plausibly showing a
 26 “reasonable probability” that a merger will substantially lessen competition in a relevant market. *FTC v.*
 27 *Microsoft Corp.*, 136 F.4th 954, 964 (9th Cir. 2025). In applying this standard, courts apply a burden-
 28 shifting framework that requires plaintiffs to first “establish a prima facie case that a merger is

1 anticompetitive.” *DeHoog*, 899 F.3d at 763. The FAC fails to meet this initial burden with respect to either
 2 merger, thereby providing yet another reason why it should be dismissed with prejudice. *See, e.g.,*
 3 *Demartini*, 662 F. Supp. 3d at 1062–63.

4 **A. The FAC Fails to Allege Any Concrete Economic Facts That Could Plausibly Support**
 5 **Plaintiffs’ Claim That Either Merger Is Likely to Substantially Lessen Competition**

6 The FAC—like the original Complaint—is devoid of any concrete allegations of economic facts
 7 that could plausibly support Plaintiffs’ claims. Section 7 does not condemn every horizontal acquisition
 8 that increases market concentration to any degree. Rather, to state a *prima facie* Section 7 claim, Plaintiffs
 9 must allege facts showing that a merger will likely result in “undue” market concentration. *See United*
 10 *States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017) (*prima facie* case requires “showing that the
 11 transaction will lead to undue concentration”); *California v. Sutter Health Sys.*, 130 F. Supp. 2d 1109,
 12 1118 (N.D. Cal. 2001) (requiring “an initial statistical showing that the transaction will lead to undue
 13 concentration in the market”). To make that showing, modern Section 7 jurisprudence requires a plaintiff
 14 to put forward economic facts—such as market shares, market concentration, barriers to entry, or other
 15 alleged market characteristics—showing “that the merger will probably lead to anticompetitive effects.”
 16 *St. Alphonsus*, 778 F.3d at 783–85 (requiring “statistical evidence” to establish *prima facie* case). The
 17 inquiry is not whether the merger eliminates a competitor. It is whether the pleaded facts make a
 18 substantial lessening of competition in the alleged relevant markets reasonably probable. The FAC fails
 19 this test because it is devoid of the allegations of market shares or market concentration that are ordinarily
 20 required to support a Section 7 claim.

21 Plaintiffs once again seek to shortcut this required showing by alleging the mere elimination of a
 22 rival, but courts, including in this District, reject that approach. “Merely alleging the elimination of a rival
 23 does not plausibly support an inference of an appreciable danger of anticompetitive effects in a relevant
 24 market.” *Demartini*, 662 F. Supp. 3d at 1065. Courts likewise reject the proposition that “any non-trivial
 25 acquisition of a significant rival is per se violative of the Clayton Act.” *Malaney v. UAL Corp.*, 2010 WL
 26 3790296, at *7 (N.D. Cal. Sept. 27, 2010); *see also Aurora Astro Prods. LLC v. Celestron Acquisition,*
 27 *LLC*, 691 F. Supp. 3d 1132, 1149–50 (N.D. Cal. 2023) (dismissing Section 7 claim where allegations
 28 showed no more than elimination of rival). The governing rule is that the “economic concept of

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1 competition, rather than any desire to preserve rivals as such, is the lodestar that shall guide the
2 contemporary application of the antitrust laws.” *Hospital Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th
3 Cir. 1986). The FAC simply ignores these fundamental legal requirements.

4 Instead, Plaintiffs continue to press the legally incorrect premise that any “nontrivial” combination
5 of competitors violates Section 7 because, in Plaintiffs’ view, “the elimination of . . . independent
6 competitive incentives . . . follows directly from consummation” of the merger. *See* FAC ¶¶ 7, 149. Rather
7 than allege economic facts to support their claims, Plaintiffs allege that the Paramount-WBD merger “may
8 substantially lessen competition by placing Paramount+ and HBO Max under common ownership,” *id.*
9 ¶ 85, that it will harm news competition by “eliminating an independent newsroom owner and allowing a
10 single management structure to influence the competitive attributes of both organizations,” *id.* ¶ 110, and
11 that it will, through common ownership, change the incentive to “improve films, marketing, release
12 strategies, and audience appeal,” *id.* ¶¶ 116–17. Such conclusory assertions of competitive harm, based
13 solely on the allegation that the merging parties were competitors to some degree, are not a legally
14 sufficient substitute for allegations of economic facts capable of stating a *prima facie* Section 7 claim.

15 Plaintiffs’ recycled reliance on an “incipiency” theory drawn from 1960s Supreme Court decisions
16 such as *Brown Shoe, United States v. Von’s Grocery Co.*, 384 U.S. 270 (1966), and *United States v. Pabst*
17 *Brewing Co.*, 384 U.S. 546 (1966) is a bankrupt effort to avoid satisfying modern pleading requirements
18 for a Section 7 claim. FAC ¶¶ 5, 7. The Ninth Circuit expressly rejected such an incipiency argument in
19 *DeHoog*, 899 F.3d at 764–65 (holding that plaintiffs’ assertion that a post-merger entity “will adopt the
20 distribution practices of” the acquiring firm was “a classic speculative conclusion” that “stops short of the
21 line between possibility and plausibility”). “Merely stating that” a post-merger entity “is likely to have
22 incentives to change its practices,” “without more, is insufficient.” *Id.* at 762, 765. Incipiency permits
23 courts to act before harm is certain, but it does not dispense with the requirement that a complaint plead
24 facts making substantial competitive harm reasonably probable.

25 The FAC is devoid of any allegations of economic facts that might plausibly establish a likelihood
26 that competition will be substantially lessened in any market, *i.e.*, that there exists a “monopolistic
27 tendenc[y]” worthy of being curbed “in [its] incipiency.” *Brown Shoe*, 384 U.S. at 317 n.32. Instead, the
28 FAC treats as sufficient the merger of two firms with some allegedly overlapping assets, the alleged loss

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of one independent owner through the merger, and conclusory assertions about post-merger incentives. These allegations, however, are *ipse dixit*, not a plausible factual basis to connect the challenged transactions to undue concentration or other market conditions that would likely harm competition.

B. The FAC Alleges No Market Shares or Concentration Figures for the DTC Streaming or Paid National Television News Markets

In both the alleged streaming services and television news markets, the FAC is an empty shell: it alleges neither market shares nor any method of measuring market concentration, such as the Herfindahl-Hirschman Index (“HHI”). This is fatal to Plaintiffs’ Section 7 claims. *See Demartini*, 662 F. Supp. 3d at 1062–63. A Section 7 plaintiff must plead economic facts that permit the Court to assess the merging firms’ competitive positions and the alleged anticompetitive effect of the transaction within the alleged relevant market. *See, e.g., St. Alphonsus*, 778 F.3d at 783–85 (describing plaintiff’s burden as “establishment of a prima facie case on statistical evidence”); *Sutter Health*, 130 F. Supp. 2d at 1118 (requiring “initial statistical showing”). The FAC offers no such allegations for either market.

The Alleged Streaming Market. As with the original Complaint, Plaintiffs’ amended allegations offer only bits and pieces of information about their alleged subscription streaming services market—subscriber counts and streaming revenue for some companies—without any market-wide allegations. *See* FAC ¶¶ 86–87. Plaintiffs allege no market shares, market concentration figures, or even the total volume of commerce allegedly involved. As before, Plaintiffs’ subscriber and revenue allegations continue to inexplicably omit major streaming competitors, including Amazon (*id.* ¶ 86), Hulu (*id.* ¶ 86), and Apple (*id.* ¶¶ 86–87). None of this is sufficient to state a Section 7 claim against either merger.

Plaintiffs’ inclusion of a statement from Paramount’s CEO that the combined company after the merger with Warner Bros. would account for “nearly one-fifth of American television viewing,” FAC ¶ 90, cannot plausibly cure the problem because it measures the share of a broader market than the one Plaintiffs allege in the FAC and because a 20% market share would not be large enough to state a plausible Section 7 claim in any event. *See, e.g., FTC v. Lab. Corp. of Am.*, 2011 WL 3100372, at *19 (C.D. Cal. Feb. 22, 2011) (“Market shares must be measured in a proper relevant product and geographic market; alleging market shares in some other market is inadequate.”); *Demartini v. Microsoft Corp.*, 2023 WL 4239653, at *4 (N.D. Cal. June 27, 2023) (rejecting market share allegations not “tethered to . . . the

alleged relevant market”); *see infra* pp. 20–21. And, as discussed *supra* pp. 7–8, Plaintiffs do not allege any facts to support a vertical foreclosure claim in the alleged streaming market with respect to the Skydance-Paramount merger or otherwise.

The Alleged Paid Television News Market. In the alleged Paid Television News market, the absence of any alleged economic facts is glaring. The FAC says nothing at all about the size or competitive significance of any competitor in the alleged market. It identifies no revenues, viewership information, market shares, market concentration figures, or other economic facts that could potentially form the basis of a Section 7 claim. Instead, Plaintiffs make extensive allegations about pre-merger conduct, some of which does not even relate to television news, that they claim threatens “deterioration” of “journalistic independence,” “credibility,” and “consumer trust.” *See* FAC ¶¶ 98–111. These types of allegations are not “cognizable economic harms protected by antitrust laws,” MTD Order at 8; *see supra* pp. 11–12, and they are far afield from the allegations of economic facts that are required to support a plausible Section 7 theory. *See, e.g., St. Alphonsus*, 778 F.3d at 783–85; *Sutter Health*, 130 F. Supp. 2d at 1118. Indeed, because over-the-air news networks like CBS News are available for free, without subscribing to “paid cable, satellite, and live-TV streaming packages,” FAC ¶ 92, CBS News is not even in Plaintiffs’ alleged television news market.

C. The Market Shares Plaintiffs Allege for Their Purported Consumer Market for First-Run Theatrical Motion Pictures Are Misaligned with Their Alleged Market and Insufficient to Satisfy Plaintiffs’ Burden to Establish a *Prima Facie* Case

The FAC alleges market shares for the alleged Consumer Market for First-Run Theatrical Motion Pictures, but these shares are misaligned with the alleged relevant market and are far too low to raise a plausible inference of competitive harm. As in the original Complaint, Plaintiffs allege the market is limited to the United States, FAC ¶ 118, yet they allege market shares that include Canada, *id.* ¶ 124. Plaintiffs concede this shortcoming. *See id.* n.1. Moreover, Plaintiffs’ allegation that the merger of Warner Bros. and Paramount will result in a 23.6% market share, *id.* ¶ 124, falls well below the levels courts have identified as necessary to support a *prima facie* Section 7 case.⁷ *See United States v. Oracle Corp.*, 331 F. Supp. 2d 1098, 1123 (N.D. Cal. 2004) (“A presumption of anticompetitive effects from a combined share of 35% in a differentiated products market is unwarranted.”); *Fry*, 2026 WL 751422, at *6 (“some courts

⁷ The FAC alleges no market shares or other economic facts relating to the Skydance-Paramount merger.

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hold that a plaintiff can satisfy their prima facie burden by showing that the merger will yield a combined market share of over 30%” and dismissing a complaint alleging a combined 16.2% share); *New York v. Kraft Gen. Foods, Inc.*, 926 F. Supp. 321, 366 (S.D.N.Y. 1995) (rejecting a challenge to a proposed merger resulting in a combined share below 35%). Nor does the FAC allege any increase in concentration in this alleged market, such as a change in HHI, that might support a likely substantial lessening of competition. See U.S. Dep’t of Justice & FTC, Merger Guidelines § 2.1 (2023).

Plaintiffs’ new allegations about the Disney-Fox merger, FAC ¶¶ 119–122, do not cure its pleading deficiencies about either of the mergers it challenges. The FAC alleges no facts to plausibly suggest that the alleged impact of the Disney-Fox merger is in any way predictive of the future competitive effect of the Paramount-WBD merger. The allegations about Fox-Disney concern a different transaction that occurred seven years ago involving different parties, different assets, and different market conditions. Plaintiffs do not allege any facts supporting the assertion that the Paramount-WBD merger would have comparable competitive effects in the alleged theatrical market.

Moreover, the FAC does not allege facts suggesting any barriers exist that would hinder competitors in the alleged theatrical market from expanding their output of films to counteract any actions by the merged firm to raise prices or restrict output. Given the low market share alleged for the merged company, the combination of no allegations of high barriers to entry or expansion makes any claim of competitive harm implausible. See *United States v. Baker Hughes Inc.*, 908 F.2d 981, 984–85, 987–89 (D.C. Cir. 1990) (finding ease of entry “would likely avert anticompetitive effects”); *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1441 (9th Cir. 1995) (no market power as a matter of law where “competitors have expanded output in the recent past, or have the ability to expand output in the future”); *United States v. Waste Mgmt., Inc.*, 743 F.2d 976, 982–83 (2d Cir. 1984) (current market shares “are not an accurate proxy for market power” when “potential competition [can] respond quickly to price increases” (citing *United States v. Gen. Dynamics*, 415 U.S. 486, 486 (1974))).

CONCLUSION

For all the reasons set forth above, and because this is now Plaintiffs’ second failed chance to state a viable Section 7 claim on multiple grounds, including a lack of Article III standing, the First Amended Complaint should be dismissed with prejudice.

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1 Dated: August 28, 2026

3 Respectfully submitted,

4 By: /s/ Jeffrey L. Kessler

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, et al.

RECORD APPENDIX
VOLUME 2

District Court No. 4:26-cv-03790-AMO

APP 120-232

September 30, 2026

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EXHIBIT 1

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EX-2.1 2 tm2533570d75_ex2-1.htm EXHIBIT 2.1

Exhibit 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

among

WARNER BROS. DISCOVERY, INC.,

PARAMOUNT SKYDANCE CORPORATION

and

PRINCE SUB INC.

Dated as of February 27, 2026

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of February 27, 2026, is entered into by and among Warner Bros. Discovery, Inc., a Delaware corporation ("Company"), Paramount Skydance Corporation, a Delaware corporation ("Buyer"), and Prince Sub Inc., a Delaware corporation and a wholly owned Subsidiary of Buyer ("Merger Sub") and, together with the Company and Buyer, the "Parties" and each, a "Party").

RECITALS

WHEREAS, the Company, Buyer and Merger Sub desire to effect the acquisition of the Company by Buyer through the merger of Merger Sub with and into the Company, with the Company surviving the merger as the surviving corporation (the "Merger"), in accordance with the Delaware General Corporation Law (the "DGCL"), and each share of Series A common stock, par value \$0.01 per share, of the Company ("Company Stock") issued and outstanding immediately prior to the Effective Time (other than any shares cancelled pursuant to Section 2.1(a) and any Appraisal Shares) being converted into the right to receive an amount in cash equal to the Per Share Merger Consideration, without interest (such amount, the "Merger Consideration"), upon the terms and subject to the conditions set forth herein;

WHEREAS, the Equity Investors have entered into subscription agreements with Buyer (the "Subscription Agreements"), providing for a private placement investment by the Equity Investors in shares of Buyer Class B common stock, par value \$0.001 per share ("Buyer Class B Common Stock"), in an aggregate amount of up to \$46,970,000,000.00, *plus* any Ticking Consideration, *plus* any Contingent Equity Amount, *plus* any Amended Notes Payment Amount (the "PIPE Transaction");

WHEREAS, the board of directors of the Company (the "Company Board") has (i) determined that the terms of this Agreement and the Transactions, including the Merger, are fair to, and in the best interests of, the Company and its stockholders, (ii) determined that it is in the best interests of the Company and its stockholders and declared it advisable to enter into this Agreement, (iii) approved the execution and delivery by the Company of this Agreement, the performance by the Company of its covenants and agreements contained herein and the consummation of the transactions contemplated by this Agreement, including the Merger, upon the terms and subject to the conditions set forth herein and (iv) resolved to recommend that the Company's stockholders approve the Merger and adopt this Agreement (the "Company Recommendation") and directed that this Agreement be submitted to the holders of Company Stock for their adoption;

WHEREAS, an independent transaction committee of the Buyer Board (as defined below) (the "Buyer Board Independent Committee"), comprised solely of directors who are independent of the Equity Investors and their respective Affiliates, has (i) determined that the PIPE Transaction is fair and in the best interests of Buyer and its stockholders, (ii) approved that Buyer enter into the Subscription Agreements and consummate the PIPE Transaction and (iii) recommended that the Buyer Board approve the Subscription Agreements and the PIPE Transaction;

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WHEREAS, the board of directors of Buyer (the "Buyer Board") (acting in part upon the recommendation of the Buyer Board Independent Committee with respect to the Subscription Agreements and the PIPE Transaction) has (i) determined that the terms of this Agreement, the Subscription Agreements and the transactions contemplated hereby and thereby, including the Merger and the PIPE Transaction, are fair to, and in the best interests of, Buyer and its stockholders, (ii) determined that it is in the best interests of Buyer and its stockholders and declared it advisable to enter into this Agreement and the Subscription Agreements, and (iii) approved the execution and delivery by Buyer of this Agreement and the Subscription Agreements, the performance by Buyer of its covenants and agreements contained herein and therein and the consummation of the transactions contemplated by this Agreement and the Subscription Agreements, including the Merger and the PIPE Transaction, upon the terms and subject to the conditions set forth herein;

WHEREAS, Buyer has made available to the Company an accurate and complete copy of the executed written consent by the holders of 100% of the shares of Buyer Class A common stock, par value \$0.001 per share, approving the PIPE Transaction upon the terms and subject to the conditions set forth herein (the "Buyer Written Consent");

WHEREAS, (i) the board of directors of Merger Sub has approved this Agreement and determined that the terms of this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, Merger Sub and Buyer, its sole stockholder, and (ii) Buyer, in its capacity as the sole stockholder of Merger Sub, has approved the Merger and adopted this Agreement;

WHEREAS, Merger Sub has terminated and withdrawn the offer by Merger Sub to purchase all of the outstanding shares of Company Stock, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 8, 2025 (as amended or supplemented from time to time) (the "Tender Offer");

WHEREAS, that certain Amended and Restated Agreement and Plan of Merger, dated as of January 19, 2026 (the "Netflix Merger Agreement"), by and among the Company, Netflix, Inc., a Delaware corporation ("Netflix"), Nightingale Sub, Inc., a Delaware corporation and a wholly owned Subsidiary of Netflix, and New Topco 25, Inc., a Delaware corporation and a wholly owned Subsidiary of the Company, has been validly terminated in accordance with its terms concurrently with the execution and delivery of this Agreement by the Company;

WHEREAS, concurrently with the execution of this Agreement and the termination of the Netflix Merger Agreement, Buyer, on behalf of the Company, shall pay or cause to be paid \$2,800,000,000 (the "Netflix Termination Fee") to Netflix by wire transfer of immediately available funds in order for the Company to terminate the Netflix Merger Agreement pursuant to Section 8.1(c)(ii) of the Netflix Merger Agreement;

WHEREAS, as a material inducement to, and as a condition to, the Company entering into this Agreement, concurrently with the execution of this Agreement, The Lawrence J. Ellison Revocable Trust, u/a/d 1/22/88, as amended (the "Trust"), and Mr. Lawrence J. Ellison ("L. Ellison") and, together with the Trust, the "Guarantors") have entered into a guarantee, dated as of the date hereof, guaranteeing certain of Buyer's and Merger Sub's obligations under this Agreement (the "Ellison Guarantee"); and

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WHEREAS, Buyer, the Company and Merger Sub desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, the Parties agree as set forth herein.

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate existence of Merger Sub will cease, and the Company shall continue as the surviving corporation (the "Surviving Corporation"). As a result of the Merger, the Surviving Corporation shall become a wholly owned Subsidiary of Buyer. The Merger shall have the effects provided in this Agreement and as specified in the DGCL.

Section 1.2 Closing. Subject to the provisions of this Agreement, the closing of the Merger (the "Closing") shall take place at 10:00 a.m. Eastern Time, remotely via electronic exchange of documents and signatures, no later than the second Business Day (the "Specified Date") following the satisfaction or, to the extent permitted by applicable Law, waiver of the conditions set forth in Article VII (except for any conditions that by their nature can only be satisfied on the Closing Date, but subject to the satisfaction of such conditions or waiver by the Party entitled to waive such conditions), unless another date, time or place is agreed to in writing by Buyer and the Company (the date of the Closing, the "Closing Date").

Section 1.3 Effective Time. On the Closing Date, the Company shall file with the Secretary of State of the State of Delaware a certificate of merger relating to the Merger (the "Certificate of Merger"), executed and acknowledged in accordance with the relevant provisions of the DGCL. The Merger shall become effective at the time that the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware, or at such later time as Buyer and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective, the "Effective Time").

Section 1.4 The Certificate of Incorporation of the Surviving Corporation. At the Effective Time, the certificate of incorporation of the Company shall be amended and restated to read in its entirety as set forth on Exhibit A and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation, until thereafter duly amended as provided therein or by applicable Law.

Section 1.5 The Bylaws of the Surviving Corporation. At the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated to read in their entirety as the bylaws of Merger Sub as in effect immediately prior to the Effective Time, except that references to Merger Sub's name shall be replaced by references to the Surviving Corporation's name, until thereafter duly amended as provided therein or by applicable Law.

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Section 1.6 Directors and Officers of the Surviving Corporation. From and after the Effective Time, until their successors have been duly elected or appointed and qualified, or until their earlier death, resignation, incapacity or removal: (i) the directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation and (ii) the officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation.

Section 1.7 Further Assurances. If, at any time after the Effective Time, the Surviving Corporation shall determine that any actions are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or Merger Sub acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to take all such actions as may be necessary or desirable to vest all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE II

EFFECT OF THE MERGER ON CAPITAL STOCK

Section 2.1 Effect of the Merger on Capital Stock of the Company and Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Buyer or Merger Sub or any other Person:

- (a) All shares of Company Stock that are owned, directly or indirectly, by Buyer, the Company (including shares held as treasury stock or otherwise) or Merger Sub immediately prior to the Effective Time shall be automatically canceled and shall cease to exist and no consideration shall be delivered in exchange therefor.
- (b) Each share of Company Stock issued and outstanding immediately prior to the Effective Time (other than shares (i) to be canceled in accordance with Section 2.1(a), and (ii) subject to the provisions of Section 2.3) shall be converted into the right to receive the Merger Consideration, subject to the provisions of this Article II.
- (c) All shares of Company Stock converted into the Merger Consideration pursuant to this Section 2.1 shall automatically be canceled and shall cease to exist, and each holder of (i) a certificate that immediately prior to the Effective Time represented any such shares of Company Stock (a "Certificate") or (ii) shares of Company Stock held in book-entry form ("Book-Entry Shares") shall cease to have any rights with respect thereto, except (subject to Section 2.3) the right to receive the Merger Consideration, without interest, subject to compliance with the procedures set forth in Section 3.2.

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(d) Each share of capital stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

Section 2.2 Certain Adjustments. Notwithstanding anything in this Agreement to the contrary, if, from the date of this Agreement until the earlier of (a) the Effective Time and (b) any termination of this Agreement in accordance with Section 8.1, the outstanding shares of Company Stock shall have been changed into a different number of shares or a different class by reason of any reclassification, stock split (including a reverse stock split), recapitalization, split-up, combination, exchange of shares, readjustment or other similar transaction, or a stock dividend thereon shall be declared with a record date within said period, then the Merger Consideration and any other similarly dependent items, as the case may be, shall be appropriately adjusted to provide Buyer and the holders of Company Stock (including Company Options exercisable for Company Stock) the same economic effect as contemplated by this Agreement prior to such event. Nothing in this Section 2.2 shall be construed to permit any Party to take any action that is otherwise prohibited or restricted by any other provision of this Agreement.

Section 2.3 Appraisal Shares. Notwithstanding anything in this Agreement to the contrary, shares of Company Stock that are issued and outstanding immediately prior to the Effective Time (other than shares canceled in accordance with Section 2.1(a)) and that are held by any Person who is entitled to demand and has properly exercised appraisal rights in respect of such shares in accordance with Section 262 of the DGCL (“Appraisal Shares”) shall not be converted into the Merger Consideration as provided in Section 2.1, but rather shall be canceled and the holders of Appraisal Shares shall be entitled to payment by the Surviving Corporation of the “fair value” of such Appraisal Shares in accordance with Section 262 of the DGCL; provided, however, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to appraisal under Section 262 of the DGCL, then the right of such holder to be paid the “fair value” of such holder’s Appraisal Shares shall cease and such Appraisal Shares shall be deemed to have been converted as of the Effective Time into, and to have become exchangeable solely for, the Merger Consideration as provided in Section 2.1. The Company shall provide prompt notice to Buyer of any demands received by the Company for appraisal of any shares of Company Stock, withdrawals of such demands and any other instruments served pursuant to Section 262 of the DGCL received by the Company. Buyer shall have the right to participate in and direct all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Buyer, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

ARTICLE III

DELIVERY OF MERGER CONSIDERATION; PROCEDURES FOR SURRENDER

Section 3.1 Paying Agent. Prior to the Effective Time, Buyer shall enter into a customary payment agreement with a nationally recognized bank or trust company designated by Buyer and reasonably acceptable to the Company (the “Paying Agent”). Prior to the Effective Time, Buyer shall provide or shall cause to be provided to the Paying Agent cash in an aggregate amount sufficient to pay the Merger Consideration (the “Exchange Fund”). The Paying Agent shall pay the Merger Consideration out of the Exchange Fund. Except as provided in Section 3.7, the Exchange Fund shall not be used for any other purpose.

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Section 3.2 Exchange Procedures

(a) Certificates. Buyer shall cause the Paying Agent to mail, as soon as reasonably practicable after the Effective Time and in any event not later than the fifth (5th) Business Day following the Closing Date, to each holder of record of a Certificate whose shares of Company Stock were converted into the right to receive the Merger Consideration pursuant to Section 2.1(h), (x) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent and shall be in customary form reasonably satisfactory to the Company) and (y) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Buyer, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Paying Agent, the holder of such Certificate shall be entitled to receive in exchange therefor, and Buyer shall cause the Paying Agent to pay in exchange therefor as promptly as practicable, cash in an amount equal to the Merger Consideration multiplied by the number of shares of Company Stock previously represented by such Certificate, and the Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Company Stock that is not registered in the transfer records of the Company, payment may be made to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the Person requesting such payment shall pay any transfer or other similar Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the reasonable satisfaction of Buyer that such Tax has been paid or is not applicable. No interest shall be paid or accrue on any amount payable upon surrender of any Certificate.

(b) Book-Entry Shares. Notwithstanding anything to the contrary contained in this Agreement, any holder of Book-Entry Shares shall not be required to deliver a Certificate or an executed letter of transmittal to the Paying Agent to receive the Merger Consideration that such holder is entitled to receive pursuant to this Article III. In lieu thereof, each holder of record of one (1) or more Book-Entry Shares whose shares of Company Stock were converted into the Merger Consideration pursuant to Section 2.1(h) shall automatically upon the Effective Time be entitled to receive, and Buyer shall cause the Paying Agent to pay and deliver as promptly as practicable after the Effective Time, cash in an amount equal to the Merger Consideration multiplied by the number of shares of Company Stock previously represented by such Book-Entry Shares, and the Book-Entry Shares of such holder shall forthwith be canceled. No interest shall be paid or accrue on any amount payable upon conversion of any Book-Entry Shares.

Section 3.3 Full Satisfaction. The Merger Consideration paid in accordance with the terms of this Article III upon the surrender of the Certificates (or immediately, in the case of the Book-Entry Shares) shall be deemed to have been paid in full satisfaction of all rights pertaining to such shares of Company Stock. After the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Company Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificates formerly representing shares of Company Stock or any Book-Entry Shares are presented to the Surviving Corporation or the Paying Agent for any reason, they shall be canceled and exchanged as provided in this Article III.

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Section 3.4 Undistributed Exchange Funds. Any portion of the Exchange Fund that remains undistributed to the former holders of Company Stock for one (1) year after the Effective Time shall be delivered to the Surviving Corporation, upon demand, and any former holder of Company Stock who has not theretofore complied with this Article III shall thereafter look only to the Surviving Corporation for payment of its claim for the Merger Consideration.

Section 3.5 Abandoned Property, Escheat or Similar Laws. None of Buyer, Merger Sub, the Company, the Surviving Corporation or the Paying Agent shall be liable to any Person in respect of any cash from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any Merger Consideration remaining unclaimed by former holders of Company Stock immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity shall, to the fullest extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of any claims or interest of any Person previously entitled thereto.

Section 3.6 Lost Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit, in form and substance reasonably acceptable to Buyer, of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Buyer or the Paying Agent, the posting by such Person of a bond in reasonable and customary amount as Buyer or the Paying Agent may direct, as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent will pay in exchange for such lost, stolen or destroyed Certificate the Merger Consideration.

Section 3.7 Investment of Exchange Funds. The Paying Agent shall invest the Exchange Fund as directed by Buyer; provided, however, that no investment interest or gain or loss thereon shall affect the amounts payable to holders of Company Stock. Any interest or gains resulting from such investments shall be the sole and exclusive property of Buyer payable to Buyer upon its request, and no part of such interest or gains shall accrue to the benefit of holders of Company Stock; provided, further, that any investment of the Exchange Fund shall in all events be limited to direct short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the U.S. government, in commercial paper rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$10 billion (based on the most recent financial statements of such bank that are then publicly available). If for any reason (including investment losses) the Exchange Fund shall be insufficient to fully satisfy all of the payment obligations to be made by the Paying Agent hereunder, Buyer shall promptly deposit cash into the Exchange Fund in an amount which is equal to the deficiency in the amount of cash required to fully satisfy such payment obligations.

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Section 3.8 Treatment of Company Equity Awards

(a) As of the Effective Time, by virtue of the Merger and without any further action on the part of the holders thereof, the Company, Buyer or Merger Sub:

(i) Company Options.

(A) Each Company Option that is outstanding immediately prior to the Effective Time and that is (x) vested in accordance with all applicable terms as of the Effective Time or (y) that is held by a former employee or service provider of the Company (each, a "Vested Company Option") shall be cancelled and converted into the right to receive an amount in cash, without interest, equal to the product obtained by multiplying (i) the excess, if any, of the Merger Consideration over the per-share exercise price for such Vested Company Option, by (ii) the total number of shares of Company Stock subject to such Vested Company Option immediately prior to the Effective Time (the "Vested Company Option Consideration"); provided, however, that if the exercise price per share of Company Stock of such Vested Company Option is equal to or greater than the Merger Consideration, such Vested Company Option shall be cancelled without any cash payment or other consideration being made in respect thereof.

(B) Each Company Option that is outstanding and unexercised immediately prior to the Effective Time and that is not a Vested Company Option (each, an "Unvested Company Option") shall be assumed by Buyer and automatically converted into the contingent right to receive an amount in cash, without interest, equal to the product obtained by multiplying (i) the excess, if any, of the Merger Consideration over the per-share exercise price for such Unvested Company Option, by (ii) the total number of shares of Company Stock subject to such Unvested Company Option immediately prior to the Effective Time (the "Unvested Company Option Consideration"); provided, however, that if the exercise price per share of Company Stock of such Unvested Company Option is equal to or greater than the Merger Consideration, such Unvested Company Option shall be cancelled without any cash payment or other consideration being made in respect thereof. Subject to the holder's Continued Service through the applicable vesting dates, such Unvested Company Option Consideration shall vest and become payable at the same time as the Unvested Company Option from which such Unvested Company Option Consideration was converted would have vested and become exercisable pursuant to its terms and shall otherwise remain subject to the same terms and conditions (including any applicable terms relating to accelerated vesting upon qualifying terminations of employment and timing and form of payment) as were applicable to the underlying Unvested Company Option immediately prior to the Effective Time (except for terms rendered inoperative by reason of the transactions contemplated by this Agreement or for such other administrative or ministerial changes as in the reasonable and good faith determination of Buyer are appropriate to conform the administration of the Unvested Company Option Consideration amounts and are not adverse to such holders) with respect to their receipt of the Unvested Company Option Consideration.

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(ii) Company RSUs

(A) Each Company RSU that is outstanding immediately prior to the Effective Time and that is vested in accordance with all applicable terms as of the Effective Time or that is held by a non-employee member of the Company Board (each, a "Vested Company RSU") shall be cancelled and converted into the right to receive the Merger Consideration with respect to each share of Company Stock underlying such Vested Company RSU pursuant to Section 2.1(c) (the "Vested Company RSU Consideration").

(B) Each Company RSU that is outstanding immediately prior to the Effective Time and that is not a Vested Company RSU (each, an "Unvested Company RSU") shall be assumed by Buyer and automatically converted into the contingent right to receive an amount in cash, without interest, equal to (x) the product of (i) the Merger Consideration, *multiplied by* (ii) the total number of shares of Company Stock subject to such Company RSU immediately prior to the Effective Time (the "Unvested Company RSU Consideration"). Subject to the holder's Continued Service through the applicable vesting dates, such Unvested Company RSU Consideration shall vest and become payable at the same time as the Unvested Company RSU from which such Unvested Company RSU Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions (including any applicable terms relating to accelerated vesting upon qualifying terminations of employment and timing and form of payment) as were applicable to the underlying Unvested Company RSU immediately prior to the Effective Time (except for terms rendered inoperative by reason of the transactions contemplated by this Agreement or for such other administrative or ministerial changes as in the reasonable and good faith determination of Buyer are appropriate to conform the administration of the Unvested Company RSU Consideration amounts and are not adverse to such holders) with respect to their receipt of the Unvested Company RSU Consideration.

(iii) Company PRSUs

(A) Each Company PRSU that is outstanding immediately prior to the Effective Time and that is vested in accordance with all applicable terms as of the Effective Time (each, a "Vested Company PRSU") shall be cancelled and converted into the right to receive the Merger Consideration with respect to each share of Company Stock underlying such Vested Company PRSU pursuant to Section 2.1(c) (with the number of shares of Company Stock subject to such Vested Company PRSU determined based on the attainment of the applicable performance measures at the actual level of performance by the Company Board or a committee thereof in the ordinary course of business and consistent with past practice) (the "Vested Company PRSU Consideration").

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(B) Each Company PRSU that is outstanding immediately prior to the Effective Time and that is not a Vested Company PRSU (each, an “Unvested Company PRSU”) shall be assumed by Buyer and automatically converted into the contingent right to receive an amount in cash, without interest, equal to (x) the product of (i) the Merger Consideration, *multiplied by* (ii) the total number of shares of Company Stock subject to such Company PRSU immediately prior to the Effective Time (after taking into account the treatment of the applicable performance-vesting conditions in accordance with the last sentence of this Section 3.8(a)(iii)(B)) (the “Unvested Company PRSU Consideration”). Subject to the holder’s Continued Service through the applicable vesting dates, such Unvested Company PRSU Consideration shall vest and become payable at the same time as the Unvested Company PRSU from which such Unvested Company PRSU Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions (including any applicable terms relating to accelerated vesting upon qualifying terminations of employment and timing and form of payment) as were applicable to the underlying Unvested Company PRSU immediately prior to the Effective Time (except for terms rendered inoperative by reason of the transactions contemplated by this Agreement or for such other administrative or ministerial changes as in the reasonable and good faith determination of Buyer are appropriate to conform the administration of the Unvested Company PRSU Consideration amounts and not adverse to such holders) with respect to their receipt of the Unvested Company PRSU Consideration. The performance-based vesting conditions applicable to any Unvested Company PRSU (1) for which the applicable performance period has been completed prior to the Effective Time shall be determined based on actual performance and (2) for which the applicable performance period has not been completed prior to the Effective Time shall be deemed to have been achieved at the greater of (I) target performance and (II) actual performance extrapolated through the end of the applicable performance period based on actual performance through the Closing Date, determined by the Company Board or a committee thereof in good faith and consistent with past practices, in each case, for purposes of the conversion set forth in this Section 3.8(a)(iii).

(iv) Company DSUs. Each Company DSU that is outstanding immediately prior to the Effective Time shall be assumed by Buyer and automatically converted into a right to receive an amount in cash, without interest, equal to the product obtained by multiplying (A) the Merger Consideration by (B) the number of shares of Company Stock subject to such Company DSU immediately prior to the Effective Time (the “Company DSU Consideration”). The Company DSU Consideration shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company DSU immediately prior to the Effective Time except as set forth in this Section 3.8(a)(iv) (including with respect to timing and form of payment).

(v) Company Notional Units. Each Company Notional Unit that is outstanding immediately prior to the Effective Time shall be assumed by Buyer and automatically converted into a notional unit with respect to a number of shares of Buyer Class B Common Stock (a “Buyer Notional Unit”) equal to the product (rounded down to the nearest whole share) obtained by multiplying (A) the Equity Award Exchange Ratio by (B) the number of shares of Company Stock subject to such Company Notional Unit immediately prior to the Effective Time. Each such Buyer Notional Unit as so assumed and converted shall continue to have, and shall be subject to, the same terms and conditions as applied to the corresponding Company Notional Unit immediately prior to the Effective Time (including with respect to timing and form of payment), as set forth in the applicable Company DC Plan.

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(b) Certain Actions:

(i) Prior to the Effective Time, the Company Board (or, if appropriate, any appropriate committee thereof) and Buyer shall take all necessary action for the assumption, conversion, adjustment and payment of Unvested Company Options, Vested Company Options, Unvested Company RSUs, Vested Company RSUs, Unvested Company PRSUs, Vested Company PRSUs, Company DSUs and Company Notional Units as provided in Section 3.8(a). Buyer shall reserve for future issuance a number of shares of Buyer Class B Common Stock at least equal to the number of shares of Buyer Class B Common Stock that will be subject to the Buyer Notional Units. Not later than the Closing Date, Buyer shall file an effective registration statement on Form S-8 (or other applicable form) with respect to the Buyer Class B Common Stock issuable upon settlement of each Buyer Notional Unit and shall distribute a prospectus relating to such Form S-8 (or other applicable form), and Buyer shall use reasonable best efforts to maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as any of such awards remain outstanding.

(ii) Delivery of Vested Company Option Consideration, Vested Company RSU Consideration and Vested Company PRSU Consideration. Buyer shall cause the Surviving Corporation to pay through the payroll system of the Surviving Corporation (to the extent applicable) to each holder of a Vested Company Option, Vested Company RSU and Vested Company PRSU the Vested Company Option Consideration, Vested Company RSU Consideration and the Vested Company PRSU Consideration, respectively (collectively, the “Company Equity Award Consideration”), less any required withholding Taxes and without interest, within ten (10) Business Days following the Effective Time. To the extent any payment made in accordance with this Section 3.8(b)(ii) in the time periods provided herein would trigger a Tax or penalty under Section 409A of the Code, such payments shall be made on the earliest date that payment would not trigger such Tax or penalty.

(c) Company ESPP. The Company shall take such action as may be necessary or appropriate under the Company ESPP to ensure, provide for or cause the following to occur: (i) except for any offering period under the Company ESPP that is in effect on the date hereof (the “Final Offering Period”), no new offering periods under the Company ESPP will commence during the period from the date of this Agreement through the Effective Time; (ii) there will be no increase in the amount of payroll deductions or payroll contributions permitted to be made by the participants under the Company ESPP during the Final Offering Period, except those made in accordance with payroll deduction elections that are in effect as of the date of this Agreement; and (iii) no individuals shall commence participation in the Company ESPP during the period from the date of this Agreement through the Effective Time. If the Effective Time would occur during the Final Offering Period, (i) the accumulated contributions of the participants in any such offering period shall be used to purchase shares of Company Stock as of such date as the Company determines in its sole discretion (provided that such date shall be no later than five (5) Business Days prior to the Effective Time), (ii) the participants’ accumulated contributions under the Company ESPP shall be used to purchase shares of Company Stock in accordance with the terms of the Company ESPP as of the date determined in accordance with the foregoing clause (i), and (iii) purchase rights under any such offering shall terminate immediately after such purchase. As of no later than the Business Day immediately prior to the Effective Time, the Company shall terminate the Company ESPP, subject to the occurrence of the Effective Time. As promptly as practicable following the purchase of shares of Company Stock in accordance with the immediately foregoing clause (ii), the Company shall return to each participant the funds, if any, that remain in such participant’s account under the Company ESPP after such purchase.

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Section 3.9 Withholding. Notwithstanding anything to the contrary contained in this Agreement, each of Buyer, the Company, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from any amount otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable state, local or foreign Tax Law. To the extent that amounts are so withheld and timely remitted to the applicable Governmental Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. Buyer shall use reasonable best efforts to cooperate with the Company to obtain any affidavits, certificates or other documentation as may reasonably be expected to afford to the Company and any holder of Company Stock reduction of or relief from any such deduction or withholding.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the forms, statements, certifications, reports and documents required to be filed or furnished by the Company with the SEC pursuant to the Exchange Act or the Securities Act since December 31, 2023 (the "Applicable Date") (the forms, statements, certifications, reports and documents filed with or furnished to the SEC since the Applicable Date, including those filed with or furnished to the SEC subsequent to the date of this Agreement, in each case as amended, the "Company Reports") that were filed with or furnished to the SEC prior to the date of this Agreement (excluding any disclosures set forth in any risk factor section or in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature), other than with respect to Sections 4.1, 4.2, 4.3 and 4.18, or in the corresponding sections or subsections of the disclosure letter delivered to Buyer by the Company concurrently with the execution and delivery of this Agreement (the "Company Disclosure Letter"), it being agreed that for purposes of the representations and warranties set forth in this Article IV, disclosure of any item in any section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on its face, the Company hereby represents and warrants to Buyer and Merger Sub as of the date of this Agreement (other than such representations and warranties that are expressly made as of a certain date, which are made as of such date) that (provided that the representations and warranties in this Article IV (except in the case of Section 4.1) with respect to the Company JVs shall be given solely to the extent of the Knowledge of the Company):

Section 4.1 Organization, Good Standing and Qualification. Each of Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, qualified or in good standing, or to have such power or authority, would not, individually or in the aggregate, have a Company Material Adverse Effect. Prior to the date of this Agreement, the Company has made available to Buyer complete and correct copies of the Organizational Documents of the Company.

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Section 4.2 Capital Structure.

(a) As of the date of this Agreement, the authorized capital stock of the Company consists of (i) 10,800,000,000 shares of Company Stock and (ii) 1,200,000,000 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock") and the Company Stock together with the Preferred Stock, the "Company Capital Stock"). As of February 24, 2026 (the "Measurement Date"), there were (x) (A) an aggregate of 2,481,014,551 shares of Company Stock issued and outstanding and (B) no shares of Preferred Stock issued and outstanding and (y) there were (A) an aggregate of 343,291,334 shares of Company Stock reserved for, and 148,111,652 shares of Company Stock subject to, issuance pursuant to the Company Stock Plans, which included (i) 83,652,241 Company RSUs, (ii) 15,013,403 and 23,216,712 Company PRSUs (assuming the achievement of performance criteria at target and maximum levels, respectively), (iii) 48,918,196 shares of Company Stock subject to Company Options and (iv) 527,812 Company DSUs and (B) no shares of Preferred Stock reserved for, and no shares of Preferred Stock subject to, issuance pursuant to the Company Stock Plans. As of the Measurement Date, there were 134,627.92 Company Notional Units outstanding under the Company DC Plans representing an equivalent of 134,627.92 shares of Company Stock. From the Measurement Date to the date of this Agreement, the Company has not issued or granted any shares of Company Stock, other than pursuant to (I) the vesting and settlement of Company RSUs, Company PRSUs or Company DSUs, (II) the exercise of Company Options or (III) the Company ESPP, in each case of foregoing clauses (I), (II) and (III), which were granted prior to the date of this Agreement. All of the issued and outstanding shares of Company Capital Stock have been duly authorized and validly issued and are fully paid and nonassessable.

(b) Section 4.2(b) of the Company Disclosure Letter sets forth, as of the date of this Agreement, each Subsidiary of the Company (such Subsidiaries, together with any other Subsidiaries of the Company as of the Effective Time, the "Company Subsidiaries") and the percentage ownership interest of the Company, directly or indirectly, in each such Company Subsidiary. The ownership interest in each Company Subsidiary owned by the Company, directly or indirectly, has been duly authorized and validly issued and is fully paid and nonassessable, free and clear of any Liens.

(c) Except as set forth in Section 4.2(c) of the Company Disclosure Letter, as of the date of this Agreement, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or any of its Subsidiaries to issue or sell any shares of capital stock or other equity or voting securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire from the Company or any of its Subsidiaries, any equity or voting securities of the Company or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

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(d) Section 4.2(d) of the Company Disclosure Letter contains a correct and complete list (the “Equity Award Schedule”), as of the Measurement Date, of all outstanding Company Equity Awards, including the holder (by employee identification number), type of Company Equity Award, date of grant, number of shares of Company Stock underlying such award (and, if applicable, assuming achievement of the applicable performance metrics at the target level of performance), whether such Company Equity Award is intended to qualify as an “incentive stock option” under Section 422 of the Code, the Company Stock Plan pursuant to which the Company Equity Award was granted, the applicable vesting schedule with respect to such Company Equity Award (including whether the Company Equity Award would become vested solely as a result of the consummation of the Merger), any unpaid dividend equivalents with respect to such Company Equity Award and, where applicable, the exercise price and expiration date. The Company shall provide Buyer with an updated Equity Award Schedule within five (5) Business Days prior to the anticipated Closing Date to reflect any changes occurring between the Measurement Date and the applicable date of delivery.

Section 4.3 Corporate Authority and Approval.

(a) The Company has all requisite corporate power and authority and has taken all corporate action necessary to execute and deliver this Agreement and the Transaction Documents to which it is or is contemplated to be a party and that have been executed as of the date hereof and the Company will have all requisite corporate power and authority and has taken all corporate action necessary to execute and deliver all other Transaction Documents to which it will be a party as of the Effective Time and, subject to receipt of the Company Stockholder Approval, to consummate the Transactions and the transactions contemplated by the Transaction Documents. This Agreement has been duly executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the “Bankruptcy and Equity Exception”). Upon execution and delivery by the Company of each other Transaction Document to which it is or is contemplated to be a party, each other Transaction Document to which it is or is contemplated to be a party will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(b) The Company Board has (i) (A) determined that the terms of this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Company and its stockholders, (B) determined that this Agreement and the Transactions, including the Merger, are fair to and in the best interests of the Company and its stockholders, (C) approved the execution and delivery by the Company of this Agreement, the performance by the Company of its covenants and agreements contained herein and the consummation of the Transactions, including the Merger, upon the terms and subject to the conditions set forth herein, (D) approved the termination of the Netflix Merger Agreement and (E) resolved to make the Company Recommendation and directed that this Agreement be submitted to the holders of Company Stock for their adoption, and (ii) received the opinions of J.P. Morgan Securities LLC and Allen & Company LLC to the effect that, as of the date of such opinions and based upon and subject to the various qualifications, assumptions, limitations and other matters set forth therein, the Merger Consideration provided for pursuant to this Agreement is fair, from a financial point of view, to the holders of the Company Stock.

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(c) No vote of the holders of any class of equity securities of the Company is required for the execution and delivery of this Agreement, the Transaction Documents or any other agreements and documents contemplated hereby to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder, or to consummate the Merger and the transactions contemplated hereunder and thereunder, except for the Company Stockholder Approval.

Section 4.4 Governmental Filings; No Violations.

(a) Other than the necessary filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods or authorizations (i) pursuant to Section 1.3, (ii) required under the rules and regulations of NASDAQ, (iii) required under the HSR Act or any other applicable Antitrust Laws in connection with the Transactions, the Exchange Act and the Securities Act, (iv) to comply with state securities or "blue-sky" Laws, (v) as may be required with or to Foreign Regulators pursuant to applicable Foreign Regulatory Laws and (vi) as set forth in Section 4.4(a) of the Company Disclosure Letter, no filings, notices or reports are required to be made by any of the Company or its Subsidiaries with, nor are any consents, registrations, approvals, permits, expirations of waiting periods or authorizations required to be obtained by the Company or any of its Subsidiaries from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by the Company or the consummation by the Company of the Transactions, except, in each case, those that the failure to make or obtain would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is or will be a party as of the Effective Time do not or will not (as applicable), and the consummation by the Company of the Transactions and the transactions contemplated by such other Transaction Documents will not, constitute or result in (i) a breach or violation of, or a default under, the Organizational Documents of the Company or any of its Subsidiaries, (ii) with or without the lapse of time or the giving of notice or both, a breach or violation of, a default or termination or modification (or right of termination or modification) under, payment of additional fees under, the creation or acceleration of any obligations under, or the creation of a Lien on any Company Material Contracts, or, assuming (solely with respect to the performance of this Agreement and the consummation of the Transactions) the filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods and authorizations referred to in Section 4.4(a) are made or obtained, under any Law, Governmental Order or License to which the Company or any of its Subsidiaries is subject or (iii) any change in the rights or obligations under any Company Material Contract, except, in the case of clauses (ii) and (iii) above, for any such breach, violation, default, termination, modification, payment, acceleration, creation or change that would not, individually or in the aggregate, have a Company Material Adverse Effect.

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Section 4.5 Company Reports: Financial Statements.

(a) The Company has filed or furnished or will file or furnish, as applicable, on a timely basis, all Company Reports since the Applicable Date. Each of the Company Reports, at the time of its filing or being furnished complied (or, if not yet filed or furnished, will comply) in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Company Reports. As of their respective dates (or, if amended prior to the date of this Agreement, as of the date of such amendment), the Company Reports did not, and any Company Reports filed with or furnished to the SEC subsequent to the date of this Agreement will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(b) The Company has timely responded to all comment letters from the Staff of the SEC relating to the Company Reports dated on or prior to the date hereof, and the SEC has not asserted that any of such responses are inadequate, insufficient or otherwise non-responsive. None of the Company Reports filed on or prior to the date hereof is, to the Knowledge of the Company, subject to ongoing SEC review or investigation, and there are no inquiries or investigations by the SEC or any internal investigations pending or, to the Knowledge of the Company, threatened, in each case regarding any accounting practices of the Company.

(c) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of NASDAQ.

(d) The Company maintains disclosure controls and procedures required by Rule 13a-15 or 15d-15 under the Exchange Act. Such disclosure controls and procedures are reasonably designed to ensure that material information required to be disclosed by the Company in its filings with the SEC under the Exchange Act is recorded and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC under the Exchange Act. The Company maintains internal control over financial reporting (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act). Such internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on the most recent evaluation of its Chief Executive Officer and its Chief Financial Officer prior to the date of this Agreement, to the Company's auditors and the audit committee of the Company Board (i) any significant deficiencies and material weaknesses in the design or operation of its internal controls over financial reporting that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting. The Company has made available prior to the date of this Agreement to Buyer (A) either materials relating to or a summary of any disclosure of matters described in clause (i) or (ii) in the preceding sentence made by management of the Company to its auditors and the audit committee of the Company Board on or after the Applicable Date and prior to the date of this Agreement and (B) any material communication on or after the Applicable Date and prior to the date of this Agreement made by management of the Company or its auditors to the audit committee as required by the listing standards of NASDAQ, the audit committee's charter or professional standards of the Public Company Accounting Oversight Board.

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(e) Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents or, in the case of Company Reports filed after the date of this Agreement, will fairly present, in each case, in all material respects, the consolidated financial position of the Company and its Subsidiaries, as of the date of such balance sheet, and each of the consolidated statements of operations, cash flows and changes in stockholders' equity (deficit) included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents, or, in the case of Company Reports filed after the date of this Agreement, will fairly present, in each case, in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to notes and normal year-end audit adjustments that are not or will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein or in the notes thereto, and complied or will comply, as of their respective dates of filing with the SEC, in all material respects with the published rules and regulations of the SEC with respect thereto.

(f) Neither the Company nor any of its consolidated Subsidiaries is a party to or has any obligation or other commitment to become a party to any securitization transaction, off-balance sheet partnership or any similar Contract (including any structured finance, special purpose or limited purpose entity, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)) where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in any of the Company's published financial statements or other Company Reports.

Section 4.6 Absence of Certain Changes.

(a) Since September 30, 2025, and through the date of this Agreement, there has not been any Effect that, individually or in the aggregate, has had a Company Material Adverse Effect.

(b) Since September 30, 2025, and through the date of this Agreement, other than in connection with this Agreement, the Transactions and the Netflix Merger Agreement (including (x) conducting the business of the Company and its Subsidiaries in accordance with the terms thereof, (y) the transactions contemplated thereby and (z) the termination thereof), (i) the business of the Company and its Subsidiaries has been conducted in the Ordinary Course in all material respects, (ii) there has not been any material damage, destruction or other casualty loss with respect to any material asset of the Company and its Subsidiaries, whether or not covered by insurance, and (iii) there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period between the date of this Agreement through the Effective Time, without Buyer's consent, would constitute a breach of Section 6.1(a)(y)(i)(C) (*Distributions*), (iii)(B) (*Senior Executive Compensation*), (vi) (*COT Properties*), (vii) (*Key Properties*), (viii) (*HBO Service*), (ix) (*Sale of Assets*), (xi) (*Acquisitions*), (xii) (*Accounting Policies*), (xv) (*Loans*) or (xxvi) (solely to the extent relating to the foregoing clauses (i)(C), (iii)(B), (vi), (vii), (viii), (ix), (xi), (xii) and (xv)).

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Section 4.7 Litigation and Liabilities.

(a) As of the date of this Agreement, there are no Proceedings pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiaries, except for those that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) There are no obligations or liabilities of the Company or any of its Subsidiaries, whether or not accrued, contingent or otherwise, other than obligations or liabilities (i) disclosed, reflected, reserved against or otherwise provided for in the consolidated balance sheet of the Company as of December 31, 2024 and the notes thereto set forth in the Company's annual report on Form 10-K for the fiscal year ended December 31, 2024, (ii) incurred in the Ordinary Course since December 31, 2024, (iii) arising out of this Agreement (and which do not arise out of a breach by the Company of any representation or warranty in this Agreement) or third-party service provider obligations incurred in connection with the Transactions, (iv) incurred pursuant to Contracts or Licenses binding on the Company or any of its Subsidiaries or pursuant to which their respective assets are bound (other than those resulting from a breach of such Contract or License) or (v) that would not, individually or in the aggregate, have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries is a party to or subject to the provisions of any Governmental Order that would, individually or in the aggregate, have a Company Material Adverse Effect.

Section 4.8 Employee Benefits and Labor Matters.

(a) Each material Company Plan as of the date of this Agreement is listed in Section 4.8(a) of the Company Disclosure Letter, other than employment agreements that do not materially deviate from the Company's standard forms set forth in Section 4.8(a) of the Company Disclosure Letter. True and complete copies of each of the material Company Plans (other than employment agreements that do not materially deviate from the Company's standard forms set forth in Section 4.8(a) of the Company Disclosure Letter) (or, if unwritten, a written summary thereof) and all amendments thereto have been made available to Buyer on or prior to the date of this Agreement. The Company shall provide a list to Buyer of each material employment agreement with a Company Employee, other than any such employment agreements that do not materially deviate from the Company's standard forms set forth in Section 4.8(a) of the Company Disclosure Letter, and make available to Buyer true and complete copies (or a summary of the material terms) of each such material employment agreement within ninety (90) days following the date of this Agreement.

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(b) Each Company Plan that is subject to ERISA that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "Company Pension Plan") and intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the IRS and, to the Knowledge of the Company, no circumstance exists that is likely to result in the loss of the qualification of such plan under Section 401(a) of the Code. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, each Company Plan has been established, funded and operated in accordance with its terms and with all applicable Law, including the applicable provisions of ERISA and the Code.

(c) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Company or any of its Subsidiaries with respect to any ongoing, frozen or terminated "single-employer plan," within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code (a "Company ERISA Affiliate"), except as would not, individually or in the aggregate, have a Company Material Adverse Effect.

(d) Each Multiemployer Plan maintained, sponsored or contributed to by the Company or any Company ERISA Affiliate (a "Company Multiemployer Plan"), as of the date of this Agreement, is listed in Section 4.8(d) of the Company Disclosure Letter, and true and complete copies of each such Multiemployer Plan and all amendments thereto have been made available to Buyer on or prior to the date of this Agreement. With respect to each Company Multiemployer Plan, except as would not, individually or in the aggregate, have a Company Material Adverse Effect: (i) to the Knowledge of the Company, no such Company Multiemployer Plan is insolvent, within the meaning of Section 4245 of ERISA; (ii) no withdrawal liability, within the meaning of Section 4201 of ERISA, has been or is reasonably expected to be incurred by the Company or any Company ERISA Affiliate, and, to the Knowledge of the Company, no event has occurred that has resulted or would reasonably be expected to result in the incurrence by the Company or any Company ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from, or termination of, any Company Multiemployer Plan; (iii) to the Knowledge of the Company, no proceeding has been initiated by the PBGC to terminate such Company Multiemployer Plan or is threatened; and (iv) all contributions required to be made by the Company or any of its Subsidiaries under each such Company Multiemployer Plan, as of the date of this Agreement, have been timely made.

(e) Neither any Company Pension Plan nor any single-employer plan of a Company ERISA Affiliate has failed to satisfy the minimum funding standards under Sections 412 and 430 of the Code and Section 302 of ERISA (whether or not waived), and no Company ERISA Affiliate has an outstanding funding waiver. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, with respect to any Company Pension Plan subject to the minimum funding requirements of Section 412 of the Code or Title IV of ERISA, (i) no such plan is, or is expected to be, in "at-risk" status (within the meaning of Section 303(j)(4)(A) of ERISA or Section 430(j)(4)(A) of the Code), (ii) no unsatisfied liability (other than for premiums to the Pension Benefit Guaranty Corporation (the "PBGC")) under Title IV of ERISA has been, or is expected to be, incurred by the Company or any of its Subsidiaries and (iii) the PBGC has not instituted proceedings to terminate any such Company Pension Plan.

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(f) As of the date of this Agreement, there is no pending or, to the Knowledge of the Company, threatened litigation relating to the Company Plans, except as would not, individually or in the aggregate, have a Company Material Adverse Effect.

(g) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has any obligations for retiree health or life benefits under any of the Company Plans or any Collective Bargaining Agreement, except as required by Section 4980B of the Code or Section 601 of ERISA (or any similar non-U.S. Law).

(h) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) each material Company Plan that is maintained in any non-U.S. jurisdiction or covers any Company Employee residing or working outside the United States (each, an "International Company Plan") has been established, funded, and operated in compliance in all respects with its terms and conditions and with the requirements prescribed by any applicable Laws, (ii) each International Company Plan which is required to be registered or approved by any Governmental Entity has been so registered and approved and has been maintained in good standing with applicable requirements of the Governmental Entities, and, if intended to qualify for special tax treatment, meets all requirements for such special tax treatment with respect to such International Company Plan, and (iii) each International Company Plan is funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions, to the extent such International Company Plan is required to be funded and/or book-reserved.

(i) Neither the execution of this Agreement, stockholder adoption of this Agreement, receipt of approval or clearance from any one or more Governmental Entities of the Transactions, nor the consummation of the Transactions will, either alone or in combination with any other event, (A) cause any Company Employee to become eligible for any increase in severance pay upon any termination of employment after the date of this Agreement, (B) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of material compensation or benefits to any Company Employee or under any Company Plan, or increase the amount payable or result in any other material obligation pursuant to any of the Company Plans, (C) limit or restrict the right of the Company to merge, amend or terminate any of the Company Plans or (D) result in the payment of any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment" as defined in Section 280G(b)(1) of the Code.

(j) Except as set forth in Section 4.8(j) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is party to any Collective Bargaining Agreements (excluding any Collective Bargaining Agreement with a Guild or that applies on a national, area-wide, sector-wide, or industry-wide basis). To the Knowledge of the Company, there are no activities or proceedings of any Labor Union to organize any Company Employees with regard to their employment with the Company or any of its Subsidiaries. There is no, and since December 31, 2023 there has been no, strike, lockout, concerted work slowdown or stoppage, material unfair labor practice charge, material grievance, material arbitration, or other labor dispute pending or, to the Knowledge of the Company, threatened in writing, against the Company or any of its Subsidiaries, except where such strike, lockout or concerted work slowdown or stoppage would not, individually or in the aggregate, have a Company Material Adverse Effect.

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(k) The Company and each of its Subsidiaries is, and has been since December 31, 2023, in compliance with all applicable Laws governing employment or labor, including all such Laws relating to terms and conditions of employment, wages, hours, worker classification, contractors, child labor, immigration, collective bargaining, labor relations, discrimination, equal opportunity, safety and health, disability rights or benefits, employee leave issues, plant closures and layoffs, unemployment insurance, workers' compensation, and automated employment decision tools and other artificial intelligence, except as would not, individually or in the aggregate, have a Company Material Adverse Effect.

(l) Since December 31, 2023, neither the Company nor any of its Subsidiaries has entered into a settlement agreement relating to a court or administrative complaint with a current or former officer, employee or independent contractor of the Company or any of its Subsidiaries that involves allegations relating to harassment or discrimination of any kind by a Covered Employee. Since December 31, 2023, no formally reported allegations of harassment or discrimination of any kind have been made against any Senior Executive other than allegations that were formally investigated and determined by the Company to be unsubstantiated.

(m) To the Knowledge of the Company, no Covered Employee is in any material respect in violation of any term of any nondisclosure agreement, non-competition agreement or similar restrictive covenant agreement: (i) to the Company or any of its Subsidiaries or (ii) to a former employer of any such employee relating to (A) the right of any such employee to be employed by the Company or any of its Subsidiaries or (B) the knowledge or use of Trade Secrets or proprietary information. To the Knowledge of the Company, no Senior Executive has provided written notice to the Company of his or her intention to terminate his or her employment.

Section 4.9 Compliance with Laws, Licenses.

(a) Each of the Company and its Subsidiaries, since the Applicable Date, has not been, and is not being, conducted in violation of any applicable federal, state, local, foreign or transnational Law or any Governmental Order, except for such violations that would not, individually or in the aggregate, have a Company Material Adverse Effect. To the Knowledge of the Company, no investigation or review by any Governmental Entity with respect to the Company or its Subsidiaries is pending or, as of the date of this Agreement, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for such investigations or reviews the outcome of which would not, individually or in the aggregate, have a Company Material Adverse Effect. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Company and its Subsidiaries possesses each License necessary to conduct its business.

(b) Section 4.9(b) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of each License made, issued or granted to the Company or any of its Subsidiaries or used by the Company and its Subsidiaries, except for any Licenses the absence of which would not, individually or in the aggregate, have a Company Material Adverse Effect.

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(c) The Company and its Subsidiaries and, to the Knowledge of the Company, the officers, directors and employees of the Company and its Subsidiaries are in compliance in all material respects with, and since the Applicable Date have complied in all material respects with: (i) the provisions of the FCPA applicable to the Company and its Subsidiaries and such officers, directors and employees; and (ii) the provisions of all anti-bribery, anti-corruption and anti-money laundering Laws of each jurisdiction in which the Company and its Subsidiaries operate or have operated. Since the Applicable Date, the Company and its Subsidiaries and, to the Knowledge of the Company, the officers, directors and employees of the Company and its Subsidiaries, have not paid, offered or promised to pay, or authorized or ratified the payment, directly or indirectly, of any monies or anything of value to any national, provincial, municipal or other Government Official or any political party or candidate for political office for the purpose of corruptly influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person or to secure any other improper benefit or advantage, in each case in violation in any material respect of the FCPA or any Laws described in clause (ii) of the foregoing sentence.

(d) The Company and its Subsidiaries have instituted and maintain policies and procedures reasonably designed to ensure compliance with the FCPA and other anti-bribery, anti-corruption and anti-money laundering Laws in each jurisdiction in which the Company and its Subsidiaries operate.

(e) None of the Company nor any of its Subsidiaries are, and since the Applicable Date, have been, subject to any pending, or, to the Knowledge of the Company, threatened civil, criminal, or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings, demand letters, settlements or enforcement actions, or made any voluntary disclosures to any Governmental Entity, involving the Company and its Subsidiaries relating to the FCPA or any other anti-bribery, anti-corruption or anti-money laundering Laws.

(f) Without limiting the generality of the foregoing, each of the Company and its Subsidiaries, since the Applicable Date, has been and currently is in compliance in all material respects with the Export and Sanctions Regulations. Section 4.9(f) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of material specific licenses or authorizations held by the Company or any of its Subsidiaries under the Export and Sanctions Regulations. The Company and its Subsidiaries have instituted and maintain policies and procedures reasonably designed to ensure compliance with the Export and Sanctions Regulations in each jurisdiction in which the Company and its Subsidiaries operate or are otherwise subject to jurisdiction.

(g) None of the Company nor any of its Subsidiaries are, and since the Applicable Date, have been, subject to any actual, pending or, to the Knowledge of the Company, threatened Proceedings, demands, notices of violation, demand letters, settlements or enforcement actions, or made any voluntary disclosures to any Governmental Entity, involving the Company or any of its Subsidiaries relating to the Export and Sanctions Regulations.

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(h) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Company and its Subsidiaries are in compliance with the rules and regulations of all performing rights societies and industry guilds applicable to their operations.

Section 4.10 [Reserved].

Section 4.11 Certain Contracts.

(a) Section 4.11(a) of the Company Disclosure Letter sets forth a complete and accurate list as of the date of this Agreement of each Contract to which either the Company or any of its Subsidiaries is a party or bound (each such Contract, a "Company Material Contract"), which:

(i) provides that any of the Company or its Subsidiaries will not compete with any other Person, or which grants "most favored nation" protections to the counterparty to such Contract, that in each case after the Effective Time would be binding upon Buyer or any of its Subsidiaries (other than the Company or any of its Subsidiaries), and is material to the Company and its Subsidiaries, taken as a whole;

(ii) purports to limit in any material respect either the type of business in which the Company or any of its Subsidiaries may engage or the manner or locations in which any of them may so engage in any business, that in each case after the Effective Time would be binding upon Buyer or any of its Subsidiaries (other than the Company and any of its Subsidiaries);

(iii) requires the Company or any of its Subsidiaries (or, after the Effective Time, Buyer or any of its Subsidiaries) to deal exclusively with any Person or group of related Persons which Contract is reasonably likely to provide for annual revenues or expenses of \$500,000,000 or more;

(iv) is material to the formation, creation, operation, management or control of any partnership or joint venture, the book value of the Company's investment in which exceeds \$500,000,000;

(v) is a Contract for the operating lease of personal property providing for annual payments of \$60,000,000 or more;

(vi) is (A) a Material Real Property Lease or (B) any Contract relating to the disposition or acquisition of Owned Real Property;

(vii) is required to be filed by the Company as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act;

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(viii) contains a put, call or similar right pursuant to which the Company or any of its Subsidiaries would be required to purchase or sell, as applicable, any equity interests of any Person or assets (excluding Intellectual Property) at a purchase price which would reasonably be expected to exceed, or the fair market value of the equity interests or assets (excluding Intellectual Property) of which would be reasonably likely to exceed, \$250,000,000;

(ix) is a Contract not of a type (disregarding any dollar thresholds, materiality or other qualifiers, restrictions or other limitations applied to such Contract type) described in the foregoing clauses (i) through (viii) and in the following clause (x) that has or would reasonably be likely to, either pursuant to its own terms or the terms of any related Contracts, involve net payments or receipts in excess of \$600,000,000 in any year; or

(x) is a Contract (A) governing Indebtedness of the Company or any of its Subsidiaries with a principal amount in excess of \$60,000,000, (B) that grants a Lien securing Indebtedness of the Company or any of its Subsidiaries with a principal amount in excess of \$60,000,000 on any property or asset of the Company or any of its Subsidiaries, or (C) under which any Person is guaranteeing Indebtedness of the Company or any of its Subsidiaries with a principal amount in excess of \$60,000,000;

provided that, notwithstanding the foregoing, Company Material Contracts shall not include any purchase orders and invoices or Company Plans or agreements related to the development or Exploitation (including any production, licensing or distribution) of Content (or Intellectual Property licensed for use in the development or production of Content, which are the subject of Section 4.14(d)).

(b) A true and complete copy of each Company Material Contract, as of the date of this Agreement, including all amendments, attachments, schedules and exhibits thereto, has been made available to Buyer prior to the date of this Agreement (other than any immaterial omissions and subject to the redaction of competitively sensitive information). Each of the Company Material Contracts, and each Contract entered into after the date hereof that would have been a Company Material Contract if entered into prior to the date hereof (each, a "Company Additional Contract"), is (or if entered into after the date hereof, will be) valid and binding on the Company or the applicable Subsidiary, as the case may be, and, to the Knowledge of the Company, each other party thereto, and is in full force and effect, except for such failures to be valid and binding or to be in full force and effect as would not, individually or in the aggregate, have a Company Material Adverse Effect. None of the Company nor any of its Subsidiaries or, to the Knowledge of the Company, any other party is in breach of or in default under any Company Material Contract or Company Additional Contract, and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a default thereunder by the Company or any of its Subsidiaries, in each case, except for such breaches and defaults as would not, individually or in the aggregate, have a Company Material Adverse Effect. To the Knowledge of the Company, as of the date of this Agreement, none of the Company nor any of its Subsidiaries has received written notice alleging a breach of or default under any Company Material Contract.

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Section 4.12 Environmental Matters. Except for such matters that would not, individually or in the aggregate, have a Company Material Adverse Effect: (a) each of the Company and its Subsidiaries has since the Applicable Date been in compliance with all applicable Environmental Laws, (b) the environmental conditions at the properties currently owned, leased or operated by the Company and its Subsidiaries (including soils, groundwater and surface water), and, to the Knowledge of the Company, any formerly owned, leased or operated properties, are not contaminated with any Hazardous Substance that has or would reasonably be likely to result in the Company or any of its Subsidiaries incurring liability or having to conduct or fund any cleanup or other remedial activity pursuant, directly or indirectly, to any applicable Environmental Law, (c) none of the Company nor any of its Subsidiaries is subject to any Proceeding, or has otherwise received a written notice, alleging that it is liable for the release or threat of release of any Hazardous Substance that has or would reasonably be likely to result in the Company or any of its Subsidiaries incurring liability under any applicable Environmental Law, (d) none of the Company nor any of its Subsidiaries have received any written notice, demand, letter, claim or request for information alleging that the Company or any of its Subsidiaries may be in violation of or subject to liability under any Environmental Law, (e) none of the Company nor any of its Subsidiaries is subject to any outstanding obligations under any orders, decrees or injunctions, or outstanding obligations or claims under any indemnities or other contractual agreements, concerning liability or obligations relating to any Environmental Law and (f) to the Knowledge of the Company, there are no other environmental conditions involving the Company or any of its Subsidiaries that would reasonably be likely to result in a liability to the Company or any of its Subsidiaries pursuant to any Environmental Law.

Section 4.13 Taxes. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect:

(a) All Tax Returns required to be filed by or with respect to the Company and its Subsidiaries have been timely filed (taking into account applicable extensions), and all such Tax Returns are true, correct and complete in all respects.

(b) All Taxes of or with respect to the Company and its Subsidiaries, whether or not shown as due on such Tax Returns, have been timely paid in full, or adequate reserves therefor have been provided in accordance with GAAP. Neither the Company nor its Subsidiaries is currently the beneficiary of any extension of time within which to file any Tax Return (other than automatically granted extensions obtained in the Ordinary Course).

(c) All Taxes required to be withheld in respect of the Company and its Subsidiaries have been withheld and, to the extent required, have been timely paid over to the appropriate Governmental Entity.

(d) No deficiency for any amount of Taxes has been asserted or assessed by any Governmental Entity in writing against the Company or any of its Subsidiaries (or, to the Knowledge of the Company, has been threatened or proposed), except for deficiencies which have been satisfied by payment, settled or withdrawn. No claim, audit or other proceeding by any Governmental Entity is pending or threatened in writing with respect to any Taxes of or with respect to the Company or any of its Subsidiaries.

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(e) Neither the Company nor any of its Subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) during the two (2)-year period ending on the date of this Agreement.

(f) Neither the Company nor any of its Subsidiaries has participated in a “listed transaction” as defined in Treasury Regulations Section 1.6011-4(b)(2).

(g) There are no Liens for Taxes (other than Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been provided in accordance with GAAP) upon the assets of the Company or any of its Subsidiaries.

(h) Neither the Company nor any of its Subsidiaries is party to (or will be liable in respect of) any Contract relating to the allocation, sharing or indemnification of an amount of Taxes, other than (i) customary commercial, leasing or employment Contracts entered into in the Ordinary Course, the primary purposes of which do not relate to Taxes and (ii) Contracts solely between or among any of the Company or one or more of its Subsidiaries.

(i) Neither the Company nor any of its Subsidiaries (i) is, or since April 8, 2022 has been, a member of a group filing an affiliated, consolidated, combined or unitary Tax Return (other than a group the common parent of which is the Company or a Subsidiary of the Company), or (ii) has any Liability for the Taxes of any Person other than the Company or any of its Subsidiaries under Treasury Regulation Section 1.1502-6 (or any corresponding or similar provision of U.S. state or local or non-U.S. Law), as a transferee or successor or by Contract (other than a commercial contract executed in the ordinary course of business the primary purpose of which is not related to Taxes), other than Contracts solely between or among any of the Company or one or more of its Subsidiaries.

(j) No Governmental Entity has notified the Company or any of its Subsidiaries in writing that it is or may be subject to taxation by a jurisdiction in which it does not presently file Tax Returns.

(k) The Company is not and has not, in the five (5)-year period ending on the date of this Agreement, been a “United States Real Property Holding Corporation” within the meaning of Section 897 of the Code.

(l) No closing agreements (as described in Section 7121 of the Code or any corresponding provision of state, local or non-U.S. Law), private letter rulings, technical advice memoranda or similar agreements or rulings, in each case, in respect of Taxes of the Company or any of its Subsidiaries, have been entered into or requested by the Company or any of its Subsidiaries that will be in effect after the Closing.

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Section 4.14 Intellectual Property.

- (a) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, all Registered Company IP is subsisting and, to the Knowledge of the Company, valid and enforceable.
- (b) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Company and its Subsidiaries (i) are the owners of the Company Owned IP, free and clear of any Liens and (ii) own, or have a valid and enforceable license or other sufficient rights to use, all Intellectual Property that is used by or necessary to operate the business of the Company and its Subsidiaries.
- (c) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) the Company and its Subsidiaries have not since the Applicable Date, and do not, infringe, misappropriate or otherwise violate the Intellectual Property rights of any third party, (ii) no third party is infringing, misappropriating or otherwise violating any Company Owned IP, (iii) there are no pending or threatened in writing Proceedings alleging that the Company or any of its Subsidiaries have infringed, misappropriated or otherwise violated the Intellectual Property rights of any Person, and (iv) the Company and its Subsidiaries have not received any written notice within the past three (3) years alleging that the Company or any of its Subsidiaries is infringing, misappropriating, or otherwise violating the Intellectual Property rights of any third party.
- (d) The Company has provided Buyer with true and complete copies of (i) all material Contracts containing any in-licenses or transfers of the COT Properties to the Company or any of its Subsidiaries or any of its or their predecessors (including the in-licensing of Intellectual Property for use in the development or production of such COT Properties); provided that for purposes of this Section 4.14(d), (i) a Contract shall be deemed material only if it would reasonably be expected to impair the Exploitation of such COT Property in any material respect; and (ii)(w) the top ten (10) by revenue vMVPD and MVPD agreements that include distribution of the COT Properties in the United States and, to the extent not included in the above, the top eight (8) HBO Max distribution agreements by revenue for the United States; (x) the top ten (10) by revenue HBO Max distribution agreements for the Europe and Middle East region; (y) the top ten (10) by revenue HBO Max or HBO Premium distribution agreements for the Latin America region; and (z) the top ten (10) by revenue HBO Max distribution agreements for the Asia Pacific region; provided that the foregoing shall not include COT Property Agreements solely between or among the Company and its Subsidiaries. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Key Out-License Agreements and the Key Out-License Summary (solely with respect to the COT Properties, term, exclusivity and territory), taken together, constitute an accurate and complete summary (solely with respect to the COT Properties, term, exclusivity and territory) of all exclusive out-licenses and material non-exclusive out-licenses of the COT Properties.
- (e) Within the past three (3) years, the Company and its Subsidiaries have not dedicated to the public domain, forfeited, abandoned or otherwise allowed to fall into the public domain, any COT Property.
- (f) To the Knowledge of the Company, none of the COT Properties are subject to a right of any Person to, within ten (10) years of the date of this Agreement, revert, extinguish or otherwise terminate any right of the Company or any of its Subsidiaries in any COT Properties, including pursuant to 17 U.S.C. §203 or §304 or their foreign equivalents. Within the past three (3) years, the Company and its Subsidiaries have not received any written notice reverting, extinguishing or otherwise terminating (or stating an intent to revert, extinguish or otherwise terminate) any rights of the Company or any of its Subsidiaries in any COT Property, including under §203 or §304(c) of the United States Copyright Act and their foreign equivalents, and, to the Knowledge of the Company, there is no reasonable basis for a claim that any Person holds any such right.

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(g) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect or Buyer Material Adverse Effect, the execution, delivery and performance of this Agreement, and the consummation of the Merger will not, with or without notice or the lapse of time or both:

- (i) breach or require consent or notice to be given for any COT Property Agreement;
- (ii) cause any material loss of, or forfeiture or termination of (or give rise to a right of forfeiture or termination of, or any incremental loss of rights with respect to), any rights of the Company or any of its Subsidiaries to Exploit any COT Properties;
- (iii) in any way impair the right to Exploit, or bring any Proceeding for the unauthorized Exploitation, disclosure, or infringement of, any COT Properties;
- (iv) result in any other Person receiving (or give any other Person) the right or option to modify or terminate any agreement, covenant not to sue, immunity or other rights with respect to any COT Properties, or result in the Company or any of its Subsidiaries not having any such rights to the same extent as it would had such execution, delivery, performance, or consummation not taken place;
- (v) cause or require Buyer, its Affiliates or the Company or any of its Subsidiaries to be bound by, or become subject to, any non-compete, non-solicit or other similar or comparable restriction on the operation or scope of their respective businesses;
- (vi) cause or require the Company or any of its Subsidiaries (or accelerate any obligation of the Company or any of its Subsidiaries) to pay any royalties or other amounts to any Person with respect to ownership or Exploitation of COT Properties by the Company or any of its Subsidiaries (or any of their licensees) that the Company or its Subsidiaries would not otherwise have been required to pay pursuant to any license or other agreement; or
- (vii) result in any other Person having (or give or purport to give any other Person) the right or option to any license, covenant not to sue, immunity or other rights with respect to the Intellectual Property rights of Buyer, its Affiliates or the Company or any of its Subsidiaries.

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(h) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Company and its Subsidiaries take and have taken commercially reasonable measures to maintain, preserve and protect (i) their respective interests in the Intellectual Property material to the respective businesses of the Company and its Subsidiaries, and (ii) the confidentiality of the Trade Secrets owned or received from third parties by the Company and its Subsidiaries. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, there has not been any disclosure or other compromise of any confidential or proprietary information of the Company or any of its Subsidiaries (including any such information of any other Person disclosed in confidence to the Company or any of its Subsidiaries) to any third party in a manner that has resulted or would reasonably be likely to result in any liability to the Company or any of its Subsidiaries.

(i) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect: (i) the Company Information Technology operates and performs in all respects as required to permit the Company and its Subsidiaries to conduct their respective businesses as currently conducted, and (ii) to the Knowledge of the Company, since the Applicable Date, no Person has gained unauthorized access to the Company Information Technology in a manner that has resulted or would reasonably be likely to result in liability to the Company or any of its Subsidiaries. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, none of the software owned by the Company or any of its Subsidiaries contains or is distributed with any shareware, open source code or other software for which use or distribution is under a license that requires the Company or any of its Subsidiaries to do any of the following: (A) disclose or distribute the software owned by the Company or any of its Subsidiaries in source code form, (B) authorize a licensee of the software owned by the Company or any of its Subsidiaries to make derivative works of such software owned by the same or (C) distribute the software owned by the Company or any of its Subsidiaries at no cost to the recipient.

(j) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) the Company and its Subsidiaries are in compliance with applicable Laws and Governmental Orders regarding the privacy and security of customer, employee and other Personal Data and are compliant in all respects with their respective privacy policies and (ii) there have not been any incidents of, or third-party claims related to, any loss, theft, unauthorized access to or acquisition, modification, disclosure, corruption or other misuse of any Personal Data in the Company's or any of its Subsidiaries' possession. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has received any written notice of any claims, investigations (including investigations by any Governmental Entity) or alleged violations of any Laws and Governmental Orders with respect to Personal Data possessed by the Company or any of its Subsidiaries.

Section 4.15 Insurance. The Company has made available to Buyer prior to the date of this Agreement true, correct and complete copies of the Company's and its Subsidiaries' director and officer insurance policies. The insurance policies held by the Company and its Subsidiaries provide adequate coverage for all normal risks incident to the business and assets of the Company and its Subsidiaries, except for any such failures to maintain such policies that would not, individually or in the aggregate, have a Company Material Adverse Effect. Each such policy is in full force and effect and all premiums due with respect to all such policies have been paid, with such exceptions that would not, individually or in the aggregate, have a Company Material Adverse Effect.

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Section 4.16 Related-Party Transactions. As of the date hereof, except as disclosed in the Company's definitive proxy statements included in the Company Reports, within the twelve (12) months prior to the date of this Agreement no event has occurred, and no relationship exists that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K.

Section 4.17 Information Supplied. The information supplied by or on behalf of the Company to be contained in, or incorporated by reference in, the Proxy Statement, including any amendments or supplements thereto and any other document incorporated or referenced therein, will not, on the date the Proxy Statement is first mailed to stockholders of the Company, at the time of the Company Stockholder Meeting or at the time of any amendment or supplement thereof, contain any untrue statement of any material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, at the time and in light of the circumstances under which they were made, not misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder. Notwithstanding the foregoing provisions of this Section 4.17, no representation or warranty is made by the Company with respect to information or statements made or incorporated by reference in the Proxy Statement that were supplied by or on behalf of Buyer or Merger Sub for use therein.

Section 4.18 Brokers and Finders. The Company has not employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the Transactions, except that the Company has engaged Allen & Company LLC, J.P. Morgan Securities LLC and Evercore Group L.L.C. as the Company's financial advisors, none of which shall be entitled to any brokerage fees, commissions or finders' fees (not including any fees with respect to opinions delivered by such financial advisors or expense reimbursement) in connection with the Netflix Merger Agreement, the transactions contemplated thereby or the termination thereof, except as are credited to any amount payable in connection with this Agreement or the Transactions. The Company has, prior to the execution and delivery of this Agreement by the Company, made available to Buyer true, correct and complete copies of the Company's engagement letters with such financial advisors as in effect on the date of this Agreement (including such engagement letters with respect to the Netflix Merger Agreement, the transactions contemplated thereby or the termination thereof).

Section 4.19 Real Property.

(a) Section 4.19(a) of the Company Disclosure Letter sets forth a true and complete list in all material respects of the real property owned in fee by the Company or any of its Subsidiaries (collectively, the "Owned Real Property"). The Company or one of its Subsidiaries has good fee title to all Owned Real Property, free and clear of all Liens to the Knowledge of the Company. To the Knowledge of the Company, the Owned Real Property is not subject to any agreement under which any Person has a right to purchase any of the Owned Real Property. Except as set forth in Section 4.19(a) of the Company Disclosure Letter, to the Knowledge of the Company, there does not exist, any actual, pending or threatened violation of any Laws that remains uncured, proceedings of eminent domain, condemnation or any sale or disposition in lieu thereof.

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(b) Section 4.19(b) of the Company Disclosure Letter sets forth a true and complete list in all material respects pursuant to which the Company or any of its Subsidiaries leases or subleases any real property in excess of 100,000 square feet (each, a "Material Real Property Lease," and such real property the subject thereof, the "Leased Real Property"). The Company has made available to Buyer correct and complete copies in all material respects each Material Real Property Lease in the possession of the Company and, to the Knowledge of the Company, each is in full force and effect. The Company and its Subsidiaries, as applicable, hold valid real estate interests and rights to the Leased Real Property, free and clear of all Liens. To the Knowledge of the Company, there does not exist any material breaches or defaults by the Company or any of its Subsidiaries under any Material Real Property Lease.

Section 4.20 Termination of Netflix Merger Agreement. Concurrently with the execution and delivery of this Agreement, assuming that Buyer has paid (or has caused to be paid) the Netflix Termination Fee on behalf of the Company, the Company has validly terminated the Netflix Merger Agreement in accordance with its terms and has no further liabilities thereunder. Promptly, and in any event within twenty-four (24) hours after the execution and delivery of this Agreement, the Company will have instructed Netflix to return to the Company or destroy or erase all Confidential Information (as defined in the Netflix Merger Agreement) previously furnished to Netflix or Representatives of Netflix by or on behalf of the Company or any of its Subsidiaries (in accordance with the terms of the confidentiality letter agreement entered into between Netflix and the Company, dated October 26, 2025 (the "Netflix Confidentiality Agreement")), except as permitted in the Netflix Confidentiality Agreement. Upon or substantially concurrently with the execution and delivery of this Agreement, the Company will have terminated all physical and electronic data room access for Netflix and its Representatives to diligence or other information regarding the Company or any of its Subsidiaries.

Section 4.21 No Other Representations and Warranties. The Company, on its own behalf and on behalf of its Affiliates and each of its and their respective representatives, acknowledges and agrees that (a) except for the representations and warranties made by Buyer and Merger Sub in Article V, or in any certificate delivered pursuant to this Agreement, neither Buyer, Merger Sub nor any other Person makes any express or implied representation or warranty with respect to Buyer and its Affiliates or any of their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects in connection with this Agreement or the Transactions, and Buyer and Merger Sub hereby disclaims any such other representations or warranties, and (b) neither Buyer nor any other Person makes or has made any representation or warranty to the Company or any of its Affiliates or Representatives with respect to (i) any financial projection, forecast, estimate, budget or prospective information relating to Buyer or any of its Affiliates or any of their respective businesses, or (ii) any oral or, except for the representations and warranties made by Buyer and Merger Sub in Article V or in any certificate delivered pursuant to this Agreement, written information made available to the Company or any of its Affiliates or Representatives in the course of their evaluation of Buyer, the Buyer Entities or the business of Buyer and its Subsidiaries, the negotiation of this Agreement or in the course of the Transactions.

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ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Except as set forth in the forms, statements, certifications, reports and documents required to be filed or furnished by Buyer with the SEC pursuant to the Exchange Act or the Securities Act since the Applicable Date (the forms, statements, certifications, reports and documents filed with or furnished to the SEC since the Applicable Date, including those filed with or furnished to the SEC subsequent to the date of this Agreement, in each case as amended, the "Buyer Reports") that were filed with or furnished to the SEC prior to the date of this Agreement (excluding any disclosures set forth in any risk factor section or in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature), other than with respect to Sections 5.1, 5.2, 5.3 and 5.9, or in the corresponding sections or subsections of the disclosure letter delivered to the Company by Buyer concurrently with the execution and delivery of this Agreement (the "Buyer Disclosure Letter"), it being agreed that for purposes of the representations and warranties set forth in this Article V, disclosure of any item in any section or subsection of the Buyer Disclosure Letter shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on its face, Buyer and Merger Sub hereby represent and warrant to the Company as of the date of this Agreement (other than such representations and warranties that are expressly made as of a certain date, which are made as of such date) that (provided that the representations and warranties in this Article V (except in the case of Section 5.1) with respect to the Buyer JVs shall be given solely to the extent of the Knowledge of Buyer):

Section 5.1 Organization, Good Standing and Qualification. Each of Buyer, Merger Sub and Buyer's Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, qualified or in good standing, or to have such power or authority, would not, individually or in the aggregate, have a Buyer Material Adverse Effect. Prior to the date of this Agreement, Buyer has made available to the Company complete and correct copies of the Organizational Documents of Buyer.

Section 5.2 Capital Structure.

(a) As of the date of this Agreement, the authorized capital stock of Buyer consists of (i) 55,000,000 shares of Buyer Class A common stock, par value \$0.001 per share ("Buyer Class A Common Stock") and together with Buyer Class B Common Stock, "Buyer Common Stock"), (ii) 5,500,000,000 shares of Buyer Class B Common Stock and (iii) 100,000,000 shares of preferred stock, par value \$0.001 per share ("Buyer Preferred Stock"). As of the Measurement Date, there were (x)(A) an aggregate of 31,500,087 shares of Buyer Class A Common Stock issued and outstanding, (B) an aggregate of 1,080,241,022 shares of Buyer Class B Common Stock issued and outstanding and (C) no shares of Buyer Preferred Stock issued and outstanding and (y) there were (A) an aggregate of 156,821,898 shares of Buyer Class B Common Stock reserved for, and 63,747,040 shares of Buyer Class B Common Stock subject to, issuance pursuant to the Buyer Plans, which included (i) 63,043,277 restricted-stock units of Buyer, (ii) no performance-based restricted stock units of Buyer (assuming the achievement of performance criteria at target levels) and (iii) 703,763 options to purchase shares of Buyer Class B Common Stock granted under any Buyer Plan and (B) no shares of Preferred Stock reserved for, and no shares of Preferred Stock subject to, issuance pursuant to the Buyer Plans.

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(b) The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.01 per share, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned, directly or indirectly, by Buyer, and there are (i) no other shares of capital stock or voting securities of Merger Sub, (ii) no securities of Merger Sub convertible into or exchangeable for equity securities or other voting securities of Merger Sub and (iii) no options or other rights to acquire from Merger Sub, and no obligations of Merger Sub to issue, any equity securities, other voting securities or securities convertible into or exchangeable for equity securities or other voting securities of Merger Sub. Merger Sub has not conducted any business prior to the date of this Agreement and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incidental to its formation and pursuant to this Agreement and the Transactions.

Section 5.3 Corporate Authority and Approval.

(a) Each of Buyer and Merger Sub has all requisite corporate power and authority and has taken all corporate action necessary to execute and deliver this Agreement and the Transaction Documents to which it is a party and that have been executed as of the date hereof and will have all requisite corporate power and authority and has taken all corporate action necessary to execute and deliver all other Transaction Documents to which it will be a party as of the Effective Time and to consummate the Transactions and the transactions contemplated by the Transaction Documents. This Agreement has been duly executed and delivered by Buyer and Merger Sub and constitutes a valid and binding agreement of Buyer and Merger Sub, enforceable against each of them in accordance with its terms, subject to the Bankruptcy and Equity Exception. The execution and delivery by Buyer and Merger Sub of this Agreement and the Transaction Documents to which Buyer or Merger Sub is or will be a party as of the Effective Time and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary and proper corporate action on the part of Buyer and Merger Sub, and no other corporate action on the part of Buyer or Merger Sub is necessary to authorize this Agreement or the Transaction Documents to which Buyer or Merger Sub is or will be a party as of the Effective Time. As of the date of this Agreement, the respective boards of directors of each of Buyer and Merger Sub have approved and declared advisable this Agreement and the transactions contemplated hereby. Buyer, as the sole stockholder of Merger Sub, has approved and adopted this Agreement and the transactions contemplated hereby.

(b) As of the date of this Agreement, (i) the Buyer Board Independent Committee has unanimously (1) determined that the PIPE Transaction is fair and in the best interests of Buyer and its stockholders, (2) approved that Buyer enter into the Subscription Agreements and consummate the PIPE Transaction and (3) recommended that the Buyer Board approve the Subscription Agreements and the PIPE Transaction and (ii) the Buyer Board (acting in part upon the recommendation of the Buyer Board Independent Committee) has unanimously approved and declared advisable the Subscription Agreements and the PIPE Transaction.

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(c) Except with respect to (i) the Buyer Written Consent (which has been duly executed and delivered prior to the date of this Agreement) and (ii) the consent of Buyer, in its capacity as the sole stockholder of Merger Sub, which has been duly executed and delivered prior to the date of this Agreement and will become effective immediately upon the execution and delivery of this Agreement, no vote of the holders of any class of equity securities of Buyer or Merger Sub is required for the execution and delivery of this Agreement, the Transaction Documents or any other agreements and documents contemplated hereby to which Buyer or Merger Sub is a party, the performance by Buyer or Merger Sub of its obligations hereunder and thereunder, or to consummate the Merger and the transactions contemplated hereunder.

Section 5.4 Governmental Filings; No Violations.

(a) Other than the necessary filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods or authorizations (i) pursuant to Section 1.3, (ii) required under the rules and regulations of NASDAQ, (iii) required under the HSR Act or any other applicable Antitrust Laws in connection with the Transactions, the Exchange Act and the Securities Act, (iv) to comply with state securities or "blue-sky" Laws, (v) as may be required with or to Foreign Regulators pursuant to applicable Foreign Regulatory Laws and (vi) as set forth in Section 5.4(a) of the Buyer Disclosure Letter, no filings, notices or reports are required to be made by Buyer, Merger Sub or any of Buyer's Subsidiaries with, nor are any consents, registrations, approvals, permits, expirations of waiting periods or authorizations required to be obtained by Buyer, Merger Sub or any of Buyer's Subsidiaries from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by Buyer and Merger Sub or the consummation by Buyer and Merger Sub of the Transactions, except, in each case, those that the failure to make or obtain would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

(b) The execution, delivery and performance by Buyer and Merger Sub of this Agreement and the Transaction Documents to which Buyer or Merger Sub is or will be a party as of the Effective Time do not or will not (as applicable), and the consummation by Buyer and Merger Sub of the Transactions and the transactions contemplated by such other Transaction Documents will not, constitute or result in (i) a breach or violation of, or a default under, the Organizational Documents of Buyer, Merger Sub or any of Buyer's Subsidiaries, (ii) with or without the lapse of time or the giving of notice or both, a breach or violation of, a default or termination or modification (or right of termination or modification) under, payment of additional fees under, the creation or acceleration of any obligations under, or the creation of a Lien on any material Contracts to which Buyer, Merger Sub or any of Buyer's Subsidiaries is a party, or, assuming (solely with respect to the performance of this Agreement and the consummation of the Transactions) the filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods and authorizations referred to in Section 5.4(a) are made or obtained, under any Law, Governmental Order or License to which Buyer, Merger Sub or any of Buyer's Subsidiaries is subject or (iii) any change in the rights or obligations under any material Contract to which Buyer, Merger Sub or any of Buyer's Subsidiaries is a party, except, in the case of clauses (ii) and (iii) above, for any such breach, violation, default, termination, modification, payment, acceleration, creation or change that would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

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Section 5.5 Litigation. As of the date of this Agreement, there are no, Proceedings pending or, to the Knowledge of Buyer, threatened against Buyer or its Subsidiaries, except for those that would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

Section 5.6 Financing.

(a) Buyer has delivered to the Company true, complete and fully executed copies (subject, in the case of any related fee letters, to redaction solely of fee and other economic provisions that are customarily redacted in connection with transactions of this type and none of which would be reasonably expected to impact the conditionality or amount of the Financing) of the commitment letter (together with the term sheet and any other annexes, exhibits, schedules and other attachments thereto), dated as of February 25, 2026 (as may be amended, restated, amended and restated, replaced, substituted, supplemented, waived or otherwise modified in accordance with Section 6.16 of this Agreement, the "Debt Commitment Letter") and any related fee letters (the "Debt Fee Letter") and, together with the Debt Commitment Letter, the "Commitment Letter"), pursuant to which the Financing Sources party thereto have agreed, subject to the terms and conditions therein, to provide the Financing as described therein (the "Committed Debt Financing"). Buyer has delivered to the Company true, complete and fully executed copies of the Subscription Agreements, dated as of the date hereof, pursuant to which the Equity Investors thereto have agreed, subject to the terms and conditions therein, to invest the amounts set forth therein as described therein (the "Committed Equity Financing") and, together with the Committed Debt Financing, the "Committed Financing"). As of the date of this Agreement, there are no side letters or other Contracts or arrangements related to the Committed Financing to which Buyer or any Buyer Entity is a party (except for customary engagement letters or non-disclosure agreements which do not impact the conditionality or amount of the Committed Financing) that could adversely affect the availability of, or reduce the aggregate principal amount of, the Committed Financing such that Buyer would not have on the Closing Date the Required Amounts. As of the date of this Agreement, none of the Commitment Letter nor the Subscription Agreements has been amended, supplemented or otherwise modified, and the commitments contained in the Debt Commitment Letter and the Subscription Agreements have not been withdrawn, modified or rescinded in any respect and no such amendment, supplement, modification, withdrawal or termination is contemplated or the subject of current discussions (other than any amendment, restatement, amendment and restatement, modification or supplement to the Debt Commitment Letter (and any related fee letters) to add lenders, lead arrangers, bookrunners, underwriters, syndication agents or similar entities that have not executed the Debt Commitment Letter (or such fee letters) as of the date of this Agreement). As of the date of this Agreement, each of the Subscription Agreements and the Commitment Letter is in full force and effect and is a legal, valid and binding obligation of Buyer and, to the Knowledge of Buyer, the other parties thereto, in each case, subject to the Bankruptcy and Equity Exception. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would reasonably be expected to (x) constitute a default or breach on the part of Buyer or, to the Knowledge of Buyer, any other party thereto under any term or condition of the Commitment Letter or either of the Subscription Agreements, (y) result in any of the conditions to the funding of the Committed Financing or either of the Subscription Agreements not being satisfied prior to the Closing Date or (z) otherwise result in the Committed Financing not being available in accordance with the terms of the Commitment Letter and the Subscription Agreements on the Closing Date. There are no conditions or other contingencies relating to the funding of the full amount of the Committed Financing, other than as set forth in the Debt Commitment Letter and the Subscription Agreements. As of the date of this Agreement, assuming the satisfaction of the conditions contained in Section 7.1 and Section 7.3, Buyer has no reason to believe that any of the conditions relating to the funding of the full amount of the Committed Financing will not be satisfied on or prior to the Closing Date. Buyer has fully paid, or caused to be paid, any and all commitment fees or other fees required by the Commitment Letter or either of the Subscription Agreements to be paid on or prior to the date of this Agreement. Assuming the satisfaction of the conditions contained in Section 7.1 and Section 7.3, Buyer will have on the Closing Date funds sufficient to (i) pay the aggregate Merger Consideration, (ii) pay any and all fees and expenses required to be paid at Closing by Buyer in connection with the Transactions, the Committed Equity Financing and the Financing and (iii) satisfy all of the other payment obligations of Buyer contemplated hereunder that are required to be satisfied in connection with Closing (the "Required Amounts").

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(b) In no event shall the receipt or availability of any funds or financing by or to Buyer or any of its Affiliates or any other financing transaction be a condition to any of the obligations of Buyer or Merger Sub hereunder.

(c) As of the date hereof, except for the Subscription Agreements, this Agreement, the Debt Commitment Letter or the Rights Offering, none of Buyer, any Equity Investor, any Guarantor or any of their respective Affiliates has, directly or indirectly, in connection with the Transactions, (i) entered into any agreement or made any other arrangement with respect to debt or equity financing, (ii) granted any Person any right, contingent or otherwise, to acquire (1) any equity securities, any securities directly or indirectly convertible into equity securities, or any other interest or participation that confers the right to receive a unit of the profits or losses or distribution of assets of, in each case, Buyer or any of its Subsidiaries (including, after the closing, the Company or any of its Subsidiaries) or (2) any interest that is derivative of the value of or provides economic benefits based on the value or price of any of the foregoing, or (iii) otherwise granted or agreed to grant any Person any governance or other rights with respect to Buyer or any of its Subsidiaries (including, after the closing, the Company or any of its Subsidiaries).

Section 5.7 Information Supplied. The information supplied by or on behalf of Buyer or Merger Sub to be contained in, or incorporated by reference in, the Proxy Statement, including any amendments or supplements thereto and any other document incorporated or referenced therein, will not, on the date the Proxy Statement is first mailed to stockholders of the Company, at the time of the Company Stockholder Meeting or at the time of any amendment or supplement thereof, contain any untrue statement of any material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, at the time and in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing provisions of this Section 5.7, no representation or warranty is made by Buyer or Merger Sub with respect to information or statements made or incorporated by reference in the Proxy Statement that were supplied by or on behalf of the Company for use therein.

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Section 5.8 Share Ownership. None of Buyer, Merger Sub or any of their respective “affiliates” or “associates” (as defined in Section 203 of the DGCL) (a) beneficially owns (as such term is used in Rule 13d-3 promulgated under the Exchange Act) any Company Stock or any options, warrants or other rights to acquire Company Stock or other securities of the Company, or has any other economic interest in the Company or (b) is, or at any time within the past three (3) years has been, an “interested stockholder” (as defined in Section 203 of the DGCL) of the Company.

Section 5.9 Brokers and Finders. Buyer or Merger Sub has not employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders’ fees in connection with the Transactions, except that Buyer has engaged Centerview Partners LLC as Buyer’s financial advisor.

Section 5.10 Ellison Guarantee. L. Ellison and the Trust have furnished the Company with a true, complete and correct copy of the Ellison Guarantee. The Ellison Guarantee is in full force and effect and has not been amended, modified or terminated except as permitted under this Agreement. The Ellison Guarantee (a) is a legal, valid and binding obligation of the Guarantors and (b) is enforceable against the Guarantors in accordance with its terms, subject to the Bankruptcy and Equity Exception. There is no default under the Ellison Guarantee by the Guarantors, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Guarantors.

Section 5.11 No Other Representations and Warranties. Buyer and Merger Sub, each on its own behalf and on behalf of its Affiliates and each of its and their respective representatives, acknowledges and agrees that (a) except for the representations and warranties made by the Company in Article IV or in any certificate delivered pursuant to this Agreement, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company and its Affiliates or any of their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects in connection with this Agreement or the Transactions, and the Company hereby disclaims any such other representations or warranties and (b) neither the Company nor any other Person makes or has made any representation or warranty to Buyer or any of its Affiliates or Representatives with respect to (i) any financial projection, forecast, estimate, budget or prospective information relating to the Company or any of its Affiliates or any of their respective businesses, or (ii) any oral or, except for the representations and warranties by the Company in Article IV or in any certificate delivered pursuant to this Agreement, written information made available to Buyer or any of its Affiliates or Representatives in the course of their evaluation of the Company and its Subsidiaries, the negotiation of this Agreement or in the course of the Transactions.

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ARTICLE VI

COVENANTS

Section 6.1 Interim Operations.

(a) Interim Operations of the Company. During the period from the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement in accordance with Article VIII, except as otherwise (A) expressly contemplated by or reasonably necessary to effectuate the transactions contemplated by this Agreement or the other Transaction Documents, (B) required by applicable Law, (C) approved in writing (which approval shall not be unreasonably withheld, conditioned or delayed) by Buyer or (D) set forth in Section 6.1(a) of the Company Disclosure Letter, the Company covenants and agrees to use its commercially reasonable efforts to conduct the business of the Company and its Subsidiaries in the Ordinary Course and, to the extent consistent therewith, (x) use its commercially reasonable efforts to preserve the Company and its Subsidiaries' business organizations intact and maintain the Company and its Subsidiaries' existing relations and goodwill with Governmental Entities, customers, suppliers, licensors, licensees, distributors, creditors, lessors, employees and business associates and others having material business dealings with them and (y) without limiting the generality of and in furtherance of the foregoing, not and shall cause its Subsidiaries not to:

(i) (A) amend its Organizational Documents (other than amendments to the governing documents of any wholly or majority owned Subsidiary of the Company that would not prevent, materially delay or materially impair the Transactions), (B) split, combine, subdivide or reclassify its outstanding shares of capital stock or other equity interests (except for any such transaction by a wholly owned Subsidiary of the Company which remains a wholly owned Subsidiary of the Company after consummation of such transaction), (C) declare, set aside or pay any dividend or distribution payable in cash, stock or property (or any combination thereof) in respect of any shares of its capital stock or other equity interests (except for any dividends or distributions paid by a direct or indirect wholly owned Subsidiary of the Company to another direct or indirect wholly owned Subsidiary of the Company or to the Company), or (D) purchase, repurchase, redeem or otherwise acquire any shares of its capital stock or other equity interests or any securities convertible or exchangeable into or exercisable for any shares of its capital stock (other than purchases, repurchases, redemptions or other acquisitions of securities of any wholly owned Subsidiary of the Company by the Company or any other wholly owned Subsidiary of the Company);

(ii) except (A) as otherwise contemplated by this Agreement, (B) in the Ordinary Course or (C) to the extent solely among the Company and its Subsidiaries, merge or consolidate with any other Person, or adopt or implement any plan of complete or partial liquidation, dissolution, consolidation, restructuring, recapitalization or other reorganization;

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(iii) (A) establish, enter into, adopt, amend or modify in any material respect (including accelerating the vesting), or terminate any Company Plan or any plan, program, policy, practice, agreement or arrangement that would be a Company Plan if it had been in effect on the date of this Agreement except (x) in conjunction with annual renewal or plan design changes for the Company Plans that are health and welfare plans that are made in the Ordinary Course, (y) to comply with or satisfy Tax-qualification requirements under the Code or other applicable Law or (z) in conjunction with clause (iii)(E) of this Section 6.1(a)(y); (B) increase the compensation or benefits of any Covered Employee other than (x) annual merit salary or wage rate increases (and corresponding short-term incentive opportunity increases, as applicable) in the Ordinary Course or (y) as required under a Company Plan in effect as of the date of this Agreement; (C) grant any severance or termination pay to any Company Employee, except as required under any Company Plan in effect as of the date of this Agreement; (D) grant any Company Equity Awards or other equity or equity-based incentives other than as provided by Section 6.1(a)(y)(x) of the Company Disclosure Letter; (E) enter into any employment, severance, change in control, retention, individual consulting or similar agreement with any current or former Covered Employee (other than an offer letter or employment agreement for any newly hired or promoted Covered Employee who is hired or promoted to fill a vacated position formerly held by a Covered Employee as permitted by Section 6.1(a)(y)(xxi) and on terms substantially similar to the Covered Employee who vacated such position); (F) grant to any Company Employee any right to reimbursement, indemnification or payment for any Taxes, including any Taxes incurred under Section 409A or 4999 of the Code; or (G) take any action (other than actions contemplated by this Agreement) to accelerate any payment or benefit, the vesting of any equity or equity-based award or the funding of any payment or benefit, payable or to become payable to any Company Employee;

(iv) make or commit to any capital expenditures, other than (A) in connection with the repair or replacement of facilities, properties or assets destroyed or damaged due to casualty or accident (if covered by insurance or the portion of which is not covered by insurance is less than \$125,000,000) or (B) in the Ordinary Course and, with respect to any fiscal year, in the aggregate not in excess of 125% of the amounts reflected in the Company's capital expenditure budget set forth in Section 6.1(a)(y)(ix) of the Company Disclosure Letter;

(v) enter into or materially amend any Contract for the transfer, lease, license, sale or assignment of, or let lapse, abandon, cancel, mortgage, pledge, place a Lien upon or otherwise dispose of any Company Owned IP (excluding any Content IP relating to any Key Property), other than (A) in the Ordinary Course, (B) in the case of a license of any such Company Owned IP, involving payments that do not exceed \$150,000,000 per license or (C) in the case of a sale of any such Company Owned IP, Company Owned IP with a fair market value that does not exceed \$100,000,000 individually (other than transactions among the Company and its Subsidiaries); provided that, for the avoidance of doubt, clause (A) above permits turnarounds, option lapses and quitclaims of "stale scripts" (i.e., the sale of development materials where the Company or any of its Subsidiaries no longer owns underlying rights) in the Ordinary Course;

(vi) enter into or materially amend any Contract for the transfer, lease, license, sale or assignment of, or let lapse, abandon, cancel, mortgage, pledge, place a Lien upon or otherwise dispose of any Content IP relating to clause (i) of the definition of any "Key Property," other than an out-license granted in the Ordinary Course that expires no later than two (2) years after the Closing Date; provided that the foregoing shall not prevent (x) renewals or extensions of existing Contracts pursuant to options or rights that can be exercised in the sole discretion of the counterparty or (y) entering into any free TV deal outside of the United States with ordinary course SVOD exclusivity that expires no later than three (3) years after the Closing Date; provided, further, that the foregoing shall not prohibit turnarounds, option lapses and quitclaims of "stale scripts" (i.e., the sale of development materials where the Company and its Subsidiaries no longer own underlying rights) in the Ordinary Course;

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(vii) enter into or materially amend any Contract for the transfer, lease, license, sale or assignment of, or let lapse, abandon, cancel, mortgage, pledge, place a Lien upon or otherwise dispose of any Content IP relating to clause (ii) of the definition of any "Key Property" that is English language scripted TV or film, other than an out-license granted in the Ordinary Course that expires no later than two (2) years after the Closing Date; provided that for licenses for longer than two (2) years after the Closing Date, the Company and its Subsidiaries will provide Buyer with a first opportunity to negotiate for any licensing or co-production related thereto, which Buyer shall accept or reject within ten (10) days following notice thereof, subject to good faith arms' length negotiation, and if Buyer does not so accept, the Company and its Subsidiaries shall be permitted to enter into such out-license transaction; provided that the foregoing shall not prevent the Company and its Subsidiaries from entering into any agreement based on an offer that has been made as of the date of this Agreement; provided, further, that the foregoing shall not prohibit turnarounds, option lapses and quitclaims of "stale scripts" (i.e., the sale of development materials where the Company and its Subsidiaries no longer own underlying rights) in the Ordinary Course;

(viii) enter into or materially amend any Contract that grants any Person the right to distribute, exhibit, or otherwise make available the HBO service (including both linear and direct-to-consumer businesses) or any material portion thereof, except for any Contract, license or other arrangement (including transactions commonly understood in the industry as "bundling" or "ingestion" deals) entered into in the Ordinary Course that expires no later than two (2) years after the Closing Date; provided, that the foregoing shall not prevent renewals or extensions of existing Contracts pursuant to options or rights that can be exercised in the sole discretion of the counterparty; provided, further, that the foregoing shall not prohibit modifications to the manner in which distribution is conducted through Apple, Google or other app stores, including changes to methods for selling digital content (e.g., IAP, VPP or clickthrough);

(ix) transfer, lease, license, sell, assign, let lapse, abandon, cancel, mortgage, pledge, place a Lien upon or otherwise dispose of any of its assets (including capital stock of any of the Company's Subsidiaries but not including any Intellectual Property, which is governed by Section 6.1(a)(v), Section 6.1(a)(vii), Section 6.1(a)(viii) and Section 6.1(a)(ix)), except for (A) sales, leases, licenses or other dispositions of any properties or assets (excluding capital stock of the Company or any of its Subsidiaries) with a fair market value not in excess of \$125,000,000 individually if the transaction is not in the Ordinary Course or \$200,000,000 individually in any event or (B) transactions among the Company and its Subsidiaries (other than Company JVs);

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(x) issue, sell, deliver, grant, transfer or encumber, or authorize, agree or commit to issue, sell, deliver, grant, transfer or encumber, any shares of Company Stock, or any securities convertible or exchangeable into or exercisable for, or any options, warrants or other rights to acquire, any such shares, except: (A) in accordance with the terms of any Company Plan or Company Stock Plan, or otherwise with respect to, and upon the vesting, exercise or settlement of, Company Options, Company RSUs, Company PRSUs or Company DSUs, in each case, outstanding on the date of this Agreement or granted after the date hereof in compliance with Section 6.1(a)(y)(x) of the Company Disclosure Letter or (B) pursuant to any purchases of shares of Company Stock pursuant to the Company ESPP in accordance with the terms of such plan and in compliance with this Agreement;

(xi) other than capital expenditures made in accordance with Section 6.1(a)(y)(ix), spend or commit to spend in excess of (A) \$30,000,000 if the transaction is not in the Ordinary Course and \$125,000,000 in any event or (B) more than \$400,000,000 in the aggregate in any twelve (12) month period, in each case to acquire any business, whether by merger, consolidation, purchase of property or assets, licenses or otherwise (valuing any non-cash consideration at its fair market value as of the date of the agreement for such acquisition); provided that the Company and its Subsidiaries shall not enter into any such transaction that would, or would reasonably be expected to, prevent, materially delay or materially impair the consummation of the Transactions;

(xii) make any material change with respect to the financial accounting policies or procedures of the Company and its Subsidiaries, except as required by changes in GAAP or Regulation S-X of the Exchange Act (or any interpretation thereof), any Governmental Entity or by applicable Law;

(xiii) (A) change or rescind any material Tax election, (B) change any material method of Tax accounting or any material annual Tax accounting period, (C) amend any material Tax Return, (D) settle or resolve any material Tax controversy, (E) enter into any pre-filing agreement, advance pricing agreement or closing agreement, or request or enter into any ruling, in each case, with a Governmental Entity with respect to a material amount of Taxes, or (F) surrender or forfeit any right to claim a material Tax refund, provided that for purposes of this Section 6.1(a)(y)(xiii), materiality shall be determined with respect to the Company and its Subsidiaries, taken as a whole;

(xiv) enter into any new line of business other than any line of business that is reflected in the Company's long range plan as provided to Buyer prior to the date of this Agreement (provided that such entry would not reasonably be likely to prevent, materially delay or materially impair the ability of the Parties to complete the Merger on a timely basis);

(xv) make any loans, advances or capital contributions to, or investments in, any Person (other than (A) loans, advances or capital contributions solely among the Company and its Subsidiaries or (B) as permitted by clause (xxiv) below) in excess of \$30,000,000 if the transaction is not in the Ordinary Course and \$200,000,000 in any event;

(xvi) amend or modify in any material respect, or terminate any Company Material Contract (other than amendments or modifications in the Ordinary Course or that are not adverse to the business of the Company and its Subsidiaries in any material respect with respect to the Contract and terminations upon the expiration of the term thereof in accordance with the terms thereof) or waive, release or assign any material rights, claims or benefits under any Company Material Contract or enter into any Contract that would have been a Company Material Contract had it been entered into prior to the date of this Agreement (other than Company Material Contracts of the type described in Section 4.11(a)(iii), (viii), (ix) or (x)) unless it is on terms substantially consistent with, or on terms more favorable to the Company and/or its Subsidiaries than, either a Contract it is replacing or a form of such Company Material Contract made available to Buyer prior to the date hereof; provided that for the avoidance of doubt, this Section 6.1(a)(y)(xvi) shall not prohibit or restrict any Company Plans;

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- (xvii) take the action set forth in Section 6.1(a)(xvii) of the Company Disclosure Letter;
- (xviii) take the action set forth in Section 6.1(a)(xviii) of the Company Disclosure Letter;
- (xix) take the action set forth in Section 6.1(a)(xix) of the Company Disclosure Letter;
- (xx) settle any Proceeding before or threatened to be brought before a Governmental Entity, other than settlements (A) if the amount of any such settlement is not in excess of \$30,000,000 individually or \$100,000,000 in the aggregate; provided that such settlements do not (1) involve any non-de minimis injunctive or equitable relief, (2) impose non-de minimis restrictions on the business activities of the Company or any of its Subsidiaries or Buyer or any of its Subsidiaries or (3) grant any material license or immunity with respect to Intellectual Property, or (B) relating to Taxes (which shall be governed by Section 6.1(a)(xiii));
- (xxi) (A) hire or engage any individual to be a Covered Employee, other than the hiring of an individual to fill a position that has been vacated by a Covered Employee; or (B) terminate the employment of any Covered Employee other than for cause;
- (xxii) (A) enter into any Collective Bargaining Agreement (excluding any Collective Bargaining Agreement with a Guild or that applies on a national, area-wide, industry-wide or mandatory basis), other than renewals of any Collective Bargaining Agreements in the Ordinary Course or (B) recognize or certify any Labor Union or group of Company Employees as the bargaining representative for any Company Employees;
- (xxiii) waive, release, amend or, to the Knowledge of the Company, fail to enforce the restrictive covenant obligations of any current or former director, officer, employee, independent contractor or consultant of the Company or any of its Subsidiaries;
- (xxiv) incur, issue, guarantee or otherwise become liable for any Indebtedness with a principal amount in excess of \$60,000,000, other than with respect to (A) [reserved], (B) Indebtedness solely between or among any one or more of the Company and/or its Subsidiaries, (C) Indebtedness, drawdowns, repayments and refinancings under any revolving credit or letter of credit facilities (1) of the Company and/or its Subsidiaries in existence as of the date of this Agreement, or (2) otherwise in accordance with clause (D) below, (D) Indebtedness incurred pursuant to or contemplated by the Permitted Company Financing Activities, (E) (1) letters of credit, bank guarantees, security or performance bonds or similar credit support instruments and (2) overdraft facilities or cash management programs or services, in each case, issued, made or entered into in the Ordinary Course, (F) commercial paper issued in the Ordinary Course and (G) hedging in the Ordinary Course;

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(xxv) (x) file any registration statement under the Securities Act or the Exchange Act in connection with the separation of the Company's Streaming & Studios business from the Company's Global Linear Networks business (the "Separation"), or (y) file any amendment to such registration statement or cause, request or seek to have any such registration statement declared effective under the Exchange Act; provided that notwithstanding anything to the contrary herein, the Company and its Subsidiaries may take other preparatory actions in connection with the Separation to the extent not prohibited by Section 6.1(a)(y); or

(xxvi) agree, authorize or commit to do any of the foregoing.

(b) [Reserved].

(c) Nothing contained in this Agreement shall give the Company or Buyer, directly or indirectly, the right to control or direct the other Party's operations prior to the Effective Time. Prior to the Effective Time, each Party will exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 6.2 No Solicitation.

(a) The Company, its Subsidiaries and its and their respective officers and directors will not, and the Company will direct and use its reasonable best efforts to cause its and its Subsidiaries' other respective Representatives not to, directly or indirectly, take any action to solicit, initiate, or knowingly encourage or knowingly facilitate the making of any inquiry, expression of interest, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal (including by granting any waiver under Section 203 of the DGCL) or engage in or otherwise participate in discussions or negotiations with any Person with respect thereto (except solely to notify such Person of the existence of the provisions of this Section 6.2), or disclose any nonpublic information or afford access to properties, books or records to any Person that has made, or to the Company's Knowledge is considering making, any Acquisition Proposal, or agree to, approve or recommend, or propose to agree to, approve or recommend, or execute or enter into any letter of intent, agreement in principle, merger agreement, option agreement, acquisition agreement or any other agreement relating to an Acquisition Proposal, or propose publicly or agree to do any of the foregoing relating to an Acquisition Proposal (other than a confidentiality agreement as permitted herein). Nothing contained in this Agreement shall prevent the Company Board from (i) complying with Rule 14e-2 under the Exchange Act with regard to an Acquisition Proposal or (ii) making any disclosure if, in the case of this clause (ii), in the good faith judgment of the Company Board, after consultation with outside counsel, the failure to make such disclosure would be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties to the Company's stockholders under applicable law. The Company shall be permitted to make any "stop, look and listen" communication to the Company's stockholders pursuant to Rule 14d-9(f) under the Exchange Act and comply with disclosure obligations under Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act with regard to an Acquisition Proposal, and any such communication or compliance shall not be deemed to be a Change in the Company Recommendation; provided, that any such compliance shall not be deemed to permit the Company or the Company Board to effect a Change in the Company Recommendation except in accordance with Section 6.3. Notwithstanding anything to the contrary in this Agreement but subject to the first sentence of Section 6.2(b), prior to (but not after) obtaining the Company Stockholder Approval, the Company may, directly or indirectly through its advisors, agents or other intermediaries, (A) furnish information and access, but only in response to a request for information or access, to any Person, and its Representatives (including sources of financing), making a bona fide, written Acquisition Proposal to the Company Board after the date of this Agreement which was not obtained as a result of a material breach of this Section 6.2 and (B) participate in discussions and negotiate with such Person or its Representatives concerning any such unsolicited Acquisition Proposal, if and only if, in any such case set forth in clause (A) or (B) of this sentence, (1) the Company Board determines in good faith, (x) after consulting with its outside legal counsel and its financial advisors, that such Acquisition Proposal constitutes or could reasonably be expected to result in a Company Superior Proposal and (y) that failure to do so would be reasonably likely to be inconsistent with its fiduciary duties to the Company's stockholders under applicable law and (2) the Company receives (or prior to the date hereof has received) from the Person making such an Acquisition Proposal, prior to engaging in any of the activities described in clause (A) or (B) of this sentence, an executed confidentiality agreement the terms of which are (without regard to the terms of such Acquisition Proposal) in all material respects (i) no less favorable to the Company and (ii) no less restrictive to the Person making such Acquisition Proposal than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not contain any "standstill" or similar provisions or otherwise prohibit the making of any Acquisition Proposal; provided that if any such confidentiality agreement does not contain a "standstill" or similar provisions, or contains such provisions that are more favorable to such other Person than those contained in the Confidentiality Agreement, the Confidentiality Agreement shall be deemed to be automatically (and permanently) amended hereby and without further action of the parties to delete the standstill provision contained therein or conform the provision thereof with such more favorable provision as applicable). The Company agrees that any material non-public information provided to such Person that has not previously been provided to Buyer shall be provided to Buyer prior to or substantially concurrently with the time it is provided to such Person. The Company Board shall not take any of the actions referred to in the foregoing clauses (A) and (B) unless the Company shall have first delivered to Buyer written notice advising Buyer that the Company intends to take such action; provided that only one such notice need be given with respect to any specific Acquisition Proposal, including any amendment or modification of any such Acquisition Proposal; provided, further, that the foregoing shall not limit the Company's obligations set forth in Section 6.2(b) or Section 6.3(b).

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(b) In the event that on or after the date of this Agreement, the Company, any of its Subsidiaries or any of their respective Representatives receives an Acquisition Proposal, or any inquiry or request regarding an Acquisition Proposal or request for nonpublic information relating to the Company or any Subsidiary of the Company or for access to the properties, books or records of the Company or any Subsidiary of the Company by any Person that has made, or has informed the Company it is considering making, an Acquisition Proposal (or any proposal that would reasonably be expected to lead to an Acquisition Proposal), in each case, whether orally or in writing, the Company will (i) promptly (and in no event later than twenty-four (24) hours after a director or senior executive officer of the Company becomes aware of such an Acquisition Proposal or any inquiry or request that would reasonably be expected to lead to an Acquisition Proposal) notify (which notice shall be provided in writing and shall identify the Person making such Acquisition Proposal, inquiry or request and set forth the material terms thereof) Buyer thereof, (ii) keep Buyer reasonably and promptly informed of any material amendments or other material modifications to such Acquisition Proposal and material developments regarding the status or terms of any such Acquisition Proposal or request, and (iii) as promptly as practicable after the receipt or delivery thereof (but in no event later than twenty-four (24) hours after a director or senior executive officer of the Company becomes aware of receipt) provide to Buyer a correct and complete copy of such Acquisition Proposal or any inquiry or request that would reasonably be expected to lead to an Acquisition Proposal, including unredacted copies of all material written correspondence and other material written materials sent by or provided to the Company, any of its Subsidiaries or any of their respective Representatives that describe any terms or conditions thereof, including any proposed transaction agreements. Upon the execution and delivery of this Agreement, the Company (x) shall, and shall cause its Subsidiaries and its and their respective officers and directors to, immediately cease and cause to be terminated and shall use reasonable best efforts to cause its and their other respective Representatives to, immediately cease and cause to be terminated, all discussions and negotiations, if any, that have taken place prior to the date of this Agreement with any Persons with respect to any Acquisition Proposal or the possibility thereof, (y) shall promptly (and in any event within twenty-four (24) hours) request each Person, if any, that has executed a confidentiality agreement within the nine (9) months prior to the date of this Agreement in connection with its consideration of any Acquisition Proposal to return or destroy all confidential information heretofore furnished to such Person by or on behalf of it or any of its Subsidiaries and (z) immediately terminate all physical and electronic data room access for such Person and their representatives to diligence or other information regarding the Company or any of its Subsidiaries. From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement, the Company shall not modify, amend or terminate, or waive, release or assign, any provisions of any confidentiality or standstill agreement (or any similar agreement) to which the Company or any of its Subsidiaries is a party relating to any such Acquisition Proposal and shall enforce the provisions of any such agreement in accordance with its terms; provided that the Company shall be permitted on a confidential basis, upon written request by a relevant party thereto and without prior notice to Buyer disclosing the party and the circumstances, to release or waive any standstill obligations to the extent necessary to permit the party referred therein to submit an Acquisition Proposal to the Company Board on a confidential basis; provided that the Company Board has determined in its good faith judgment, after consultation with its outside legal and financial advisors, that failing to take such action would be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties under applicable law. The Company shall promptly (and in any event within twenty-four (24) hours) provide written notice to Buyer of any waiver or release of any standstill by the Company.

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(c) For purposes of this Agreement, "Acquisition Proposal" means (i) any proposal, offer or indication of interest, from any Person or group of Persons, other than Buyer and its Affiliates, with respect to a merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, spin-off, extraordinary dividend, share exchange, business combination or similar transaction involving the Company or any of its Subsidiaries which is structured to result in such Person or group of Persons (or their stockholders), directly or indirectly, acquiring beneficial ownership of 20% or more of the Company's consolidated total assets (including equity securities of the Company's Subsidiaries), net income or net revenue or 20% or more of any class of the Company's equity interests and (ii) any acquisition by any Person or group of Persons (or their stockholders) (other than Buyer and its Subsidiaries) resulting in, or proposal or offer, which if consummated would result in, any Person or group of Persons (or their stockholders) (other than Buyer and its Subsidiaries) obtaining control (through Contract or otherwise) over or becoming the beneficial owner of, directly or indirectly, in one or a series of related transactions, 20% or more of the total voting power of any class of equity securities of the Company or 20% or more of the Company's consolidated total assets (including equity securities of the Company's Subsidiaries), net income or net revenue, in each case other than the Transactions. For purposes of this Agreement, "Company Superior Proposal" means an unsolicited bona fide Acquisition Proposal made after the date of this Agreement that would result in a Person or group (or their stockholders) becoming, directly or indirectly, the beneficial owner of more than 50% of the Company's consolidated total assets, net income or net revenue or more than 50% of the total voting power of the equity securities of the Company or the successor Person of the Company, that the Company Board has determined in its good faith judgment, after consultation with its outside legal and financial advisors and taking into account all the terms and conditions of such Acquisition Proposal, is more favorable to the Company's stockholders than the Transactions (after taking into account all relevant factors, including likelihood of consummation on the terms proposed and all legal, financial and regulatory aspects of such proposal, as well as any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 6.3(b)(i)).

Section 6.3 Company Stockholder Meeting; Proxy Material.

(a) Except as permitted by Section 6.3(b) below, the Company Board shall recommend adoption of this Agreement by the Company's stockholders, and unless permitted by Section 6.3(b), neither the Company Board nor any committee thereof shall (i) withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in any manner adverse to Buyer, the approval of this Agreement, the Merger or the Company Recommendation, (ii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal or (iii) if an Acquisition Proposal has been publicly disclosed after the date of this Agreement, fail to publicly reaffirm the Company Recommendation within ten (10) Business Days of a written request of Buyer, or (iv) fail to recommend against a tender or exchange offer related to an Acquisition Proposal within ten (10) Business Days after the commencement thereof (any of the foregoing, a "Change in the Company Recommendation"). For purposes of this Agreement, a Change in the Company Recommendation shall also include any failure by the Company to include the Company Recommendation in the Proxy Statement.

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(b)

(i) The Company Board shall be permitted, in response to an Acquisition Proposal (that did not result from any material breach of Section 6.2) received after the date of this Agreement, to effect a Change in the Company Recommendation, or to cause the Company to terminate this Agreement pursuant to Section 8.1(c)(ii) (so long as, prior to or substantially concurrently with such termination, the Company pays to Buyer the Company Termination Fee), in each case, only if and to the extent that all of the following conditions are met: (A) the Company Stockholder Approval has not been obtained; (B) the Company Board determines in good faith, after consulting with outside legal counsel and financial advisors, that such Acquisition Proposal constitutes a Company Superior Proposal and that failing to take such action would be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties under applicable law; (C) before taking any such action, the Company promptly gives Buyer written notice advising Buyer of the decision of the Company Board to take such action (a "Superior Proposal Notice"), including the reasons therefor and specifying the material terms and conditions of the applicable Acquisition Proposal and the identity of the Person making such Acquisition Proposal and a copy of any then-existing drafts of the definitive agreements providing for such Company Superior Proposal (and the Company will also promptly give Buyer such a notice with respect to any subsequent change in such proposal) and the Company has given Buyer at least four (4) Business Days (as modified, extended or continued by this Section 6.3(b)(i), the "Superior Proposal Match Period") after delivery of such notice to propose revisions to the terms of this Agreement (or to make another proposal) in response to such Acquisition Proposal and during such period has caused its Representatives to negotiate in good faith with Buyer (to the extent Buyer wishes to negotiate) with respect to such proposed revisions or other proposal, if any, to make such adjustments to the terms and conditions of this Agreement so that the failure to make a Change in the Company Recommendation would no longer be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties under applicable law (it being understood and agreed that each and any amendment or modification (other than immaterial amendments or modifications) of such Acquisition Proposal shall require a new notice period with a new Superior Proposal Match Period of two (2) Business Days); and (D) the Company Board determines in good faith after consultation with its outside legal counsel and financial advisors that such Acquisition Proposal continues to constitute a Company Superior Proposal (as defined in Section 6.2(h)) at the end of such Superior Proposal Match Period, taking into account any revisions to the terms of the Merger or this Agreement proposed by Buyer during such Superior Proposal Match Period.

(ii) The Company Board shall be permitted (other than in connection with a Company Superior Proposal, which shall be governed by Section 6.3(b)(i)), to effect a Change in the Company Recommendation in response to an Intervening Event, if the following conditions are met: (A) the Company Stockholder Approval has not been obtained; (B) the Company Board determines in good faith, after consulting with outside legal counsel, that failing to take such action would be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties to stockholders under applicable law; (C) before taking any such action, the Company gives Buyer written notice advising Buyer of the decision of the Company Board to take such action (which notice shall set forth in reasonable detail a description of such Intervening Event and the reasons for such action), and the Company has given Buyer at least four (4) Business Days (as modified, extended or continued by this Section 6.3(b)(ii), the "Match Period") after delivery of such notice to propose revisions to the terms of this Agreement (or to make another proposal) and has caused its Representatives to negotiate in good faith with Buyer (to the extent Buyer wishes to negotiate) with respect to such proposed revisions or other proposal, if any, to make such adjustments to the terms and conditions of this Agreement so that the failure to make a Change in the Company Recommendation would no longer be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties under applicable law (it being understood and agreed that any material change in the facts or circumstances underlying such determination shall require a new notice period with a new Match Period of two (2) Business Days); and (D) the Company Board determines in good faith after consultation with its outside legal counsel and financial advisors that the failure to take such action would continue to be reasonably likely to be inconsistent with the directors' exercise of their fiduciary duties to stockholders under applicable law, taking into account any revisions to the terms of the Merger or this Agreement proposed by Buyer during such Match Period. Without limiting the Company's right to terminate this Agreement in the circumstances set forth in Article VIII, a Change in the Company Recommendation shall not limit the Company's obligation to submit this Agreement to the stockholders of the Company for the purpose of obtaining the Company Stockholder Approval at the Company Stockholder Meeting.

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(c) As promptly as practicable following the date of this Agreement, the Company and Buyer shall prepare, and the Company shall file with the SEC, the Proxy Statement. Each of Buyer and the Company shall use all reasonable efforts to have the Proxy Statement to be cleared by the SEC and its staff under the Exchange Act as promptly as practicable after such filing. Buyer shall promptly comply with all reasonable requests from the Company for information regarding Buyer or Merger Sub and required by applicable law for inclusion in the Proxy Statement and any amendments or supplements thereto. The Company will not file the Proxy Statement, or any amendments or supplements thereto, with the SEC without first providing Buyer and its counsel a reasonable opportunity to review and comment thereon, and the Company will (x) include the reasonable additions, deletions or changes suggested by Buyer or its counsel to the extent relating to Buyer or its Affiliates and (y) consider in good faith all other such reasonable additions, deletions or changes suggested by Buyer or its counsel in connection therewith. The Company shall cause the Proxy Statement to be mailed to stockholders of the Company as promptly as practicable after receipt of confirmation from the SEC that it will not review, or that it has completed its review of, the Proxy Statement. For the avoidance of doubt, any communications filed pursuant to Rules 14a-12 and 14a-6 under the Exchange Act or any other disclosures or statements with respect to the Merger contained in any filing required under securities Laws, other than the Proxy Statement, shall be subject to Section 6.8.

(d) Each of the Company and Buyer shall ensure that none of the information supplied by or on its behalf for inclusion or incorporation by reference in the Proxy Statement will, at the date it is first mailed to the stockholders of the Company and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

(e) If, at any time prior to the receipt of the Company Stockholder Approval, any information relating to the Company, Buyer or Merger Sub or any of their respective Affiliates, directors or officers is discovered by the Company, Buyer or Merger Sub, which is required to be set forth in an amendment or supplement to the Proxy Statement so that none of such documents would include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Party which discovers such information shall promptly notify the other Parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by applicable Law, disseminated to the stockholders of the Company.

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(f) The Company shall, as promptly as practicable after receipt thereof, provide Buyer with copies of any written comments, and advise the other of any oral comments, received from the SEC with respect to the Proxy Statement and shall provide Buyer with copies of all correspondence between it and its Affiliates, on the one hand, and the SEC, on the other hand, with respect thereto. Each of the Company and Buyer shall provide the other with a reasonable opportunity to participate in any meetings or calls with the SEC relating to the Proxy Statement and review and comment on any communications with the SEC prior to filing such with the SEC, and will promptly provide the other with a copy of all such filings and communications made with the SEC. The Company and Buyer shall use their respective reasonable best efforts to respond to any comments of the SEC or its staff with respect to the Proxy Statement as promptly as reasonably practicable.

(g) The Company shall take all action necessary in accordance with the DGCL and its certificate of incorporation and bylaws to duly call, give notice of, convene and hold a meeting of its stockholders as promptly as reasonably practicable following the date on which the Proxy Statement is first mailed to stockholders of the Company, and in any event within forty-five (45) days thereafter, for the purpose of obtaining the Company Stockholder Approval (the "Company Stockholder Meeting"), and the Company Board shall include the Company Recommendation in the Proxy Statement; provided, however, that the Company Board may effect a Change in the Company Recommendation if permitted by, and in accordance with, Section 6.3(h). Without limiting the generality of the foregoing, but subject to Section 6.3(b) and the Company's rights to terminate this Agreement under the circumstances set forth in Article VIII, the Company agrees that its obligations pursuant to the first sentence of this Section 6.3(g) or its other obligations under this Section 6.3 shall not be affected by the commencement, public proposal, public disclosure or communication to the Company or its stockholders or representatives of any Acquisition Proposal. The Company shall not, without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), adjourn, postpone or otherwise delay the Company Stockholder Meeting; provided that the Company may, notwithstanding the foregoing, without the prior written consent of Buyer, adjourn or postpone the Company Stockholder Meeting (A) if the Company believes in good faith that such adjournment or postponement is reasonably necessary to allow reasonable additional time to (1) solicit additional proxies necessary to obtain the Company Stockholder Approval, or (2) distribute any supplement or amendment to the Proxy Statement the distribution of which the Company Board has determined in good faith to be necessary under applicable law after consultation with outside legal counsel or (B) for an absence of a quorum, and the Company shall use its reasonable best efforts to obtain such a quorum as promptly as practicable; provided that the Company shall postpone or adjourn the Company Stockholder Meeting up to two times for up to ten (10) Business Days each time upon the reasonable request of Buyer to solicit additional proxies for purposes of obtaining the Company Stockholder Approval. Notwithstanding the foregoing, the Company may not, without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), adjourn or postpone the Company Stockholder Meeting more than a total of three (3) times pursuant to clause (A)(1) or (B) of the immediately preceding sentence, and no such adjournment or postponement pursuant to clause (A)(1) or (B) of the immediately preceding sentence shall be, without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), for a period exceeding ten (10) Business Days in connection with any one adjournment or postponement or more than an aggregate of thirty (30) days. Without the prior written consent of Buyer, the matters contemplated by the Company Stockholder Approval shall be the only matters (other than matters of procedure and matters required by applicable Law to be voted on by the Company's stockholders in connection therewith and the Transactions) that the Company shall propose to be voted on by the stockholders of the Company at the Company Stockholder Meeting. The Company shall otherwise coordinate and cooperate with Buyer with respect to setting a preliminary record date for and the timing of the Company Stockholder Meeting. The Company shall provide updates to Buyer with respect to the proxy solicitation for the Company Stockholder Meeting (including interim results) as reasonably requested by Buyer.

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Section 6.4 Cooperation; Efforts to Consummate.

(a) Each of the Company and Buyer shall use its reasonable best efforts to take (and, in the case of Buyer, including the efforts required by Section 6.4(e) and Section 6.4(f)), or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the Merger and the other transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement and, in any event, prior to the End Date, including (i) preparing and filing, in consultation with the other Parties, as promptly as practicable with any Governmental Entity or other third party all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents, (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations from any Governmental Entity or other third party, in each case, that are necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated by this Agreement and (iii) taking the actions set forth in Section 6.4(g) of the Company Disclosure Letter.

(b) In furtherance and not in limitation of the foregoing, (i) prior to the date of this Agreement, each of Buyer and the Company has made the notification and report form required under the HSR Act and the applicable waiting period with respect thereto has expired, and (ii) each of Buyer and the Company shall make as promptly as practicable after the date of this Agreement (A) any other notifications or filings that are necessary, proper or advisable under other applicable Antitrust Laws and (B) any filings, notices or reports that are necessary, proper or advisable to be made with or to Foreign Regulators pursuant to applicable Foreign Regulatory Laws. Each of the Company and Buyer shall (1) supply as promptly as practicable any additional information and documentary material that may be requested by a Governmental Entity in connection with the foregoing, including any information, documentation or other material that may be requested by a Governmental Entity with respect to any controlling person of Buyer, (2) furnish to each other any necessary information and reasonable assistance as the other may request in connection with the foregoing, and (3) take all other actions necessary or advisable to cause the expiration or termination of any applicable waiting periods under any applicable Antitrust Laws and the Foreign Regulatory Laws, in each case as promptly as practicable and, in any event, prior to the End Date. Buyer shall pay all filing fees payable under the HSR Act or in connection with any other applicable Antitrust Laws or Foreign Regulatory Laws, regardless of whether the transactions contemplated by this Agreement are consummated.

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(c) Except as prohibited by applicable Law or Governmental Order, (i) each of Buyer and the Company shall (A) cooperate and consult with each other in connection with any filing or submission with a Governmental Entity in connection with the transactions contemplated by this Agreement and in connection with any investigation or other inquiry by or before a Governmental Entity relating to the transactions contemplated by this Agreement, including any proceeding initiated by a private party, including by allowing the other Party to have a reasonable opportunity to review in advance and comment on drafts of filings and submissions, (B) promptly inform the other Party of (and if in writing, supply to the other Party) any substantive communication received by such Party from, or given by such Party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice or any other Governmental Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated by this Agreement, (C) consult with each other prior to taking any material position with respect to the filings contemplated by Section 6.4(b) in discussions with or filings to be submitted to any Governmental Entity, (D) permit the other to review and discuss in advance, and consider in good faith the views of the other in connection with, any analyses, presentations, memoranda, briefs, arguments, opinions and proposals to be submitted to any Governmental Entity with respect to the filings contemplated by Section 6.4(b) and (E) coordinate with the other in preparing and exchanging such information and promptly provide the other (and its counsel) with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such Party with any Governmental Entity relating to this Agreement or the transactions contemplated hereby and (ii) each Party shall provide to the other Party copies of all filings and notifications submitted or made by such Party or any of its Representatives to any Governmental Entity directly or indirectly related to Antitrust Laws or Foreign Regulatory Laws prior to the date hereof in connection with the transactions contemplated by this Agreement, the Netflix Merger Agreement, or the Tender Offer or the transactions contemplated thereby (provided that, for the avoidance of doubt, the Company shall not be required to provide copies of any filings or notifications made by or on behalf of Netflix, other than any joint filings or notifications made by Netflix and the Company (provided that the Company may redact such joint filings or notifications as necessary to remove confidential information of Netflix)). Notwithstanding the foregoing, in the event of any dispute between the Parties relating to strategy in connection with obtaining all necessary approvals under Antitrust Laws or Foreign Regulatory Laws with respect to the Merger and the other transactions contemplated by this Agreement, the Parties shall escalate such dispute to the chief legal officers of the Company and Buyer for resolution. If such dispute is not resolved pursuant to the preceding sentence, Buyer shall have the right to make the final determination with respect to such matter acting reasonably and in good faith and in a manner consistent with Buyer's obligations under Section 6.4(g). Each party may, as it deems advisable and necessary, reasonably designate material provided to the other party as "Outside Counsel Only Material," and also may redact the material as necessary to (A) remove personally sensitive information, (B) remove references concerning the valuation of the Company and its Subsidiaries or Buyer and its Subsidiaries, (C) comply with bona fide contractual arrangements with third parties, (D) prevent the loss of a legal privilege (including attorney-client privilege) or (E) comply with applicable Law.

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(d) Unless prohibited by applicable Law or Governmental Order or by the applicable Governmental Entity, and to the extent reasonably practicable, (i) none of the Company, Buyer or their respective Affiliates shall participate in or attend any meeting, or engage in any substantive conversation, with any Governmental Entity in respect of the Merger (including with respect to any of the actions referred to in Section 6.4(a)) without the other, (ii) each of the Company and Buyer shall give the other reasonable prior notice of any such meeting or conversation and (iii) in the event either the Company or Buyer is prohibited by applicable Law or Governmental Order or by the applicable Governmental Entity from participating or attending any such meeting or engaging in any such conversation, the participating or attending Party shall keep the non-participating or non-attending, as the case may be, Party reasonably apprised with respect thereto.

(e) Notwithstanding anything to the contrary in this Section 6.4, Buyer and its Affiliates shall take all actions necessary to avoid or eliminate each and every impediment that may be asserted by any Governmental Entity with respect to the transactions contemplated by this Agreement so as to enable the Closing to occur as promptly as practicable and, in any event, prior to the End Date, including (i) the prompt use of its reasonable best efforts to avoid the entry of, or to effect the dissolution of, any permanent, preliminary or temporary Governmental Order that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement, including (A) the proffer and agreement by Buyer of its willingness to sell, lease, license or otherwise dispose of, or hold separate pending such disposition, and promptly to effect the sale, lease, license, disposal and holding separate of, such assets, rights, product lines, categories of assets or businesses or other operations or interests of the Company and its Subsidiaries after the Closing (and the entry into agreements with, and submission to orders of, the relevant Governmental Entity giving effect thereto, including the entry into hold separate arrangements, terminating, assigning or modifying Contracts (or portions thereof) or other business relationships, accepting restrictions on business operations and entering into commitments and obligations) and (B) the proffer and agreement by Buyer of its willingness to take such other actions, and promptly to effect such other actions (and the entry into agreements with, and submission to orders of, the relevant Governmental Entity giving effect thereto, including the entry into hold separate arrangements, terminating, assigning or modifying Contracts (or portions thereof) or other business relationships, accepting restrictions on business operations and entering into commitments and obligations), in each case if such action should be necessary or advisable to avoid, prevent, eliminate or remove the (x) commencement of any Proceeding in any forum by a Governmental Entity or (y) actual, anticipated or threatened issuance of any Governmental Order, in each case of clauses (x) and (y), that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement; provided, however, that in the case of the foregoing clauses (A) and (B), or any other provisions of this Section 6.4, Buyer and its Affiliates shall not be required to take actions that would, individually or in the aggregate, amount to a Burdensome Condition and which are not conditioned on the consummation of the Closing, (ii) defending through litigation on the merits (including through appeal) any claim asserted in any court, agency or other Proceeding by any Person, including any Governmental Entity, seeking to delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement and (iii) taking, in the event that any permanent, preliminary or temporary Governmental Order is entered or issued, or becomes reasonably foreseeable to be entered or issued, in any Proceeding or inquiry of any kind that would make consummation of the transactions contemplated by this Agreement in accordance with its terms unlawful or that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement, all actions (including the appeal thereof and the posting of a bond) required by such Governmental Entity or otherwise necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate or remove such actual, anticipated or threatened Governmental Order so as to permit such consummation as promptly as practicable, and in any event, prior to the End Date; notwithstanding the foregoing, and for the avoidance of doubt, Buyer and its Affiliates shall not be required to take any actions that would, individually or in the aggregate, constitute a Burdensome Condition. Nothing in this Agreement shall obligate the Company to agree to any divestiture or other remedy not conditioned on the consummation of the Closing.

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(f) Buyer and the Company shall not, and shall cause their Affiliates (and, in the case of Buyer, each of the Equity Investors and their respective Affiliates (other than Oracle Corporation and Ellison Institute of Technology or any of the respective controlled Affiliates of Oracle Corporation or Ellison Institute of Technology)) not to (i) take, cause or permit to be taken or omit to take any action, including any action with respect to any actions or filings that would be required to be made pursuant to any applicable Antitrust Laws, Foreign Regulatory Laws or other Laws, that would reasonably be expected to prevent or materially delay the consummation of the Transactions or (ii) propose, announce an intention, enter into any agreements or otherwise make a commitment to take such action. Without limiting the generality of the foregoing, Buyer and the Company each shall not, and shall cause their Affiliates not to, acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any Person or portion thereof, or otherwise acquire or agree to acquire any assets, if any such action could reasonably be expected to materially delay or materially increase the risk of not obtaining any consent, approval, authorization, declaration, waiver, license, franchise, permit, certificate or order of any Governmental Entity necessary to consummate the transactions contemplated hereby or prevent or materially delay the consummation of the Transactions.

Section 6.5 ~~Status; Notifications~~. Subject to applicable Law and as otherwise required by any Governmental Entity, the Company and Buyer each shall keep the other reasonably apprised of the status of matters relating to the consummation of the Transactions. The Company and Buyer each shall give prompt notice to the other of any Company Material Adverse Effect or any Buyer Material Adverse Effect, as applicable, or of any failure of any condition to the other Party's obligation to consummate the Transactions; ~~provided~~ that the delivery of any notice pursuant to this Section 6.5 shall not affect or be deemed to modify any representation, warranty, covenant, right, remedy or condition to any obligation of any Party or update the Company Disclosure Letter or Buyer Disclosure Letter, as applicable.

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Section 6.6 Information Access and Reports

(a) During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement in accordance with Article VIII and the Closing, subject to applicable Law and the other provisions of this Section 6.6, each of the Company and Buyer shall, upon request by the other, furnish the other with all information concerning itself, its Affiliates, directors and officers and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement or any other statement, filing, notice or application made by or on behalf of Buyer or the Company or any of their respective Subsidiaries to any third party or any Governmental Entity in connection with the Transactions, and shall, upon giving of reasonable notice by the other, afford the other's authorized Representatives reasonable access, during normal business hours following reasonable advance notice throughout the period prior to the Effective Time, to its officers, employees, agents, contracts, books and records (including the work papers of its independent accountants upon receipt of any required consents from such accountants), as well as properties, offices and other facilities, and, during such period, each of the Company and Buyer shall (and shall cause its Subsidiaries to) furnish promptly to the other all information concerning its business, properties and personnel as may reasonably be requested by the other, in each case, for purposes reasonably related to the consummation of the Transactions, including transition or integration planning related thereto.

(b) The foregoing provisions of this Section 6.6 shall not require and shall not be construed to require either the Company or Buyer to permit any access to any of its officers, employees, agents, contracts, books or records, or its properties, offices or other facilities, or to permit any inspection, review, sampling or audit, or to disclose or otherwise make available any information that in the reasonable judgment of the Company or Buyer, as applicable, would (i) result in the disclosure of any Trade Secrets of any third parties or violate the terms of any confidentiality provisions in any agreement with a third party entered into prior to the date of this Agreement if the Party shall have used commercially reasonable efforts (without payment of any consideration, fees or expenses) to obtain the consent of such third party to such inspection or disclosure, (ii) result in a violation of applicable Law, including any fiduciary duty, (iii) result in the loss of the protection of any attorney-client privilege, (iv) result in the disclosure of any personal information that would expose the Party to the risk of liability or (v) unreasonably disrupt the operations of such Party or any of its Subsidiaries. In the event that the Company or Buyer, as applicable, objects to any request submitted pursuant to and in accordance with this Section 6.6(b) and withholds information on the basis of the foregoing clauses (i) through (v), the Company or Buyer, as applicable, shall inform the other Party as to the general nature of what is being withheld and the Company or Buyer shall use commercially reasonable efforts to make appropriate substitute arrangements to permit reasonable disclosure that does not suffer from any of the foregoing impediments, including through the use of commercially reasonable efforts to (A) obtain the required consent or waiver of any third party required to provide such information and (B) implement appropriate and mutually agreeable measures to permit the disclosure of such information in a manner to remove the basis for the objection, including by arrangement of appropriate clean room procedures, redaction or entry into a customary joint defense agreement with respect to any information to be so provided, if the Parties determine that doing so would reasonably permit the disclosure of such information without violating applicable Law or jeopardizing such privilege. Each of the Company or Buyer, as it deems advisable and necessary, may reasonably designate competitively sensitive material provided to the other as "Outside Counsel Only Material" or with similar restrictions. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient, or otherwise as the restriction indicates, and be subject to any additional confidentiality or joint defense agreement between the Parties. All requests for information made pursuant to this Section 6.6 shall be directed to the executive officer or other Person designated by the Company or Buyer, as applicable. All information exchanged or made available shall be governed by the terms of the Confidentiality Agreement. Notwithstanding anything to the contrary in the Confidentiality Agreement, (i) each of the Company and Buyer agrees that the other Party may initiate contact with and pursue potential financing sources in connection with the transactions contemplated by this Agreement subject to, in the case of information that constitutes "Evaluation Material" (as defined in the Confidentiality Agreement) (the "Confidential Information"), the confidentiality and use restrictions applicable to Representatives set forth in the Confidentiality Agreement and (ii) each of the Company and Buyer agrees that (A) the other Party may disclose Confidential Information to any actual or prospective financing sources in connection with the Financing or in connection with any financing or refinancing to be undertaken by the Company or any of its Subsidiaries not prohibited by this Agreement (including any Company Refinancing), as applicable; provided that the recipients of such Confidential Information agree to customary confidentiality undertakings that are substantially similar in their protection of confidential information as the Confidentiality Agreement, including "click through" confidentiality agreements and confidentiality provisions contained in customary confidential information memoranda or other marketing materials in connection with the Financing or such financing or refinancing, as applicable; provided, further, the Company's prior written consent (not to be unreasonably withheld, conditioned or delayed) shall be required prior to Buyer's or any of its Representatives' disclosure of any Confidential Information in connection with any Buyer Public Equity Financing, and (B) each of Buyer and the Company may disclose Confidential Information to any rating agency, subject to customary confidentiality undertakings by such rating agency substantially similar in their protection of confidential information as the Confidentiality Agreement, in connection with the Financing or such financing or refinancing, as applicable.

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(c) To the extent that any of the information or material furnished pursuant to this Section 6.6 or otherwise in accordance with the terms of this Agreement may include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened Proceedings, the Parties understand and agree that they have a commonality of interest with respect to such matters and it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege. All such information that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under these privileges, this Agreement, and under the joint defense doctrine.

(d) No exchange of information or investigation by Buyer or its Representatives shall affect or be deemed to affect, modify or waive the representations and warranties of the Company set forth in this Agreement, and no investigation by the Company or its Representatives shall affect or be deemed to affect, modify or waive the representations and warranties of Buyer or Merger Sub set forth in this Agreement.

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Section 6.7 Exchange Act Deregistration. Buyer shall, with the reasonable cooperation of the Company, take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part under applicable Laws and rules and policies of NASDAQ to permit the Company Stock and any other security issued by the Company or one of its Subsidiaries and listed on NASDAQ to be de-listed from NASDAQ and de-registered under the Exchange Act as promptly as practicable following the Effective Time.

Section 6.8 Publicity. The initial press release with respect to the Merger shall be a joint press release and thereafter the Company and Buyer shall consult with each other, and provide meaningful opportunity for review and give due consideration to reasonable comment by the other Party, prior to issuing any press releases or otherwise making planned public statements with respect to the Merger and prior to making any filings with any third party or any Governmental Entity (including any national securities exchange) with respect thereto, except (i) as may be required by applicable Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or trading market, (ii) any consultation that would not be reasonably practicable as a result of requirements of applicable Law, (iii) with respect to or following any Change in the Company Recommendation made in accordance with this Agreement or with respect to any Acquisition Proposal or (iv) consistent with the initial press release or other mutually agreed communications (including any other public filings made with the SEC in connection with this Agreement or the Transactions). Each of the Company and Buyer may make any public statements in response to questions by the press, analysts, investors or those attending industry conferences or analyst or investor conference calls, so long as such statements are not inconsistent with previous statements made jointly by the Company and Buyer.

Section 6.9 Employee Matters.

(a) For a period of twelve (12) months following the Effective Time (the "Continuation Period"), the Surviving Corporation and its Subsidiaries shall (and Buyer shall cause the Surviving Corporation and its Subsidiaries to) provide each Continuing Employee with (i) a base salary or wage rate, as applicable, target cash incentive opportunities (including, as applicable, target annual or short-term bonus and commission opportunities) and target equity or equity-based incentive opportunities that are, in each case, no less than those in effect for such Continuing Employee immediately before the Effective Time (provided that Buyer shall not be required to grant equity or equity-based incentives to Continuing Employees and shall be permitted to replace such value with cash or cash-based awards) and (ii) all other employee benefits (excluding deferred compensation, severance and defined benefit pension benefits) that are substantially comparable in the aggregate to those (excluding deferred compensation, severance and defined benefit pension benefits) that are in effect for (or available to) such Continuing Employee as of the Effective Time. For the avoidance of doubt, base salary or wage rate and target annual or short-term cash and target long-term incentive compensation opportunities shall not be decreased during the Continuation Period for any Continuing Employee employed during that period.

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(b) During the Continuation Period (or such longer period required by the terms of the applicable Company Plan), the Surviving Corporation and its Subsidiaries shall (and Buyer shall cause the Surviving Corporation and its Subsidiaries to) provide each Continuing Employee with severance and termination benefits that are no less favorable than those applicable to such Continuing Employee immediately before the Effective Time as set forth on Section 4.8(a) of the Company Disclosure Letter; provided that such severance benefits shall be subject to the execution and non-revocation of a release of claims in favor of Buyer and its Subsidiaries.

(c) With respect to each benefit or compensation plan, program, policy, arrangement or agreement that is made available to any Continuing Employee at or after the Effective Time (each such plan, a "New Plan"), the Surviving Corporation and its Subsidiaries shall (and Buyer shall cause the Surviving Corporation and its Subsidiaries to) cause to be granted to such Continuing Employee credit for all service with the Company and its Subsidiaries prior to the Effective Time for purposes of eligibility to participate, vesting and entitlement to benefits where length of service is relevant (including for purposes of vacation accrual, long-term incentive compensation, and severance entitlement or termination pay), except (x) to the extent that it would result in duplication of coverage or benefits for the same period of service or (y) for purposes of defined benefit pension plans or post-employment health and welfare arrangements. In addition, and without limiting the generality of the foregoing: (i) each Continuing Employee will be immediately eligible to participate, without any waiting period, in any and all New Plans to the extent that coverage pursuant to any such New Plan replaces coverage pursuant to a corresponding Company Plan (such plans, the "Old Plans"); (ii) for purposes of each New Plan providing life insurance, medical, dental, pharmaceutical, vision or disability benefits, the Surviving Corporation and its Subsidiaries shall use commercially reasonable efforts to cause all waiting periods, pre-existing condition exclusions, evidence of insurability requirements and actively-at-work or similar requirements of such New Plan to be waived for the Continuing Employees and their covered dependents; and (iii) for purposes of each New Plan providing medical, dental, pharmaceutical, or vision benefits, the Surviving Corporation and its Subsidiaries shall cause any eligible expenses incurred by the Continuing Employees and their covered dependents during the portion of the plan year of the Old Plans ending on the date that Continuing Employees' participation in the corresponding New Plan begins to be given full credit pursuant to such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employees and their covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan. Any vacation or paid time off accrued but unused by a Continuing Employee as of immediately prior to the Effective Time will be credited to such Continuing Employee following the Effective Time and will not be subject to accrual limits or other forfeiture and shall not limit future accruals.

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(d) In respect of each Continuing Employee's annual bonus for the calendar year in which the Closing Date occurs (the "Closing Year Annual Bonus"), Buyer shall, or shall cause the Surviving Corporation to, pay to each Continuing Employee the Closing Year Annual Bonus in an amount equal to the greater of (i) such Continuing Employee's full bonus entitlement under the applicable Company Plan, assuming for purposes of determining such Closing Year Annual Bonus (x) with respect to any applicable individual performance goals, that such goals are achieved at no less than target levels of performance and (y) with respect to any applicable company performance goals, that such goals are achieved at the greater of (A) target performance and (B) actual performance based on actual performance through the Closing Date, extrapolated through the end of the applicable calendar year in which the Closing Date occurs, in either case, as determined in good faith and otherwise in the Ordinary Course by the Company prior to the Closing Date and (ii) the amount payable to such Continuing Employee under the applicable Company Plan based on actual performance through the end of the applicable performance period under such plan, as determined by Buyer in good faith and consistent with the Company's past practice (such amount, the "Closing Year Annual Bonus Payment"); provided that the Closing Year Annual Bonus Payment will be payable at the same time and subject to the same terms and conditions as called for in the applicable Company Plan in effect as of the Closing Date (including any continued employment or similar requirement under an applicable Company Plan); and provided, further, that in no event will any Continuing Employee receive any Closing Year Annual Bonus Payment, or portion thereof, that would be duplicative of any bonus-related amounts payable as severance, termination pay or similar pay under any Company Plan.

(e) From and after the Effective Time, the Surviving Corporation shall (and Buyer shall cause the Surviving Corporation to) assume and honor all of the Company Plans, including, for avoidance of doubt, employment agreements with Continuing Employees, in accordance with their terms as in effect immediately prior to the Effective Time.

(f) The Surviving Corporation shall (and Buyer shall cause the Surviving Corporation to) assume all Collective Bargaining Agreements to which the Company or any of its Subsidiaries is a party in accordance with their terms as in effect immediately prior to the Effective Time. Notwithstanding the foregoing or anything in this Agreement to the contrary, the terms and conditions of employment for any (i) Continuing Employees covered, or who become covered, by a Collective Bargaining Agreement shall be governed by the applicable Collective Bargaining Agreement until the expiration, modification or termination of such Collective Bargaining Agreement in accordance with its terms or applicable Law, and (ii) Continuing Employees otherwise located outside the United States shall be subject to applicable Law.

(g) Nothing in this Agreement shall confer upon any Person any right to continue in the employ or service of the Company, Buyer or any of their respective Affiliates, or shall interfere with or restrict in any way the rights of the Company, Buyer or any of their respective Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of any Person at any time for any reason whatsoever, with or without cause, in accordance with any Collective Bargaining Agreements. Notwithstanding any provision in this Agreement to the contrary, nothing in this Section 6.9(g) shall (i) be deemed or construed to be an amendment or other modification of any Company Plan, or any plan, program or arrangement of the Company, Buyer or any of their respective Affiliates, or (ii) create any third-party rights in any current or former service provider or employee of the Company or its Affiliates (or any beneficiaries or dependents thereof).

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Section 6.10 Indemnification: Directors' and Officers' Insurance.

(a) From and after the Effective Time, Buyer agrees that, to the fullest extent permitted under applicable Law and the Organizational Documents of the Company or any of its Subsidiaries in effect as of the date of this Agreement, Buyer shall, and shall cause the Surviving Corporation to, indemnify and hold harmless each present and former (determined as of the Effective Time) chair emeritus, director and officer of the Company or any of its Subsidiaries, in each case, when acting in such capacity (collectively, the "Indemnified Parties"), against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities (collectively, "Costs") incurred in connection with, arising out of or otherwise related to any Proceeding, in connection with, arising out of or otherwise related to matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including in connection with (i) the Transactions and (ii) actions to enforce this provision or any other indemnification or advancement right of any Indemnified Party, and Buyer or the Surviving Corporation shall also advance expenses as incurred to the fullest extent permitted to do so under applicable Law and the Organizational Documents of the Company or its applicable Subsidiary in effect as of the date of this Agreement; provided that any Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined by final adjudication that such Person is not entitled to indemnification.

(b) Prior to the Effective Time, the Company shall and, if the Company is unable to, Buyer shall cause the Surviving Corporation as of the Effective Time to, obtain and fully pay the premium for "tail" insurance policies for the extension of (i) the Company and its Subsidiaries' existing directors' and officers' insurance policies, and (ii) the Company and its Subsidiaries' existing fiduciary liability insurance policies, in each case for a claims reporting or discovery period of six (6) years from and after the Effective Time (the "Tail Period") from one or more insurance carriers with the same or better credit rating as the Company and its Subsidiaries' insurance carrier(s) as of the Effective Time with respect to directors' and officers' liability insurance and fiduciary liability insurance (collectively, "D&O Insurance") with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as the Company and its Subsidiaries' existing policies with respect to matters existing or occurring at or prior to the Effective Time (including in connection with this Agreement or the Transactions); provided, however, that in no event shall the aggregate cost of such "tail" insurance exceed three hundred percent (300%) of the aggregate annual premium for such insurance in effect as of the date hereof (the "Maximum Amount"); and provided, further, that if the aggregate cost for such "tail" insurance exceeds the Maximum Amount, then the Company or the Surviving Corporation shall obtain such "tail" insurance that is the most advantageous to the beneficiaries thereof available for a cost not exceeding the Maximum Amount, unless otherwise directed by Buyer to exceed the Maximum Amount. If the Company and the Surviving Corporation for any reason fail to obtain such "tail" insurance policies as of the Effective Time, the Surviving Corporation shall, and Buyer shall cause the Surviving Corporation to, continue to maintain in effect for the Tail Period the D&O Insurance in place as of the Effective Time with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as provided in the Company and its Subsidiaries' existing policies as of the Effective Time, or the Surviving Corporation shall, and Buyer shall cause the Surviving Corporation to, purchase comparable D&O Insurance for the Tail Period with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as provided in the Company and its Subsidiaries' existing policies as of the Effective Time; provided, however, that in no event shall the Surviving Corporation be required to expend for such insurance an aggregate annual cost in excess of the Maximum Amount; and provided, further, that if such insurance is not reasonably available or the aggregate annual cost for such insurance exceeds the Maximum Amount, then the Surviving Corporation shall obtain such insurance available that is the most advantageous to the beneficiaries thereof for a cost not exceeding the Maximum Amount.

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(c) Any Indemnified Party wishing to claim indemnification under this Section 6.10, upon learning of any such Proceeding, shall promptly notify Buyer thereof in writing, but the failure to so notify shall not relieve Buyer or the Surviving Corporation of any liability it may have to such Indemnified Party except to the extent such failure materially prejudices the indemnifying party. In the event of any Proceeding: (i) Buyer or the Surviving Corporation shall have the right to assume the defense thereof (it being understood that by electing to assume the defense thereof, neither Buyer nor the Surviving Corporation will be deemed to have waived any right to object to the Indemnified Party's entitlement to indemnification hereunder with respect thereto or assumed any liability with respect thereto), except that if Buyer or the Surviving Corporation elects not to assume such defense or legal counsel for the Indemnified Party advises that there are issues which raise conflicts of interest between Buyer or the Surviving Corporation and the Indemnified Party, the Indemnified Party may retain legal counsel satisfactory to them, and Buyer or the Surviving Corporation shall pay all reasonable and documented fees and expenses of such legal counsel for the Indemnified Party promptly as statements therefor are received; provided, however, that Buyer and the Surviving Corporation shall be obligated pursuant to this Section 6.10 to pay for only one firm of legal counsel for all Indemnified Parties in any jurisdiction unless the use of one legal counsel for such Indemnified Parties would present such legal counsel with a conflict of interest (provided that the fewest number of legal counsels necessary to avoid conflicts of interest shall be used); (ii) the Indemnified Parties shall cooperate in the defense of any such matter if Buyer or the Surviving Corporation elects to assume such defense, and Buyer and the Surviving Corporation shall cooperate in the defense of any such matter if Buyer or the Surviving Corporation elects not to assume such defense; (iii) the Indemnified Parties shall not be liable for any settlement effected without their prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) if Buyer or the Surviving Corporation elects to assume such defense, and Buyer and the Surviving Corporation shall not be liable for any settlement effected without their prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) if Buyer or the Surviving Corporation elects not to assume such defense; (iv) Buyer and the Surviving Corporation shall not have any obligation hereunder to any Indemnified Party if and when a court of competent jurisdiction shall ultimately determine, and such determination shall have become final, that the indemnified action of such Indemnified Party in the manner contemplated hereby is prohibited by applicable Law; and (v) all rights to indemnification in respect of any such Proceedings shall continue until final disposition of all such Proceedings.

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(d) All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the Organizational Documents of the Company or any of its Subsidiaries or any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries, in each case, as in effect on the date of this Agreement, shall survive the Transactions unchanged and shall not be amended, restated, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

(e) If Buyer or the Surviving Corporation or any of their respective successors or assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving Person of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of Buyer or the Surviving Corporation shall assume all of the obligations set forth in this Section 6.10.

(f) The rights of the Indemnified Parties under this Section 6.10 are in addition to any rights such Indemnified Parties may have under the Organizational Documents of the Company or any of its Subsidiaries, or under any applicable Contracts or Laws and nothing in this Agreement is intended to, shall be construed or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of its Subsidiaries for any of their respective chair emeritus, directors, officers or other employees (it being understood that the indemnification provided for in this Section 6.10 is not prior to or in substitution of any such claims under such policies).

(g) This Section 6.10 is intended to be for the benefit of, and from and after the Effective Time shall be enforceable by, each of the Indemnified Parties, who shall be third-party beneficiaries of this Section 6.10.

Section 6.11 Takeover Statutes. If any Takeover Statute is or may become applicable to the Transactions, each of the Company (including the Company Board) and Buyer (including the Buyer Board), respectively, shall grant such approvals and take such actions as are necessary so that the Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise use reasonable best efforts to eliminate or minimize the effects of such statute or regulation on the Transactions.

Section 6.12 Section 16 Matters. The Company, Buyer and the Company Board and the Buyer Board (or duly formed committees thereof consisting of non-employee directors (as such term is defined for the purposes of Rule 16b-3 promulgated under the Exchange Act)), shall, prior to the Effective Time, take all such actions as may be necessary or appropriate to cause the Merger and any other dispositions of equity securities of the Company (including derivative securities) or acquisitions of equity securities of Buyer (including derivative securities) in connection with the Merger by any individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company or will become subject to such reporting requirements with respect to Buyer, to be exempt under Rule 16b-3 promulgated under the Exchange Act, to the extent permitted by applicable Law.

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Section 6.13 Transaction Litigation.

(a) In the event that any stockholder litigation related to this Agreement or the Transactions is brought against the Company or any members of the Company Board from and following the date of this Agreement and prior to the Effective Time (such litigation, "Company Transaction Litigation"), the Company shall promptly notify Buyer of such Company Transaction Litigation and shall keep Buyer reasonably informed with respect to the status thereof (including by providing copies of all substantive pleadings with respect thereto). The Company shall give Buyer a reasonable opportunity to participate in the defense or settlement (at Buyer's sole expense and subject to a customary joint defense agreement) of any Company Transaction Litigation (including by providing Buyer the opportunity to review and comment on all material filings or responses to be made by the Company) and shall consider in good faith Buyer's advice with respect to such Company Transaction Litigation; provided that the Company shall in any event control such defense and the disclosure of information to Buyer in connection therewith shall be subject to the provisions of Section 6.5; provided, further, that the Company shall not settle or agree to settle any Company Transaction Litigation without prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) In the event that any stockholder litigation related to this Agreement or the Transactions is brought against Buyer or any members of the Buyer Board from and following the date of this Agreement and prior to the Effective Time (such litigation, "Buyer Transaction Litigation"), Buyer shall promptly notify the Company of such Buyer Transaction Litigation and shall keep the Company reasonably informed with respect to the status thereof (including by providing copies of all substantive pleadings with respect thereto). Buyer shall give the Company a reasonable opportunity to participate in the defense or settlement (at the Company's sole expense and subject to a customary joint defense agreement) of any Buyer Transaction Litigation (including by providing the Company the opportunity to review and comment on all material filings or responses to be made by Buyer) and shall consider in good faith the Company's advice with respect to such Buyer Transaction Litigation; provided that Buyer shall in any event control such defense and the disclosure of information to the Company in connection therewith shall be subject to the provisions of Section 6.5; provided, further, that Buyer shall not settle or agree to settle any Buyer Transaction Litigation without prior written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Promptly, and in any event within one (1) Business Day of the execution of this Agreement, Buyer shall file a voluntary notice of dismissal with prejudice with respect to the lawsuit it filed in the Court of Chancery of the State of Delaware naming as defendants the Company, the Company Board and its Chair Emeritus John C. Malone (*Paramount Skydance Corp. v. Zaslav*, No. 2026-0044-MTZ). Buyer shall promptly take any further actions required to dismiss with prejudice such lawsuit.

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Section 6.14 Standstill. Except as provided for in this Agreement or in connection with the Transactions, until the earliest of (x) the Effective Time, (y) if this Agreement is terminated in circumstances in which Buyer is required to pay the Regulatory Termination Fee or pursuant to Section 8.1(c)(i), June 4, 2027 and (z) if this Agreement is terminated other than in circumstances in which Buyer is required to pay the Regulatory Termination Fee or pursuant to Section 8.1(c)(i), the termination of this Agreement in accordance with Article VIII, neither Buyer nor any of Buyer's Affiliates (other than any Affiliate that has not received Evaluation Material (as defined in the Confidentiality Agreement) and is not acting on behalf of, or otherwise in concert with, Buyer or any Affiliate of Buyer that has received Evaluation Material (as defined in the Confidentiality Agreement)) nor any of Buyer's Representatives (as defined in the Confidentiality Agreement) acting on Buyer's behalf shall in any manner, directly or indirectly: (a) effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or cause or participate in or in any way assist, facilitate or encourage any other person to effect or seek, offer or propose (whether publicly or otherwise) to effect or participate in, (i) any acquisition of any securities (or beneficial ownership thereof) or derivative securities (or beneficial ownership thereof), or any assets, indebtedness or businesses, of the Company or any of its Affiliates, (ii) any tender or exchange offer, merger or other business combination involving the Company or any of its affiliates, or assets constituting a significant portion of the consolidated assets of the Company and its Affiliates, (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company or any of its Affiliates or the businesses or assets of the foregoing or (iv) any "solicitation" of "proxies" (as such terms are used in the proxy rules of the U.S. Securities and Exchange Commission) or consents to vote any voting securities or derivative securities of the Company or any of its affiliates or the calling of a meeting of the Company's stockholders or the initiation of any proposal for action by the Company's stockholders; (b) form, join or in any way participate in a "group" (as defined under the 1934 Act) to vote, acquire or dispose of any such securities or derivative securities of the Company, other than together with its Representatives in their capacity as such; (c) demand a copy of the Company's record of stockholders, stock ledger list or any other books or records of the Company; (d) otherwise act, alone or in concert with others, to seek or obtain representation on or to control or influence the management, the Company Board or the policies of the Company, or propose any matter to be voted on by holders of securities or loans of the Company; (e) take any action that would or would reasonably be expected to require the Company to make a public announcement regarding any of the types of matters set forth in clause (a) of this Section 6.14; (f) other than in connection with the Transactions as otherwise permitted hereby, arrange, or in any way participate in, any financing for the purchase of any securities, loans or assets of the Company or any of its affiliates, or any derivative securities with respect to any of the foregoing entities; (g) enter into any discussions, arrangements or understandings with any third party (that is not a Representative), including any Company stockholder, with respect to any of the foregoing; or (h) announce or otherwise publicly disclose any interest, intention or plan to do any of the foregoing, or request, directly or indirectly, that the Company waive, amend or terminate any provision of this Section 6.14 (including this clause). For purposes of this Section 6.14, "derivative securities" means, with respect to any person, any right, option, other security or derivative position that has an exercise, exchange or conversion privilege or a settlement payment or mechanism at a price related to, or a value determined in whole or in part with reference to or derived in whole or in part from, the value of any securities, bank debt or other obligations of such person or any of its affiliates.

Section 6.15 [Reserved].

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Section 6.16 Financing.

(a) Buyer shall, and shall cause the Buyer Entities to, use their respective reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain and consummate the Committed Financing on the terms and conditions (including, to the extent applicable, the “market flex” provisions) set forth in the Commitment Letter and the Subscription Agreements, as applicable, no later than the Closing Date, including using their respective reasonable best efforts to (i) maintain in effect the Commitment Letter and the Subscription Agreements until the Transactions are consummated (it being acknowledged that the commitments under the Commitment Letter may be reduced or terminated in accordance with the terms of the Commitment Letter to the extent that Buyer receives cash proceeds, to be used solely to fund the Required Amounts, from, or commitments in respect of, any other Financing (other than any Buyer Public Equity Financing) on or prior to the Closing Date (so long as such reduction or termination does not result in a Prohibited Modification)), (ii) negotiate, enter into and deliver definitive agreements with respect to the Committed Debt Financing contemplated by the Commitment Letter or the alternative Financing contemplated in the immediately preceding clause (i), as applicable, on the terms and conditions set forth in the Commitment Letter (including any “market flex” provisions applicable to the Committed Debt Financing) (or on terms that will not prevent, materially delay or materially impair the Closing or make the funding with respect to the Committed Financing or Financing, as applicable, less likely to occur or otherwise result in a Prohibited Modification), (iii) satisfy or cause to be waived on a timely basis all conditions applicable to Buyer and the Buyer Entities set forth in the Commitment Letter or such definitive agreements and in the Subscription Agreements, (iv) upon the satisfaction or waiver of such conditions, consummate the Committed Financing or Financing, as applicable, and the transactions contemplated by the Subscription Agreements on the Closing Date and (v) enforce its rights under the Commitment Letter, such definitive agreements and the Subscription Agreements. Buyer shall not, without the prior written consent of the Company, amend, modify, supplement, waive (or otherwise grant consent under) the Subscription Agreements. Buyer shall not (and shall cause the Buyer Entities not to), without the prior written consent of the Company, amend, modify, supplement, waive (or otherwise grant consent under) the Commitment Letter or any definitive agreements in respect of the Committed Debt Financing or replace all or any portion of the commitments in respect of the Committed Debt Financing, to the extent such amendment, modification, supplement, replacement or waiver would reasonably be expected to (w) reduce the amount of the Committed Financing to an amount that would result in Buyer having insufficient funds, when added with any then-immediately available Committed Financing, to pay the Required Amounts, (x)(i) impose new or additional conditions precedent to the initial funding of the Committed Debt Financing other than as set forth in the Debt Commitment Letter (as in effect on the date of this Agreement) or (ii) otherwise modify the conditions precedent to the initial funding of the Committed Debt Financing (as in effect on the date of this Agreement) in a manner reasonably expected to delay, prevent or impede the funding of the Committed Debt Financing (or satisfaction of the conditions precedent to the Committed Debt Financing) or make such funding materially less likely to occur, (y) jeopardize or delay in any material respect the Closing or (z) adversely affect the ability of Buyer to enforce its rights against the other parties to the Debt Commitment Letter (the effect described in clause (w) through (z), a “Prohibited Modification”); provided, however, Buyer may amend, modify, supplement or waive any provision of the Commitment Letter (A) to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed the Debt Commitment Letter as of the date of this Agreement, in each case, as contemplated by the Debt Commitment Letter as of the date of this Agreement or (B) to reduce or terminate the commitments thereunder as a result of (x) Buyer’s receipt of commitments in connection with an alternative financing which will generate, or (y) Buyer’s consummation of an alternative financing which provides Buyer, taken together with any other Committed Financing, with sufficient funds necessary to, and solely to be used to, pay the Required Amounts at Closing, in each case in any manner that does not result in a Prohibited Modification. As soon as reasonably practicable, Buyer will provide the Company with true and complete executed copies of any amendment or supplement to, or modification or replacement of or waiver under, the Commitment Letter (subject, in the case of any fee letters, to redaction solely of fee and other economic provisions that are customarily redacted in connection with transactions of this type and none of which would be reasonably expected to impact the conditionality or amount of the Financing) made in compliance with this Section 6.16(a). Upon any such amendment, modification, supplement, replacement, waiver or consummation of an alternative financing, (1) the definitions of “Debt Commitment Letter,” “Debt Fee Letter” and/or “Financing,” as applicable, set forth in this Agreement shall be deemed to have been modified as appropriate to reflect such amendment, modification, supplement, replacement, waiver or alternative financing and (2) any reference in this Agreement to the “Committed Debt Financing” shall mean the financing contemplated by the Debt Commitment Letter, as the same may be replaced, amended, modified, supplemented or waived in accordance with this Agreement.

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(b) If the Committed Debt Financing in an aggregate principal amount (together with the Committed Equity Financing) at least equal to the Required Amounts becomes unavailable on the terms and conditions contemplated by the Debt Commitment Letter, and such unavailable amount is necessary to pay the Required Amounts (each such event, an "Original Financing Failure"), Buyer shall promptly notify the Company in writing of the Original Financing Failure after obtaining knowledge thereof and Buyer shall use its reasonable best efforts to obtain, as promptly as reasonably practicable, alternative financing from alternative sources that does not include conditions to obtaining the Financing that are materially more onerous to Buyer, taken as a whole, than those contained in the Commitment Letter (taking into account any "market flex" provisions) and in an amount at least equal to the aggregate principal amount of the Committed Debt Financing or such unavailable portion thereof, as the case may be (the "Alternate Financing") that is necessary to pay the Required Amounts, and to obtain new financing commitment letter(s) with respect to such Alternate Financing (the "New Commitment Letter(s)"), which shall replace the existing Debt Commitment Letter. Buyer shall promptly provide true and complete and fully executed copies of such New Commitment Letter(s) (including all attachments thereto) and all related fee letters (subject, in the case of any fee letters, to redaction solely of fee and other economic provisions that are customarily redacted in connection with transactions of this type and none of which would be reasonably expected to impact the conditionality or amount of the Financing) to the Company. In the event New Commitment Letter(s) are obtained, (i) any reference in this Agreement to the "Debt Commitment Letter" or "Debt Fee Letter" shall be deemed to include the New Commitment Letter(s) or related fee letters, as applicable, and (ii) any reference in this Agreement to the "Committed Financing" or "Committed Debt Financing" shall include the financing contemplated by the New Commitment Letter(s) and related fee letters. If any Equity Financing Failure Event occurs, Buyer shall promptly notify the Company and, to the extent applicable, in consultation with the Company, use commercially reasonable efforts to arrange for alternative equity financing ("Equity Replacement Financing") in an amount that when added with the Committed Debt Financing and any cash, marketable securities, available lines of credit or other sources of immediately available funds of Buyer would be sufficient to pay the Required Amounts and which satisfies the Syndication Conditions (as defined in the Subscription Agreements). Buyer shall deliver to the Company true, correct and complete copies of all contracts or other arrangements pursuant to which any alternative source shall have committed to provide any portion of the Equity Replacement Financing. For the avoidance of doubt, the foregoing shall not release any Equity Investor or Guarantor of its obligations under the Subscription Agreements or the Ellison Guarantee, as applicable.

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(c) Buyer shall keep the Company reasonably informed promptly upon written request (which may be via email) in reasonable detail of the status of its efforts to arrange the Financing and the Committed Debt Financing. Buyer shall give the Company prompt notice of (i) any material breach or material default by any party to the Debt Commitment Letter, any Subscription Agreement, or any definitive agreements related to the Committed Financing, in each case, of which Buyer becomes aware, (ii) the receipt of any written notice or other written communication, in each case received from any Financing Source or any Equity Investor with respect to any (x) material breach of Buyer's obligations under the Debt Commitment Letter, any Subscription Agreement or definitive agreements related to the Committed Financing, or default, termination or repudiation by any party to the Debt Commitment Letter, any Subscription Agreement or definitive agreements related to the Committed Financing or (y) material dispute between or among any parties to the Debt Commitment Letter, any Subscription Agreement or definitive agreements related to the Committed Financing or any provisions of the Debt Commitment Letter or any Subscription Agreement, in each case with respect to the obligation to fund the amount of the Committed Financing to be funded at Closing and (iii) if for any reason Buyer has determined in good faith that it will not be able to obtain all or any portion of the Committed Financing on the terms contemplated by the Commitment Letter or the Subscription Agreements, as applicable, in an amount sufficient to pay the Required Amounts. Notwithstanding the foregoing, in no event shall Buyer be required to provide access to or disclose information that would jeopardize any attorney-client privilege of, or conflict with any confidentiality requirements applicable to, Buyer or any Buyer Entity; provided that Buyer shall use reasonable best efforts to provide an alternative means of disclosing or providing such information, and in the case of any confidentiality obligation, Buyer shall, to the extent permitted by such confidentiality obligations, notify the Company if any such information that the Company has specifically identified and requested is being withheld as a result of any such obligation of confidentiality. Prior to the Closing Date, Buyer shall, and shall cause the Buyer Entities and shall use reasonable best efforts to cause their respective Representatives to, use reasonable best efforts to provide to the Company cooperation reasonably requested by the Company in connection with any financing or refinancing to be undertaken by the Company or any of its Subsidiaries not prohibited by this Agreement (including any Company Refinancing), including using reasonable best efforts to provide cooperation consistent in all material respects with the cooperation required of the Company, its Subsidiaries and their respective Representatives under Section 6.16(d), as applicable. In addition, in the event that any portion of the Committed Debt Financing or any Alternate Financing becomes unavailable as a result of the inability to satisfy a condition precedent to the Committed Debt Financing or any Alternate Financing due to Buyer's or any of its Representatives' inability to deliver a solvency certificate or to make a required representation regarding solvency, Buyer shall increase the amount funded under the Committed Equity Financing (such increase in the Committed Equity Financing, the "Contingent Equity Amount") to the extent necessary for Buyer to address such solvency matter and obtain the Required Amounts at Closing.

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(d) Prior to the Closing Date, the Company shall, and shall cause each of its Subsidiaries and shall use reasonable best efforts to cause their respective Representatives to, use reasonable best efforts to provide to Buyer cooperation reasonably requested by Buyer in connection with the arrangement of the Financing, including using reasonable best efforts (to the extent reasonable and customary for financings of the type contemplated thereby as of the date of this Agreement) to:

(i) cause the appropriate senior officers of the Company to participate in a reasonable but limited number of lender or investor meetings, lender or investor presentations, roadshows, sessions with rating agencies and due diligence sessions (which may be attended via teleconference or virtual meeting platforms), in each case, upon reasonable advance notice and at mutually agreeable dates and reasonable times;

(ii) provide reasonable and customary assistance with the preparation of customary rating agency presentations, roadshow materials, customary bank information memoranda and bank syndication materials, offering documents, prospectuses and similar documents customarily required (which may incorporate, by reference, periodic and current reports filed by the Company with the SEC), in connection with consummating any Financing, in each case, solely with respect to customary information relating to the Company and its Subsidiaries;

(iii) provide all documentation and other information reasonably required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations at least four (4) Business Days prior to the Closing Date, including the USA PATRIOT Act, solely relating to the Company and any of its Subsidiaries, in each case as reasonably requested in writing by Buyer at least ten (10) Business Days prior to the Closing Date;

(iv) provide reasonable and customary assistance to Buyer and the Financing Sources in their preparation of offering documents for any Financing, including by using reasonable best efforts to (x) [reserved], (y) furnish Buyer, following Buyer's request made in good faith and in a timely manner, with all customary financial information (to the extent reasonably available to the Company) solely relating to the Company and its Subsidiaries required to be delivered pursuant to paragraph 4 of Exhibit C of the Debt Commitment Letter (as in effect on the date hereof) to the extent required to consummate any Financing (provided that in the event of any Financing that consists of a securities issuance prior to the Closing, the references to the number of days in such paragraph also shall be deemed to refer to a number of days prior to the applicable closing date of any such securities issuance), and (z) furnish Buyer, following Buyer's request made in good faith and in a timely manner, with the information and assistance that is reasonably necessary to permit Buyer to prepare pro forma financial statements described in Section 3(vi) of the Debt Commitment Letter (as in effect on the date hereof) if required to be used in or are customarily used in connection with any Financing (provided that in the event of any Financing that consists of a securities issuance prior to the Closing, the references to the number of days in such paragraph also shall be deemed to refer to a number of days prior to the applicable closing date of any such securities issuance), it being understood that Buyer, and not the Company, its Subsidiaries or any of their respective Subsidiaries, Affiliates or Representatives, is responsible for the preparation of the pro forma financial statements and any other pro forma information, including any pro forma adjustments;

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(v) (A) cause its independent auditors to reasonably cooperate with any Financing consistent with their customary practice, including (x) their participation in customary accounting due diligence sessions, and (y) requesting that they provide customary comfort letters (including “negative assurance” and customary “change period” comfort) and customary consents to the inclusion of the Company’s auditor reports and (B) providing customary management representation letters to such auditors, in each case, to the extent required in connection with such comfort letters and the marketing and syndication of any Financing;

(vi) assist with the preparation of and enter into (but not prior to the Closing) the definitive documentation relating to the Financing (including review of any disclosure schedules related thereto for completeness and accuracy); and

(vii) facilitate discussions with the Company’s existing lender and banking relationships (including cooperating with Buyer in connection with the replacement or backstopping of letters of credit).

(e) Notwithstanding anything to the contrary in this Agreement, the assistance contemplated in Section 6.16(d) and the actions and matters referred to in Section 6.16(f) shall not (i) unreasonably interfere with the normal operations of the Company or any of its Subsidiaries or, (ii) (A) require the taking of any action in respect of any Financing to the extent that such action would cause any condition to Closing set forth in Article VII to fail to be satisfied by the End Date or otherwise result in a breach of this Agreement by the Company or any of its Subsidiaries or (B) require the Company or any of its Subsidiaries to waive or amend any terms of this Agreement, (iii) require the Company or any of its Subsidiaries to take any action that would conflict with or violate any of its organizational documents, any applicable law or fiduciary duty, or result in the contravention of, or that would reasonably be expected to result in a violation or breach of, or default under, any Contract or permit to which the Company or any of its Subsidiaries is a party, (iv) except in connection with any consent solicitation described in Section 6.16(f), require the Company or any of its Subsidiaries to issue any bank information memoranda, lender presentations, offering memoranda, or similar documents including disclosure and financial statements (1) [reserved] or (2) in the name of the Company or its Subsidiaries, separate from Buyer and/or its Subsidiaries, (v) require the Company or any of its Subsidiaries to execute any Contract or any other letter, agreement, document or certificate prior to the Closing the effectiveness of which is not expressly conditioned upon the occurrence of the Closing (other than customary management letters contemplated in Section 6.16(d) or any payoff letter or supplemental indenture contemplated in Section 6.16(f) and any customary certificates required in connection therewith), (vi) require the Company or any of its Subsidiaries to enter into any agreement or commitment in connection with any Financing that is effective prior to the Closing (other than customary management letters contemplated in Section 6.16(d) or payoff letters, supplemental indentures and related documents contemplated in Section 6.16(f)), (vii) result in the Company or its Subsidiaries, including any employee, officer or director of the Company or any of its Subsidiaries incurring any actual or potential personal liability with respect to any matters relating to any Financing, (viii) provide access to or disclose information that the Company determines would jeopardize any attorney-client privilege or contravene any applicable Law, or violate any of the confidentiality provisions of any confidentiality agreement or Contract, of the Company or any of its Subsidiaries, (ix) require the Company or any of its Subsidiaries to change any fiscal period, (x) require the Company or any of its Subsidiaries to authorize any corporate action with respect to any Financing prior to the Closing Date, except for such corporate action that is conditioned on the occurrence of the Closing (and only by their respective directors, managers or other Persons holding similar positions at the Company or any of its Subsidiaries who are expected to continue to hold such positions following the Closing), (xi) except in connection with any consent solicitation described in Section 6.16(f), require the Company or any of its Subsidiaries or any of their respective Representatives to provide any legal opinion or other opinion of counsel (other than in connection with the supplemental indentures contemplated in Section 6.16(f)), (xii) require the Company or any of its Subsidiaries to pay any commitment fee or other fee or payment to obtain consent or incur any liability with respect to or cause or permit any liens to be placed on any of its assets in connection with any Financing prior to the Closing Date, (xiii) require the Company to take any action that would subject it to actual or potential liability, to bear any cost or expense or to make any other payment or agree to provide any indemnity in connection with the Committed Financing, the definitive documents related to any Financing or any information utilized in connection therewith (in each case except following the Closing), or (xiv) require the Company or any of its Representatives to prepare or provide any pro forma financial statements, information or projections or other financial statements or other financial information (other than as set forth in Section 6.16(d)(iv) above) that are not otherwise prepared by the Company in the ordinary course of business.

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(f)

(i) With respect to any outstanding notes of the Company and/or its Subsidiaries (the "Company Notes"), if reasonably requested by Buyer in consultation with the Company, the Company shall use reasonable best efforts to cooperate with, and shall use reasonable best efforts to take all actions reasonably requested by, Buyer in order to, prior to the Closing, assist Buyer in:

(w) preparing and delivering one or more notices of redemption, which notice of redemption shall be expressly conditioned on the occurrence of the Closing, in order to effect a redemption pursuant to the terms of the relevant indenture;

(x) commencing one or more consent solicitations to amend the indenture or indentures governing one or more series of the Company Notes, including, promptly following the expiration of any such consent solicitation and subject to the receipt of any requisite consents, executing one or more supplemental indentures to the relevant indenture to provide for such amendments to be effective (but which shall not be operative until the Closing);

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(y) commencing, as applicable, a “change of control” offer, which offer shall be expressly conditioned on the occurrence of the Closing, pursuant to the terms of the relevant indenture; and

(z) providing any other reasonable and customary cooperation to facilitate the assumption, amendment, redemption, repurchase, discharge, defeasance or repayment of the Company Notes, in each case conditioned on the occurrence of the Closing;

provided, that, with respect to the Amended Notes (as defined in the Company’s Offer to Purchase and Consent Solicitation Statement, dated as of June 9, 2025 (as amended, supplemented or modified from time to time, the “Offer to Purchase”)) (the “Amended Notes”):

(A) prior to October 15, 2026, Buyer may deliver one formal request in writing to the Company (such request which complies with this clause (A), the “Specified Buyer Request”) that the Company and its applicable Subsidiaries either:

(1) commence and use reasonable best efforts to effectuate a consent solicitation (on such terms to be mutually determined by Buyer and the Company in good faith) to eliminate the obligation to commence an Exchange Offer (as defined in the Offer to Purchase) or otherwise modify the required terms of such Exchange Offer;

(2) commence and use reasonable best efforts to effectuate an Exchange Offer (on such terms to be mutually determined by Buyer and the Company in good faith, it being understood that the terms of the Junior Lien Exchange Notes (as defined in the Offer to Purchase), or any other debt securities to be issued by the Company or any of its Subsidiaries pursuant to an Exchange Offer prior to the Closing, shall, in no event, be less favorable to the Company and/or its applicable Subsidiaries than the applicable terms set forth in the Offer to Purchase); and/or

(3) make the payment in the amount of \$100 per \$1,000 principal amount or €100 per €1,000 principal amount, as applicable, of any or all Amended Notes as contemplated by the Offer to Purchase (the “Amended Notes Payment Amount”), it being agreed that, if the Amended Notes Payment Amount becomes due and payable, Buyer shall timely and fully pay such amounts, at the Company’s option, either (x) on behalf of the obligor thereof (either the Company or a Subsidiary thereof) to the Persons to which such amount is payable, or (y) to the Company, in each case, as contemplated by the second to last sentence of this Section 6.16(f)(i), in which case the Company shall comply with Buyer’s written request; and

(B) if the Specified Buyer Request is not received by the Company prior to October 15, 2026, the Company and its applicable Subsidiaries may, after such date, commence one or more consent solicitations with respect to the Amended Notes (on such terms to be determined by the Company in its sole discretion), commence an Exchange Offer (on such terms to be determined by the Company in its sole discretion) and/or pay the Amended Notes Payment Amount, as applicable, in each case, in its sole discretion;

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~~provided further~~ that, if the Company determines in good faith that it is not required to comply with the Specified Buyer Request as contemplated by the last sentence of this paragraph, then the Company or any of its Subsidiaries may elect to have the Amended Notes Payment Amount paid. If the Amended Notes Payment Amount is to be paid pursuant to this paragraph or Section 6.16(f)(i)(A) or (B) above, then Buyer shall, at the Company's option, either (x) on behalf of the Company, timely and fully pay or cause to be paid such amount directly to the Persons to which such amount is payable (or to an agent, including the trustee under the Amended Notes for the benefit of the noteholders, on their behalf) by wire transfer of immediately available funds to an account designated in writing by the Company or (y) timely and fully pay or cause to be paid such amount to the Company by wire transfer of immediately available funds to an account designated in writing by the Company (~~provided, however~~, that the aggregate amount of the Amended Notes Payment Amount to be paid by Buyer pursuant to this paragraph shall in no event be more than \$1,528,000,000). In addition, (I) any action taken by the Company or any of its Subsidiaries in connection with the Specified Buyer Request is subject to the indemnification and reimbursement provisions in favor of the Company and its Subsidiaries contained in Section 6.16(h), (II) each of the Company and its Subsidiaries is not required to comply with the Specified Buyer Request if any of the Company or its Subsidiaries would be required to pay any fee or make any payment to any holder of the Amended Notes or otherwise in connection with the Amended Notes, unless such fee or payment is timely and fully paid by Buyer on its behalf to an account directed by the Company and (III) if in connection with the Specified Buyer Request, the Company commences (x) a consent solicitation or (y) an Exchange Offer, which, in each case, has not been completed prior to December 30, 2026, then the Company may, at its election, cause the Amended Notes Payment Amount to be paid on its behalf on such date by Buyer as contemplated by the preceding sentence.

(ii) Prior to the Closing, the Company shall use reasonable best efforts to deliver to Buyer a customary payoff letter in respect of any Indebtedness consisting of a loan, credit facility or receivables financing facility or factoring arrangement relating to the Company or any of its Subsidiaries, to the extent reasonably requested by Buyer in writing at least twenty (20) Business Days prior to the anticipated Closing Date, to allow for the payoff, discharge and termination in full on the Closing Date of all such Indebtedness and any related Liens (and to provide to Buyer a substantially complete draft of such letter no later than four (4) Business Days prior to the anticipated Closing Date).

(g) The Company hereby consents to the use of its and each of its Subsidiaries' logos in connection with the Financing; provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries.

(h) Buyer shall, promptly upon request by the Company (and, in any event, within ten (10) days), reimburse the Company for all reasonable and documented out-of-pocket costs and expenses (including reasonable attorney's fees) incurred by the Company or any of its Subsidiaries in order to comply with its obligations under Section 6.16(d) and Section 6.16(f). Buyer shall indemnify, defend and hold harmless the Company, its Subsidiaries and each of their respective Representatives from, against and in respect of any and all claims, debts, losses, costs, expenses, proceedings, covenants, suits, judgments, damages, actions and causes of actions, obligations, accounts and liabilities resulting from, or that exist or arise, in connection with such cooperation under Section 6.16(d) and Section 6.16(f), the arrangement of the Financing and any information used in connection therewith, except to the extent such claims, debts, losses, costs, expenses, proceedings, covenants, suits, judgments, damages, actions and causes of actions, obligations, accounts and liabilities directly result from the gross negligence or willful misconduct of such indemnified Persons. The Company shall, promptly upon request by Buyer (and, in any event, within ten (10) days), reimburse Buyer for all reasonable and documented out-of-pocket costs and expenses (including reasonable attorney's fees) incurred by Buyer or any of the Buyer Entities in order to comply with its obligations under the second to last sentence of Section 6.16(c) (but excluding, for the avoidance of doubt, any costs and expenses incurred in connection with the Amended Notes and any action taken by the Company and/or its Subsidiaries in connection with the Amended Notes or the Specified Buyer Request). The Company shall indemnify, defend and hold harmless Buyer and the Buyer Entities and each of their respective Representatives from, against and in respect of any and all claims, debts, losses, costs, expenses, proceedings, covenants, suits, judgments, damages, actions and causes of actions, obligations, accounts and liabilities resulting from, or that exist or arise, in connection with such cooperation under the second to last sentence of Section 6.16(c), the arrangement of any financing or refinancing to be undertaken by the Company or any of its Subsidiaries not prohibited by this Agreement (including any Company Refinancing, but excluding the Amended Notes and any action taken by the Company and/or its Subsidiaries in connection with the Amended Notes or the Specified Buyer Request) and any information used in connection therewith, except to the extent such claims, debts, losses, costs, expenses, proceedings, covenants, suits, judgments, damages, actions and causes of actions, obligations, accounts and liabilities directly result from the gross negligence or willful misconduct of such indemnified Persons. This clause (h) shall survive any termination of this Agreement.

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(i) Except with the prior written consent of the Company, neither Buyer, any Equity Investor, any Guarantor nor any of their respective Affiliates will, until the earlier of the Effective Time and the termination of this Agreement in accordance with Article VIII, directly or indirectly, in connection with the Transactions, (i) enter into any agreement or make any other arrangement with respect to debt or equity financing related to the Transaction or the Company, (ii) grant any Person any right, contingent or otherwise, to acquire (1) any equity securities, any securities directly or indirectly convertible into equity securities, or any other interest or participation that confers the right to receive a unit of the profits or losses or distribution of assets of, in each case, Buyer or any of its Subsidiaries (including, after the Effective Time, the Company or any of its Subsidiaries) or (2) any interest that is derivative of the value of or provides economic benefits based on the value or price of any of the foregoing, or (iii) otherwise grant or agree to grant any Person any governance or other rights with respect to Buyer or any of its Subsidiaries (including, after the Effective Time, the Company or any of its Subsidiaries), except in each of the foregoing clauses (i)-(iii), where any of the foregoing would not cause any of the Syndication Conditions to fail to be satisfied (it being agreed that Buyer will provide the Company with written notice of any action taken in reliance on this exception, which notice will include (x) the identity of the person with whom such action was taken and (y) written confirmation by Buyer that the prior written consent of the Company is not required for such action).

(j) Notwithstanding anything contained in this Agreement to the contrary, Buyer expressly acknowledges and agrees that (i) its obligations hereunder, including to consummate the Closing subject to the terms and conditions hereof, are not conditioned in any manner upon Buyer obtaining the Financing (including, for the avoidance of doubt, any securities issuance) and (ii) any breach by the Company of Section 6.16(d) or Section 6.16(f) shall be deemed not to constitute a breach for all of purposes of this Agreement (including for purposes of Section 7.3(h) and Section 8.1(d)) unless (w) the Committed Debt Financing has not been consummated as a result of the failure of any condition precedent to the funding of the Committed Debt Financing, (x) the Company has materially breached its obligations under Section 6.16(d) or Section 6.16(f), (y) such breach is the proximate cause of the Committed Debt Financing not being consummated and (z) Buyer has notified the Company of such breach in writing a reasonably sufficient amount of time prior to the End Date to afford the Company with reasonable opportunity to cure such breach (detailing in good faith (I) reasonable specificity as to the basis for any such breach and (II) reasonable steps that comply with Section 6.16(d) or Section 6.16(f) in order to cure such breach) and the Company has not taken such steps or otherwise cured such breach within such time as would reasonably permit Buyer to consummate the Committed Debt Financing prior to the End Date.

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Section 6.17 Netflix Termination Fee. Concurrently with the execution of this Agreement and with the termination of the Netflix Merger Agreement, Buyer, on behalf of the Company, shall pay or cause to be paid the Netflix Termination Fee to Netflix by wire transfer of immediately available funds in order for the Company to terminate the Netflix Merger Agreement pursuant to Section 8.1(c)(ii) of the Netflix Merger Agreement.

ARTICLE VII

CONDITIONS

Section 7.1 Conditions to Obligation of Each Party. The respective obligation of each Party to consummate the Merger is subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

- (a) [Reserved].
- (b) Stockholder Approval. The Company Stockholder Approval shall have been obtained.
- (c) [Reserved].
- (d) Regulatory Approvals. (i) Any applicable waiting period under the HSR Act relating to the Merger shall have expired or been terminated, and any commitments not to close any of the transactions contemplated by this Agreement before a certain date under a timing agreement entered into by the Parties with any Governmental Entity shall have expired or been terminated; and (ii) any applicable mandatory waiting period, clearance or affirmative approval of any governmental body, agency or authority or other condition set forth in Section 7.1(d)(ii) of the Buyer Disclosure Letter shall have expired or been obtained.

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(e) Laws or Governmental Orders. No Governmental Entity shall after the date of this Agreement have enacted, issued or promulgated any Law or Governmental Order that is in effect and that restrains, enjoins or otherwise prohibits the consummation of the Merger.

Section 7.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger is further subject to the satisfaction (or waiver by the Company to the extent permitted by applicable Law) of the following conditions:

(a) (i) the representations and warranties of Buyer and Merger Sub set forth in the first sentence of Section 5.1 (Organization, Good Standing and Qualification) and Section 5.3(a) (Corporate Authority and Approval) shall be true and correct in all material respects, at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of Buyer and Merger Sub set forth in Article V that are qualified by a "Buyer Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iii) the other representations and warranties of Buyer and Merger Sub set forth in Article V shall be true and correct at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date; provided that, for the avoidance of doubt, the representations set forth in Section 5.3 (Corporate Authority and Approval), Section 5.4 (Governmental Filings; No Violations) and Section 5.11 (No Other Representations and Warranties) shall be true and correct at and as of Closing), except with respect to this clause (iii) where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Buyer Material Adverse Effect.

(b) Buyer and Merger Sub shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them prior to the Closing.

(c) Buyer shall have delivered to the Company a certificate, dated as of the Closing Date and signed by its Chief Executive Officer or another senior officer, certifying to the effect that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

Section 7.3 Conditions to Obligation of Buyer and Merger Sub to Effect the Merger. The obligations of Buyer and Merger Sub to effect the Merger are further subject to the satisfaction (or waiver by Buyer to the extent permitted by applicable Law) of the following conditions:

(a) (i) The representations and warranties of the Company set forth in Section 4.2(a) (Capital Structure) and Section 4.6(a) (Absence of Certain Changes) shall be true and correct, at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), in each case, except for de minimis inaccuracies; (ii) the representations and warranties of the Company set forth in the first sentence of Section 4.3(a) (Corporate Authority and Approval), Section 4.3(b) (Corporate Authority and Approval) and Section 4.18 (Brokers and Finders) shall be true and correct in all material respects, at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of the Company set forth in Article IV that are qualified by a "Company Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) the other representations and warranties of the Company set forth in Article IV shall be true and correct at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date; provided that, for the avoidance of doubt, the representations set forth in Section 4.3 (Corporate Authority and Approval), Section 4.4 (Governmental Filings; No Violations) and Section 4.21 (No Other Representations and Warranties) shall be true and correct at and as of Closing), except with respect to this clause (iv) where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Company Material Adverse Effect.

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- (b) The Company shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to the Closing.
- (c) Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.
- (d) The Company shall not have completed the Separation, nor shall any dividend to the Company's stockholders to effectuate the Separation have been declared or made.
- (e) The Company shall have delivered to Buyer a certificate, dated as of the Closing Date and signed by its Chief Executive Officer or another senior officer, certifying to the effect that the conditions set forth in Section 7.3(a), Section 7.3(b) and Section 7.3(c) have been satisfied.

Section 7.4 Frustration of Closing Conditions. No Party may rely, either as a basis for not consummating the Merger or terminating this Agreement and abandoning the Merger, on the failure of any condition set forth in Section 7.1, Section 7.2 or Section 7.3, as the case may be, to be satisfied if such failure was caused by such Party's material breach of any covenant or agreement of this Agreement.

ARTICLE VIII

TERMINATION

Section 8.1 Termination or Abandonment. This Agreement may be terminated and abandoned prior to the Effective Time, whether before or after any approval by the stockholders of the Company of the matters presented in connection with the Merger:

- (a) by the mutual written consent of the Company and Buyer;

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(b) by either the Company or Buyer, if:

(i) the Effective Time shall not have occurred on or before March 4, 2027, or such other date agreed in writing by Buyer and the Company (any such date, the "End Date"); provided, however, that (A) if, on March 4, 2027, any of the conditions set forth in Section 7.1(d) or Section 7.1(e) (solely in connection with an Antitrust Law or Foreign Regulatory Law) has not been satisfied or waived, then the End Date shall be automatically extended, without any further action on the part of any Party hereto, to June 4, 2027 and (B) if all the conditions set forth in Article VII are satisfied or waived (other than those conditions that by their terms are to be fulfilled at the Closing, but subject to the fulfillment or waiver of such conditions) prior to 11:59 p.m., Eastern Time, on the End Date, but as of such time, the Specified Date would occur after the End Date, the End Date shall be automatically extended, without any further action on the part of any Party hereto, to 11:59 p.m., Eastern Time, on the Specified Date; provided that the right to terminate this Agreement pursuant to this Section 8.1(b)(i) shall not be available to a Party whose breach in any material respect of its obligations under this Agreement has been the primary cause of the failure of the Closing to occur on or before such date;

(ii) any Governmental Entity of competent jurisdiction shall have issued, enacted, enforced or entered any Governmental Order permanently enjoining or prohibiting the consummation of the Merger, and such Governmental Order shall have become final and non-appealable; provided that the Party seeking to terminate this Agreement pursuant to this Section 8.1(b)(ii) shall not have breached in any material respect its obligations under this Agreement in any manner that has been the primary cause of such Governmental Order; or

(iii) if the Company Stockholder Meeting (including any adjournments or postponements thereof) shall have been held and been concluded and the Company Stockholder Approval shall not have been obtained upon a vote taken thereon;

(c) by the Company:

(i) if Buyer or Merger Sub shall have breached or failed to perform in any material respect any of their representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 7.1 or Section 7.2 and (B) cannot be cured by the End Date or, if curable, is not cured by the earlier of (x) the End Date and (y) forty-five (45) days following the Company's delivery of written notice to Buyer stating the Company's intention to terminate this Agreement pursuant to this Section 8.1(c)(i) and the basis for such termination; provided that the Company shall not have a right to terminate this Agreement pursuant to this Section 8.1(c)(i) if the Company is then in material breach of any representation, warranty, agreement or covenant contained in this Agreement; or

(ii) prior to receipt of the Company Stockholder Approval, in order to enter into a definitive agreement providing for a Company Superior Proposal subject to compliance with Section 6.3(b).

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(d) by Buyer:

(i) if the Company shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 7.1 or Section 7.3 and (B) cannot be cured by the End Date or, if curable, is not cured by the earlier of (x) the End Date and (y) 45 days following Buyer's delivery of written notice to the Company stating Buyer's intention to terminate this Agreement pursuant to this Section 8.1(d)(i) and the basis for such termination; provided, that Buyer shall not have a right to terminate this Agreement pursuant to this Section 8.1(d)(i) if Buyer or Merger Sub is then in material breach of any representation, warranty, agreement or covenant contained in this Agreement; or

(ii) prior to receipt of the Company Stockholder Approval, if the Company Board shall have effected a Change in the Company Recommendation.

Section 8.2 Effect of Termination. In the event of a valid termination of this Agreement pursuant to Section 8.1, the terminating Party shall forthwith give written notice thereof to the other Party or Parties and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by any of the Parties. In the event of a valid termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become null and void and there shall be no liability or obligation on the part of the Company, Buyer, Merger Sub or their respective Subsidiaries or Affiliates, except that: (i) no such termination shall relieve any Party of its obligation to pay the Company Termination Fee or the Regulatory Termination Fee, as applicable, if, as and when required pursuant to Section 8.3 or any of its other obligations under Section 8.3 expressly contemplated to survive the termination of this Agreement pursuant to Section 8.3; (ii) no such termination shall relieve any Party for liability for such Party's Fraud or Willful Breach of any covenant or obligation contained in this Agreement prior to its termination; and (iii) the provisions set forth in Section 9.1(b) shall survive the termination hereof.

Section 8.3 Termination Fees.

(a) **Company Termination Fee.** If (A) this Agreement is terminated by the Company pursuant to Section 8.1(c)(ii), (B) this Agreement is terminated by Buyer pursuant to Section 8.1(d)(ii), (C) this Agreement is terminated by the Company or Buyer pursuant to Section 8.1(b)(iii) and, immediately prior to the Company Stockholder Meeting, Buyer would have been entitled to terminate this Agreement pursuant to Section 8.1(d)(ii) or (D) (x) after the date of this Agreement, an Acquisition Proposal (substituting in the definition thereof "50%" for "20%" in each place each such phrase appears) is publicly proposed or publicly disclosed prior to the Company Stockholder Meeting (a "Company Qualifying Transaction"), (y)(1) this Agreement is terminated by the Company or Buyer pursuant to Section 8.1(b)(iii) or (2) this Agreement is terminated by Buyer pursuant to Section 8.1(d)(i) as a result of a Willful Breach by the Company of any covenants hereunder and, in each case, (z) concurrently with or within twelve (12) months after such termination, the Company (1) consummates a Company Qualifying Transaction or (2) enters into a definitive agreement providing for a Company Qualifying Transaction, then the Company shall pay to Buyer, by wire transfer of immediately available funds to an account designated in writing by Buyer, a fee of \$3,000,000,000 in cash (the "Company Termination Fee"), such payment to be made: (x) concurrently with such termination in the case of clause (A) above; (y) within three (3) Business Days after such termination in the case of clauses (B) or (C) above; or (z) upon the earlier of within three (3) Business Days after the consummation of such Company Qualifying Transaction or the entry into a definitive agreement providing for a Company Qualifying Transaction in the case of clause (D) above; it being understood that in no event shall the Company be required to pay the Company Termination Fee on more than one occasion.

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(b) **Regulatory Termination Fee.** If this Agreement is terminated by (A) the Company or Buyer pursuant to Section 8.1(b)(i), and at the time of such termination, (1) one or more of the conditions set forth in Section 7.1(d) or Section 7.1(e) (in each case, solely as a result of any Antitrust Law or Foreign Regulatory Law) has not been satisfied or waived and (2) all of the other conditions set forth in Section 7.1 and Section 7.3 have been satisfied or waived (except for (i) those conditions that by their nature are to be satisfied at the Closing; provided that such conditions were then capable of being satisfied if the Closing had taken place and (ii) any condition that has not been satisfied as a result of a breach by Buyer or Merger Sub of its representations, warranties, covenants or agreements contained in this Agreement) or (B) by the Company or Buyer pursuant to Section 8.1(h)(ii) due to any Antitrust Law or Foreign Regulatory Law, then Buyer shall pay to the Company, by wire transfer of immediately available funds to an account designated in writing by the Company, a fee of \$7,000,000,000 in cash (the "**Regulatory Termination Fee**"), with such payment to be made (x) in the case of Buyer's termination of this Agreement, prior to or concurrently with, and as a condition to, such termination, or (y) in the case of the Company's termination of this Agreement, within three Business Days of such termination; it being understood that in no event shall Buyer be required to pay the Regulatory Termination Fee on more than one occasion.

(c) **Amended Notes Payment Amount Refund.** Upon the termination of this Agreement pursuant to which the Company is required to pay the Company Termination Fee or pursuant to Section 8.1(d)(i) (*Company Breach*), the Company shall, (1) concurrently with the payment of the Company Termination Fee or (2) within three Business Days after a termination pursuant to Section 8.1(d)(i), as applicable, pay (or cause to be paid) by wire transfer of immediately available funds to or at the direction of Buyer an amount equal to the aggregate amount of the Amended Notes Payment Amount paid by Buyer prior to such termination (the "**Amended Notes Payment Amount Refund**") as reimbursement for Buyer's prior payment of such amount to or on behalf of the Company pursuant to Section 6.16(f); it being understood that (i) the Amended Notes Payment Amount Refund shall be paid in addition to any payment of the Company Termination Fee, to the extent the Company Termination Fee is payable, and (ii) in no event shall the Company be required to pay the Amended Notes Payment Amount Refund on more than one occasion.

(d) **Netflix Termination Fee Refund.** Upon the termination of this Agreement pursuant to which the Company is required to pay the Company Termination Fee or pursuant to Section 8.1(d)(i) (*Company Breach*), the Company shall, (1) concurrently with the payment of the Company Termination Fee or (2) within three Business Days after a termination pursuant to Section 8.1(d)(i), as applicable, pay (or cause to be paid) by wire transfer of immediately available funds to or at the direction of Buyer an amount equal to the Netflix Termination Fee as reimbursement for payment of the Netflix Termination Fee by Buyer, on behalf of the Company, to Netflix (the "**Netflix Termination Fee Refund**"); it being understood that (i) the Netflix Termination Fee Refund shall be paid in addition to any payment of the Company Termination Fee, to the extent the Company Termination Fee is payable, and (ii) in no event shall the Company be required to pay the Netflix Termination Fee Refund on more than one occasion.

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(e) **Acknowledgments.** Each Party acknowledges that the agreements contained in this Section 8.3 are an integral part of this Agreement and that, without Section 8.3(a), Section 8.3(c) and Section 8.3(d), Buyer would not have entered into this Agreement and that, without Section 8.3(b), the Company would not have entered into this Agreement. Accordingly, if the Company or Buyer fails to promptly pay any amount due pursuant to this Section 8.3, the Company or Buyer, as applicable, shall pay to Buyer or the Company, respectively, all fees, costs and expenses of enforcement (including attorneys' fees as well as expenses reasonably incurred in connection with any action initiated seeking such payment), together with interest on the amount of the Company Termination Fee, the Netflix Termination Fee Refund or the Regulatory Termination Fee, as applicable, at the prime lending rate as published in *The Wall Street Journal*, in effect on the date such payment is required to be made. Notwithstanding anything to the contrary in this Agreement, the Parties hereby acknowledge that in the event that the Company Termination Fee, the Netflix Termination Fee Refund, the Regulatory Termination Fee or the Amended Notes Payment Amount Refund, as applicable, become payable by, and are paid by, the Company to Buyer or Buyer to the Company, as applicable, such Company Termination Fee, Netflix Termination Fee Refund, Regulatory Termination Fee or Amended Notes Payment Amount Refund, as applicable, shall be the receiving Party's sole and exclusive remedy pursuant to this Agreement (other than in respect of Fraud or Willful Breach). The Parties further acknowledge that the right to receive the Company Termination Fee, the Netflix Termination Fee Refund, the Regulatory Termination Fee or the Amended Notes Payment Amount Refund, as applicable, shall not limit or otherwise affect any such Party's right to specific performance as provided in Section 9.5; provided that the Parties shall not be permitted or entitled to receive both (x) a grant of specific performance of the obligation to consummate the Transactions contemplated by Section 9.5 that results in the Closing and (y) the Company Termination Fee, the Netflix Termination Fee Refund, the Regulatory Termination Fee or the Amended Notes Payment Amount Refund, as applicable.

ARTICLE IX

MISCELLANEOUS AND GENERAL

Section 9.1 **Survival.** The representations, warranties, covenants and agreements in this Agreement shall survive the Effective Time or the termination of this Agreement only to the extent provided in this Section 9.1.

(a) The following provisions of this Agreement shall survive the Effective Time: this Article IX (*Miscellaneous and General*), the Confidentiality Agreement, the agreements of the Parties contained in Article I (*The Merger*), Article II (*Effect of the Merger on Capital Stock*), Article III (*Delivery of Merger Consideration; Procedures for Surrender*), Section 4.21 (*No Other Representations and Warranties*), Section 5.11 (*No Other Representations and Warranties*), Section 6.9 (*Employee Matters*), Section 6.10 (*Indemnification; Directors' and Officers' Insurance*), and Section 9.11 (*Expenses*), and those other covenants and agreements contained herein that by their terms apply, or that are to be performed in whole or in part, after the Effective Time, and the provisions that substantively define any related defined terms.

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(b) The following provisions of this Agreement and certain other agreements delivered in connection herewith shall survive the termination of this Agreement: (i) this Article IX (*Miscellaneous and General*), the Confidentiality Agreement, the Subscription Agreements, the Ellison Guarantee and the agreements of the Parties contained in Section 4.21 (*No Other Representations and Warranties*), Section 5.11 (*No Other Representations and Warranties*), Section 6.16 (f) (with respect to the obligation of Buyer to pay any Amended Notes Payment Amount) (*Certain Refinancing*), Section 6.16 (h) (*Reimbursement of Financing Cooperation*), Section 8.2 (*Effect of Termination*), Section 8.3 (*Termination Fees*) and Section 9.11 (*Expenses*), and (ii) only in the event this Agreement is terminated in circumstances in which Buyer is required to pay the Regulatory Termination Fee or pursuant to Section 8.1 (c)(i), Section 6.14 (*Standstill*), and, in each case, the provisions that substantively define any related defined terms.

(c) All other representations, warranties, covenants and agreements in this Agreement or in any instrument or other document delivered pursuant to this Agreement shall not survive the Effective Time or the termination of this Agreement, as applicable.

Section 9.2 Modification or Amendment; Waiver.

(a) Subject to the provisions of applicable Law and the provisions of Section 6.10, at any time prior to the Effective Time, this Agreement may be amended, modified or waived if such amendment, modification or waiver is in writing and signed, in the case of an amendment or modification, by each Party, or in the case of a waiver, by the Party against whom the waiver is to be effective. The conditions to each of the Parties' respective obligations to consummate the Transactions are for the sole benefit of such Party and may be waived by such Party in whole or in part to the extent permitted by applicable Law; provided, however, that any such waiver shall only be effective if made in writing and executed by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder or under applicable Law shall operate as a waiver of such rights and, except as otherwise expressly provided herein, no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 9.3 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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Section 9.4 Governing Law and Venue; Submission to Jurisdiction; Selection of Forum; Waiver of Trial by Jury.

(a) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the law of the state of Delaware without regard to the conflict of law principles thereof (or any other jurisdiction) to the extent that such principles would direct a matter to another jurisdiction.

(b) Each of the Parties agrees that: (i) it shall bring any Proceeding in connection with, arising out of or otherwise relating to this Agreement, any instrument or other document delivered pursuant to this Agreement or the Transactions exclusively in the courts of the State of Delaware in the Court of Chancery of the State of Delaware, or (and only if) such court finds it lacks subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division); provided that if subject matter jurisdiction over the matter that is the subject of the Proceeding is vested exclusively in the United States federal courts, such Proceeding shall be heard in the United States District Court for the District of Delaware (the "Chosen Courts"); and (ii) solely in connection with such Proceedings, (A) it irrevocably and unconditionally submits to the exclusive jurisdiction of the Chosen Courts, (B) it waives any objection to the laying of venue in any Proceeding in the Chosen Courts, (C) it waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party, (D) mailing of process or other papers in connection with any such Proceeding in the manner provided in Section 9.6 or in such other manner as may be permitted by applicable Law shall be valid and sufficient service thereof and (E) it shall not assert as a defense, any matter or claim waived by the foregoing clauses (A) through (D) of this Section 9.4(b) or that any Governmental Order issued by the Chosen Courts may not be enforced in or by the Chosen Courts.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY BE IN CONNECTION WITH, ARISE OUT OF OR OTHERWISE RELATE TO THIS AGREEMENT, ANY INSTRUMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR THE TRANSACTIONS, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY, IN CONNECTION WITH, ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY INSTRUMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR THE TRANSACTIONS. EACH PARTY HEREBY ACKNOWLEDGES AND CERTIFIES (i) THAT NO REPRESENTATIVE OF THE OTHER PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF ANY ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) IT MAKES THIS WAIVER VOLUNTARILY AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS, ACKNOWLEDGMENTS AND CERTIFICATIONS CONTAINED IN THIS SECTION 9.4.

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Section 9.5 Specific Performance. Each of the Parties acknowledges and agrees that the rights of each Party to consummate the Transactions are special, unique and of extraordinary character and that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or damage would be caused for which money damages would not be an adequate remedy. Accordingly, each Party agrees that, in addition to any other available remedies a Party may have in equity or at law, each Party shall be entitled to enforce specifically the terms and provisions of this Agreement and to obtain an injunction restraining any breach or violation or threatened breach or violation of the provisions of this Agreement without necessity of posting a bond or other form of security. In the event that any Proceeding should be brought in equity to enforce the provisions of this Agreement, no Party shall allege, and each Party hereby waives the defense, that there is an adequate remedy at law.

Section 9.6 Notices

. All notices, requests, instructions, consents, claims, demands, waivers, approvals and other communications to be given or made hereunder by one or more Parties to one or more of the other Parties shall be in writing and shall be deemed to have been duly given or made on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day (or otherwise on the next succeeding Business Day) if (a) served by personal delivery or by a nationally recognized overnight courier service upon the Party or Parties for whom it is intended, (b) delivered by registered or certified mail, return receipt requested or (c) sent by email; provided that the email transmission is promptly confirmed by telephone or in writing by the recipient thereof (excluding out-of-office replies or other automatically generated responses). Such communications shall be sent to the respective Parties at the following street addresses or email addresses or at such other street address or email address for a Party as shall be specified for such purpose in a notice given in accordance with this Section 9.6:

If to the Company:

Warner Bros. Discovery, Inc.
230 Park Avenue South
New York, New York 10003
Attention: Priya Aiyar
Email: ***

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with copies to (which shall not constitute notice):

Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, New York 10001
Attention: Jonathan E. Levitsky
Gordon S. Moodie
Katherine D. Taylor
Erik J. Andren
Email: ***

and

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Andrew J. Nussbaum
Karessa L. Cain
Hannah Clark
Email: ***

If to Buyer or Merger Sub:

Paramount Skydance Corporation
1515 Broadway
New York, New York 10036
Attention: Chief Legal Officer and General Counsel
Email: ***

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with a copy to (which shall not constitute notice):

Cravath, Swaine & Moore LLP
Two Manhattan West
375 Ninth Avenue
New York, New York 10001
Attention: Faiza Saeed
Daniel Cerqueira
Claudia Ricciardi
Alexander Greenberg
Minh Van Ngo
Email: ***

and

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attention: Ian Nussbaum
Max Schleusener
Rick Offsay
Email: ***

Section 9.7 Entire Agreement.

(a) This Agreement (including the exhibits and annexes hereto), the Company Disclosure Letter, the Buyer Disclosure Letter, the Transaction Documents and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, negotiations, understandings, and representations and warranties, whether oral or written, with respect to such matters.

(b) Each Party acknowledges and agrees to the provisions set forth in Section 4.21 and Section 5.11 and, without limiting such provisions, additionally acknowledges and agrees that, except for the representations and warranties expressly set forth in this Agreement or any instrument or other document delivered pursuant to this Agreement, (i) no Party has made or is making any other representations, warranties, statements, information or inducements, (ii) no Party has relied on or is relying on any other representations, warranties, statements, information or inducements and (iii) each Party hereby disclaims reliance on any other representations, warranties, statements, information or inducements, oral or written, express or implied, or as to the accuracy or completeness of any statements or other information, made by, or made available by, itself or any of its Representatives, in each case with respect to, or in connection with, the negotiation, execution or delivery of this Agreement, any instrument or other document delivered pursuant to this Agreement or the Transactions, and notwithstanding the distribution, disclosure or other delivery to the other or the other's Representatives of any documentation or other information with respect to any one or more of the foregoing, and waives any claims or causes of action relating thereto, other than those for Fraud in connection with, arising out of or otherwise related to the express representations and warranties set forth in this Agreement or any instrument or other document delivered pursuant to this Agreement.

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Section 9.8 Third-Party Beneficiaries. Except (x) that, in accordance with Section 261 of the DGCL, the Company shall have the right, on behalf of the Company's stockholders and holders of Company Equity Awards (each of which are third-party beneficiaries of this Agreement to the extent required for this provision to be enforceable), to pursue specific performance as set forth in Section 9.5 or, if specific performance is not sought or granted as a remedy, damages in accordance with this Agreement (which shall include the benefit of the bargain lost by the Company's stockholders and holders of Company Equity Awards) in the event of a breach by Buyer or Merger Sub of this Agreement, it being agreed that in no event shall any such stockholders of the Company or holder of Company Equity Awards be entitled to enforce any of their rights, or any of Buyer's or Merger Sub's obligations, under this Agreement in the event of any such breach, but rather the Company shall have the sole and exclusive right to do so as a representative for such stockholders of the Company or holder of Company Equity Awards (and upon receipt of any payments as a result thereof, the Company shall be entitled to retain the amount of such payments so received) and (y) from and after the Effective Time, the Indemnified Parties with respect to the provisions of Section 6.10, the Parties hereby agree that their respective representations, warranties and covenants set forth in this Agreement are solely for the benefit of the other Parties on the terms and subject to the conditions set forth in this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the Parties and their respective successors, legal representatives and permitted assigns any rights or remedies, express or implied, hereunder, including, without limiting the generality of Section 9.7, the right to rely upon the representations and warranties set forth in this Agreement. Any inaccuracies in such representations and warranties are subject to waiver by the Parties in accordance with Section 9.2 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the Parties of risks associated with particular matters regardless of the knowledge of any of the Parties. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 9.9 Non-Recourse. Unless expressly agreed to otherwise by the Parties in writing (or, in the case of the other Transaction Documents, by the parties thereto in writing), this Agreement may only be enforced against, and any Proceeding in connection with, arising out of or otherwise resulting from this Agreement, or any instrument or other document delivered pursuant to this Agreement or the Transactions, may only be brought against the Persons expressly named as Parties (or any of their respective successors, legal representatives and permitted assigns) and then only with respect to the specific obligations set forth herein with respect to such Party. No past, present or future director, employee (including any officer), incorporator, manager, member, partner, stockholder, other equity holder or persons in a similar capacity, controlling person, Affiliate or Representative of any Party or of any Affiliate of any Party, or any of their respective successors, Representatives and permitted assigns (unless, for the avoidance of doubt, such Person is a Party), shall have any liability or other obligation for any obligation of any Party under this Agreement or for any Proceeding in connection with, arising out of or otherwise resulting from this Agreement, or any instrument or other document delivered pursuant to this Agreement or the Transactions; provided, however, that nothing in this Section 9.9 shall limit any liability or other obligation (i) of the Parties for breaches of the terms and conditions of this Agreement, (ii) of the parties to any other Transaction Document for breaches of the terms and conditions of such other Transaction Document or (iii) of the Trust and L. Ellison pursuant to the Ellison Guarantee.

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Section 9.10 Fulfillment of Obligations. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking, prior to the Effective Time, on the part of the Company to cause such Subsidiary to take such action and, from and after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action. Whenever this Agreement requires a Subsidiary of Buyer to take any action, such requirement shall be deemed to include an undertaking on the part of Buyer to cause such Subsidiary to take such action. Any obligation of one Party to any other Party under this Agreement or any of the other Transaction Documents, which obligation is performed, satisfied or properly fulfilled by an Affiliate of such Party, shall be deemed to have been performed, satisfied or fulfilled by such Party.

Section 9.11 Expenses. Except as otherwise provided in this Agreement and the other Transaction Documents and whether or not the Transactions are consummated, all costs and expenses (including fees and expenses of counsel and financial advisors) incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such costs and expenses, except that each of Buyer and the Company shall pay one-half of costs and expenses of filing, printing and mailing of the Proxy Statement (including SEC filing fees). For the avoidance of doubt, Buyer shall bear all costs and expenses in respect of the Netflix Termination Fee.

Section 9.12 Severability. The provisions of this Agreement shall be deemed severable, and the illegality, invalidity or unenforceability of any provision shall not affect the legality, validity or enforceability of the other provisions of this Agreement. If any provision of this Agreement, or the application of such provision to any Person or any circumstance, is illegal, invalid or unenforceable, (a) a suitable and equitable provision to be negotiated by the Parties, each acting reasonably and in good faith shall be substituted therefor in order to carry out, so far as may be legal, valid and enforceable, the intent and purpose of such illegal, invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such illegality, invalidity or unenforceability, nor shall such illegality, invalidity or unenforceability affect the legality, validity or enforceability of such provision, or the application of such provision, in any other jurisdiction.

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Section 9.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties (and any of their respective successors, legal representatives and permitted assigns). Except as may be required to satisfy the obligations contemplated by Section 6.10, no Party may assign any of its rights or delegate any of its obligations under this Agreement, in whole or in part, by operation of Law or otherwise, without the prior written consent of the other Parties, except as provided for in Section 9.10, and any attempted or purported assignment or delegation in violation of this Section 9.13 shall be null and void; provided, that, notwithstanding the foregoing, Buyer and Merger Sub may assign any or all of their rights, interests and obligations to wholly owned Subsidiaries of Buyer or Merger Sub without the prior written consent of any other Party; provided, further, that no such assignment shall relieve Buyer or Merger Sub of any of its obligations hereunder.

Section 9.14 Interpretation and Construction

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(b) The Preamble, and all Recital, Article, Section, Subsection, Schedule, Annex and Exhibit references used in this Agreement are to the recitals, articles, sections, subsections, schedules, annexes and exhibits to this Agreement unless otherwise specified herein.

(c) Except as otherwise expressly provided herein, for purposes of this Agreement: (i) the terms defined in the singular have a comparable meaning when used in the plural and *vice versa*; (ii) words importing the masculine gender shall include the feminine and neutral genders and *vice versa*; (iii) whenever the words "includes" or "including" are used, they shall be deemed to be followed by the words "including without limitation"; (iv) the word "or" is not exclusive; (v) the words "hereto," "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement; and (vi) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if".

(d) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(e) Except as otherwise expressly provided herein, the term "dollars" and the symbol "\$" mean United States Dollars.

(f) Except as otherwise expressly provided herein, all references in this Agreement to any statute include the rules and regulations promulgated thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and shall also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(g) The Company Disclosure Letter and Buyer Disclosure Letter may include items and information the disclosure of which is not required either in response to an express disclosure requirement contained in a provision of this Agreement or as an exception to one or more representations or warranties contained in Article IV, or Article V, as applicable, or to one or more covenants contained in this Agreement. Inclusion of any items or information in the Company Disclosure Letter or Buyer Disclosure Letter, as applicable, shall not be deemed to be an acknowledgement or agreement that any such item or information (or any non-disclosed item or information of comparable or greater significance) is "material" or that, individually or in the aggregate, has had or would have a Company Material Adverse Effect, or Buyer Material Adverse Effect, as applicable, or to affect the interpretation of such term for purposes of this Agreement.

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(h) The Parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(i) The words “made available to Buyer” and words of similar import refer to documents (i) posted to the Datasite virtual data room or provided pursuant to “clean team” arrangements, in each case, by or on behalf of the Company prior to the execution of this Agreement by Buyer (except for those documents set forth in Section 9.14(i) of the Company Disclosure Letter, which may be provided after the execution of this Agreement by Buyer but prior to the execution of this Agreement by the Company), (ii) included in the Company Reports or (iii) if permitted to be “made available” after the date hereof, delivered to Buyer or its Representatives after the date hereof in accordance with the notice procedures in Section 9.6.

Section 9.15 Matters Concerning Financing Related Parties. Notwithstanding anything in this Agreement to the contrary, each of the Buyer Entities (on behalf of itself and its Subsidiaries and each of its controlled Affiliates) and the Company (on behalf of itself and its Subsidiaries and each of its controlled Affiliates) hereby:

(a) agrees that any Proceeding, whether in law or in equity, whether in Contract, in tort or otherwise, involving any Financing Related Party in any way arising out of or relating to this Agreement, any Financing Documents, the Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder (any such Proceeding, a “Financing Related Proceeding”) shall be subject to the exclusive jurisdiction of, and shall be brought exclusively in, the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and any appellate court thereof, and irrevocably and unconditionally submits, for itself and its property, with respect to any Financing Related Proceeding, to the exclusive jurisdiction of, and to venue in, any such court;

(b) agrees not to bring or support, or permit any of its Affiliates to bring or support, any Financing Related Proceeding in any forum other than the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and any appellate court thereof;

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(c) irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Financing Related Proceeding, (i) any claim that it is not personally subject to the jurisdiction of any such court for any reason, (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any Proceeding commenced in any such court (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), (iii) that (A) any Financing Related Proceeding in any such court is brought in an inconvenient forum or (B) the venue of any Financing Related Proceeding is improper and (iv) that a final judgment in any such Financing Related Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

(d) agrees that notice as provided herein shall constitute sufficient service of process and waives any argument that such service is insufficient;

(e) agrees that any Financing Related Proceeding shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws that would result in the application of the law of any other state, except as otherwise expressly provided in the Debt Commitment Letter or the applicable Financing Document;

(f) expressly and irrevocably waives to the fullest extent permitted by Law, all right to a jury trial with respect to any Financing Related Proceeding;

(g) agrees that none of the Financing Related Parties will have any obligation or liability (including any special, consequential, punitive or indirect damages), on any theory of liability, to the Company or any of its Affiliates, and neither the Company nor any of its Affiliates shall have any rights or claims against any of the Financing Related Parties, in each case, in any way arising out of or relating to this Agreement, any Financing Document, the Financing or any of the other transactions contemplated hereby or thereby or the performance of any services thereunder, whether in law or in equity, whether in contract, in tort or otherwise;

(h) agrees that, notwithstanding anything to the contrary in Section 9.8 or elsewhere in this Agreement, the Financing Related Parties are express third-party beneficiaries of, and may rely upon and enforce, this Section 9.15; and

(i) agrees that the provisions in this Section 9.15 and the definitions of "Financing," "Financing Documents," "Financing Sources" and "Financing Related Parties" (and any other definition set forth in, or any other provision of, this Agreement to the extent that an amendment, waiver or other modification of such definition or other provision would amend, waive or otherwise modify the substance of this Section 9.15 or the definition of "Financing," "Financing Documents," "Financing Sources" or "Financing Related Parties") shall not be amended, waived or otherwise modified, in each case, in any way adverse to the Financing Related Parties in any material respect without the prior written consent of the Financing Sources; provided that nothing in this Section 9.15 shall limit the rights of the parties to the Financing under the Commitment Letter or any Financing Document.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties to this Agreement as of the date first written above.

Warner Bros. Discovery, Inc.

By /s/ Bruce Campbell
Name: Bruce Campbell
Title: Chief Revenue and Strategy Officer

[Signature Page to Agreement and Plan of Merger]

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Paramount Skydance Corporation

By /s/ David Ellison

Name: David Ellison

Title: Chief Executive Officer

Prince Sub Inc.

By /s/ Andrew Brandon-Gordon

Name: Andrew Brandon-Gordon

Title: Chief Strategy Officer and Chief Operating Officer

[Signature Page to Agreement and Plan of Merger]

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Annex A
Certain Definitions

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person (for purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise); provided, however, that, with respect to Buyer, solely with respect to Section 6.4(1) and Section 6.14, “Affiliate” shall include Ellison (as defined in Buyer’s Organizational Documents); provided, however, that “Affiliate” shall not include Oracle Corporation, Ellison Institute of Technology or any of the respective controlled Affiliates of Oracle Corporation or Ellison Institute of Technology.

“Affiliation Agreements” means Contracts for the distribution of video programming services, including linear networks and direct-to-consumer services, with any Person that distributes video services via any technology (including cable systems, SMATV, open video systems and MMDS, MDS and DBS systems, wireless and broadband, or a video-on-demand or “over the top” service providers, and further including application distribution and the ingestion of content comprising a service), and any correspondence or writings amending the foregoing.

“Antitrust Law” means the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the HSR Act and all other antitrust, competition or other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“Average Buyer Stock Price” means the per share volume-weighted average trading price of Buyer Class B Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PSKY US Equity VWAP” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening of trading until the scheduled close of trading of the primary trading session or, if such price is not available, the market value per share of Buyer Class B Common Stock as determined using a volume-weighted average method by an investment banking firm of nationally recognized standing (not affiliated with Buyer or the Company) mutually selected by the Parties for such purpose, in each case, without regard to after hours trading or any other trading outside of the regular trading session, for the fifteen (15) consecutive Trading Days ending on (and including) the Trading Day that is three (3) Trading Days prior to the Closing Date.

“Burdensome Condition” means a material adverse effect on Buyer and its Subsidiaries (including, for this purpose, the Company and its Subsidiaries), taken as a whole.

“Business Day” means any day ending at 11:59 p.m. (New York Time) other than a Saturday or Sunday or a day on which banks in the City of New York, New York or the City of Wilmington, Delaware is required or authorized by Law to close.

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"Buyer Entity" means Buyer and its Subsidiaries.

"Buyer JV" means each Person that is a Subsidiary of Buyer that is not wholly owned directly or indirectly by Buyer as of the date of this Agreement.

"Buyer Material Adverse Effect" means any Effect that would, or would reasonably be expected to, individually or in the aggregate, prevent or materially impair or materially delay, or prevents or materially impairs or materially delays, the consummation by Buyer or Merger Sub of the Merger or the other transactions contemplated by this Agreement.

"Buyer Plan" means each "employee benefit plan" (as defined in Section 3(3) of ERISA) and each other bonus, commission, stock option, stock appreciation right, restricted stock, restricted stock unit, performance stock unit, stock purchase or other equity-based, incentive compensation, profit sharing, savings, retirement, disability, vacation, deferred compensation, severance, separation, termination, retention, change of control, stay bonus and other similar material plan, program, agreement or arrangement that is maintained or contributed to by the Buyer or any of its Subsidiaries or with respect to which Buyer or any of its Subsidiaries could reasonably be expected to have any liability, other than any such plan, scheme or arrangement (i) that is sponsored or maintained by, or provided through, a Governmental Entity or Labor Union, (ii) that the Buyer or any of its Subsidiaries is required by Law to maintain or contribute to or (iii) any Multiemployer Plan.

"Buyer Public Equity Financing" means (a) one or more equity capital markets financing transactions entered into by Buyer or its Subsidiaries, the proceeds of which are used in whole or in substantial part to finance the Transactions and (b) the Rights Offering.

"Code" means the Internal Revenue Code of 1986.

"Collective Bargaining Agreement" means a collective bargaining agreement, works council agreement, or other similar Contract with a Labor Union.

"Company DC Plan" means the Warner Bros. Discovery, Inc. Non-Employee Directors Deferral Plan and the Company's Supplemental Retirement Plan.

"Company DSU" means any deferred stock unit of the Company.

"Company Employee" means a current or former employee of the Company and its Subsidiaries.

"Company ESPP" means the Company's 2011 Employee Stock Purchase Plan (as amended).

"Company Equity Awards" means the Company Options, the Company RSUs, the Company PRSUs, the Company DSUs and the Company Notional Units.

"Company Information Technology" means all Information Technology owned, leased or licensed by the Company and its Subsidiaries.

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"Company IV" means each Person that is a Subsidiary of the Company that is not wholly owned directly or indirectly by the Company as of the date of this Agreement.

"Company Material Adverse Effect" means any Effect that, individually or in the aggregate with any other Effect, is, or would reasonably be expected to be, materially adverse to the financial condition, properties, assets, operations, liabilities, business or results of operations of the Company's Streaming and Studios business taken as a whole; provided, however, that, none of the following, alone or in combination, shall be deemed to constitute a Company Material Adverse Effect, or be taken into account in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur:

- (A) Effects generally affecting the economy, credit, capital, securities or financial markets or political, regulatory, economic or business conditions (including tariffs, trade policies and sanctions) in any jurisdiction in which the Company's Streaming and Studios business has operations or in which products or services of the Company's Streaming and Studios business are sold;
 - (B) Effects that are the result of factors generally affecting the industries, markets or geographical areas in which the Company's Streaming and Studios business has operations;
 - (C) changes in the relationship of the Company's Streaming and Studios business, contractual or otherwise, with customers, employees, unions, suppliers, distributors, financing sources, partners or similar relationship or any resulting Effect that was caused by the entry into, announcement, pendency or performance of the Transactions, or resulting or arising from the identity of or any facts or circumstances relating to, or any actions taken or failed to be taken by, Buyer or its Affiliates;
 - (D) changes or modifications in accounting standards applicable to the Company's Streaming and Studios business, including GAAP, or in any Law applicable to the Company's Streaming and Studios business, including the repeal thereof, or in the interpretation or enforcement thereof, after the date of this Agreement;
 - (E) any failure by the Company's Streaming and Studios business to meet any internal or public projections or forecasts or estimates of revenues or earnings for any period; provided that the exception in this clause (E) shall not prevent or otherwise affect a determination that any Effect underlying such failure has resulted in, or contributed to, or would reasonably be expected to result in, or contribute to, a Company Material Adverse Effect;
 - (F) Effects resulting from acts of war (whether or not declared), civil disobedience, hostilities, sabotage, terrorism, cyberterrorism, ransomware or malware, military actions or the escalation of any of the foregoing, any hurricane, flood, tornado, earthquake or other weather or natural disaster, or any epidemic, pandemic, outbreak of illness or other public health event (including pandemics and epidemics) or any other force majeure event, or any national or international calamity or crisis;
 - (G) any actions taken or failed to be taken by the Company or its Subsidiaries that are required to be taken by this Agreement or any Transaction Document or any actions taken with Buyer's written consent or failed to be taken at Buyer's written request;
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(H) any Effect or announcement of an Effect affecting the credit rating or other rating of financial strength of the Company, its Subsidiaries or any of their respective securities or the Company's Streaming and Studios business; provided that the exception in this clause (H) shall not prevent or otherwise affect a determination that any Effect underlying such Effect, announcement of an Effect has resulted in, or contributed to, or would reasonably be expected to result in, or contribute to, a Company Material Adverse Effect;

(I) any change, in and of itself, in the market price or trading volume of the securities of the Company (it being understood that the facts or occurrences giving rise to or contributing to such change may be taken into account in determining whether there has been or would reasonably be expected to be a Company Material Adverse Effect, unless otherwise excluded in this definition of "Company Material Adverse Effect"); or

(J) any Effect to the extent attributable to or to the extent arising as a result of the Company's Global Linear Networks business;

provided, further that, with respect to clauses (A), (B), (D) and (F), such Effect shall be taken into account in determining whether a "Company Material Adverse Effect" has occurred or is occurring to the extent it materially and disproportionately adversely affects the Company's Streaming and Studios business (taken as a whole) compared to other businesses operating in the industries and geographies in which the Company's Streaming and Studios business operate (in which case only the incremental disproportionate impact may be taken into account, and only to the extent otherwise permitted by this definition). For the purposes of this definition, the "Company's Streaming and Studios business" means the business, operations and activities that constitute the Streaming segment and the Studios segment of the Company as narratively described in the Annual Report on Form 10-K of the Company for the fiscal year ending December 31, 2024 and as updated in the Quarterly Report on Form 10-Q of the Company for the period ending September 30, 2025, as constituted as of the date of this Agreement.

"Company Notional Unit" means each notional investment unit with respect to shares of Company Stock subject to a Company DC Plan.

"Company Option" means each option to purchase shares of Company Stock granted under any Company Stock Plan.

"Company Owned IP" means all Intellectual Property owned or purported to be owned by the Company or any of its Subsidiaries.

"Company Plan" means each "employee benefit plan" (as defined in Section 3(3) of ERISA) and each other bonus, commission, stock option, stock appreciation right, restricted stock, restricted stock unit, performance stock unit, stock purchase or other equity-based, incentive compensation, profit sharing, savings, retirement, disability, vacation, deferred compensation, severance, separation, termination, retention, change of control, stay bonus and other similar material plan, program, agreement or arrangement that is maintained or contributed to by the Company or any of its Subsidiaries or with respect to which the Company or any of its Subsidiaries would reasonably be expected to have any liability, other than any such plan, scheme or arrangement (i) that is sponsored or maintained by, or provided through, a Governmental Entity or Labor Union, (ii) that the Company or any of its Subsidiaries is required by Law to maintain or contribute to or (iii) any Multiemployer Plan.

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"Company PRSU" means any performance restricted stock unit of the Company.

"Company Refinancing" has the meaning set forth in Section 6.1(a) of the Company Disclosure Letter.

"Company RSU" means each restricted stock unit of the Company (other than any Company PRSU or Company DSU).

"Company Stock Plans" means the Amended and Restated Warner Bros. Discovery, Inc. Stock Incentive Plan, the Warner Bros. Discovery, Inc. 2011 Employee Stock Purchase Plan (as amended), the Warner Bros. Discovery, Inc. 2013 Incentive Plan (as amended) and the Warner Bros. Discovery, Inc. 2005 Non-Employee Director Incentive Plan (as amended).

"Company Stockholder Approval" means the adoption of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of Company Stock entitled to vote on such matter at a stockholders' meeting duly called and held for such purpose.

"Confidentiality Agreement" means the confidentiality letter agreement entered into between Buyer and the Company, dated November 10, 2025.

"Continued Service" means for a holder of a Company Equity Award, such holder's continued service with Buyer and its Affiliates (including the Surviving Corporation and its Subsidiaries).

"Continuing Employee" means each individual who is a Company Employee immediately prior to the Effective Time (including those on vacation, sick leave, maternity leave, military service, lay-off, disability or other paid time off or leave of absence) and continues to be an employee of Buyer or one of its Subsidiaries (including the Surviving Corporation) immediately following the Effective Time.

"Content" means television shows, movies, video games, music and other audiovisual, visual or audio content intended for broadcast, download, streaming or other transmission to an audience.

"Content IP" means Copyrights and Trademarks in, or otherwise relating to, Content.

"Contract" means any written contract, agreement, lease, license, note, mortgage, indenture, arrangement or other obligation.

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"Copyrights" has the meaning set forth in the definition of "Intellectual Property."

"COT Property" means the Intellectual Property set forth in Section A(1) of the Company Disclosure Letter.

"COT Property Agreements" means all material Contracts (including development agreements, settlement agreements, license agreements (including Key Out-License Agreements), assignment agreements and Affiliation Agreements) relating to the development or Exploitation of any COT Properties, including all modifications, amendments and supplements thereto, and waivers thereunder.

"Covered Employee" means each Senior Executive and each other employee of the Company or its Subsidiaries classified by the Company as a "Career Band 2" or "Career Band 3" employee.

"Effect" means any effect, event, development, change, state of facts, condition, circumstance or occurrence.

"Effective Time FD Share Count" means the number of outstanding shares of Company Stock as of immediately prior to the Effective Time on a fully diluted, as converted and as exercised basis in accordance with the treasury stock method, shares of Company Stock reserved for, and subject to, issuance pursuant to the Company Stock Plans (including Company RSUs, Company PRSUs (assuming the achievement of performance criteria at target levels), Company Options and Company DSUs) and any other outstanding securities or obligations of the Company convertible into or exercisable for shares of Company Stock.

"Environmental Law" means any Law or Governmental Order relating to the protection, investigation or restoration of the environment or natural resources or, as it relates to any exposure to any hazardous or toxic substance in the environment, to the protection of human health and safety.

"Equity Award Exchange Ratio" means the quotient (rounded to four decimals) obtained by dividing (x) the Merger Consideration by (y) the Average Buyer Stock Price.

"Equity Financing Failure Event" means any of the following: (a) the commitments with respect to all or any portion of the Committed Equity Financing expiring, or being terminated, (b) for any reason, all or any portion of the Committed Equity Financing becoming unavailable, (c) a breach or repudiation or threatened or anticipated breach or repudiation by any Equity Investor of which Buyer becomes aware, (d) it becoming reasonably foreseeable that any of the events set forth in clauses (a) through (c) shall occur, or (e) any party to the Subscription Agreements or any Affiliate or agent of such Person shall allege in writing that any of the events set forth in the foregoing clauses has occurred.

"Equity Investors" means the Trust and RedBird Capital Partners.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

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"Existing Company Bridge Loan Facility" shall mean the bridge loan facility pursuant to that certain Non-Investment Grade Leveraged Bridge Loan Agreement, dated as of June 26, 2025 (as amended, restated, supplemented or otherwise modified or replaced from time to time), by and among, *inter alia*, the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"Export and Sanctions Regulations" means sanctions and export control Laws and regulations where such Person does business or is otherwise subject to jurisdiction, including the U.S. International Traffic in Arms Regulations, the Export Administration Regulations, U.S. sanctions Laws and regulations administered by the Department of the Treasury's Office of Foreign Assets Control and the anti-boycott regulations administered by the U.S. Department of Commerce and U.S. Department of Treasury.

"Exploitation" (or any variant thereof) shall mean, regarding any asset or property (including any Intellectual Property), the exhibition, sale, distribution, publication, transmission, broadcast, telecast, performance, display, license, covenant not to sue or enjoin, right to obtain, enforce or register, covenant not to sue or enjoin last, sublicense, use, reproduction, marketing, creating derivative works of, or other commercial exploitation thereof, by any means, methods, processes, media devices and delivery systems of every kind or character, whether now known or hereafter created. "Exploit" means to cause the Exploitation.

"FCPA" means the United States Foreign Corrupt Practices Act of 1977.

"Financing" means any debt financing, whether in the form of debt securities, a credit or loan facility or otherwise, or any Buyer Public Equity Financing, obtained or proposed to be obtained by Buyer in connection with the Transactions, including the debt financing contemplated by the Debt Commitment Letter or any other debt or equity financing, the proceeds of which are intended to be used to finance the payment, in whole or in part, of the Merger Consideration or in connection with any of the transactions contemplated by Section 6.16(f), or any of the other amounts payable by Buyer under this Agreement or in connection with the Transactions.

"Financing Documents" means the Debt Commitment Letter, any other commitment letter, engagement letter, underwriting agreement, purchase agreement, placement agreement, credit agreement or indenture or any other agreement or document, in each case entered into by any Financing Source, on the one hand, and Buyer, on the other, in connection with any Committed Debt Financing.

"Financing Related Parties" means the Financing Sources, their respective Affiliates and the respective partners, managers, members, trustees, officers, directors, employees, controlling persons, agents and other Representatives of any of the foregoing, and their respective successors and permitted assigns.

"Financing Sources" means the Persons (other than Buyer) party from time to time to the Debt Commitment Letter or any other Financing Document, including any such Persons becoming party thereto pursuant to any joinder documentation, and each other Person that has committed or agreed to provide, arrange, syndicate, underwrite, purchase or place any Committed Debt Financing (or any permanent financing contemplated thereby), or has otherwise entered into any agreement with Buyer in connection with, or that is otherwise acting as an arranger, bookrunner, underwriter, initial purchaser, placement agent, administrative agent, trustee or a similar representative in respect of, all or any part of the Committed Debt Financing (or any permanent financing contemplated thereby), and their respective successors and permitted assigns.

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"Foreign Regulators" means foreign and transnational Governmental Entities with jurisdiction over Foreign Regulatory Laws.

"Foreign Regulatory Laws" means foreign and transnational Laws regarding (a) the provision of broadcasting, streaming or audio-visual media services, (b) the restriction or regulation of investment on national security, national interest or public order grounds, or (c) Laws concerning the review, notification or regulation of foreign subsidies or other forms of state support provided by non-domestic governments, including any Laws governing the assessment of distortive foreign subsidies in connection with mergers, acquisitions, joint ventures or public procurement.

"Fraud" means actual and intentional common law fraud under Delaware law with respect to a representation and warranty set forth in Article IV or Article V by the Party making such representation or warranty. For the avoidance of doubt, "Fraud" shall not include any claim for equitable fraud, promissory fraud, unfair dealings fraud or any torts (including a claim for fraud) based on negligence or recklessness.

"GAAP" means United States generally accepted accounting principles.

"Government Official" means any official, officer, employee, or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Entity, and includes any official or employee of any entity directly or indirectly owned or controlled by any Governmental Entity, and any officer or employee of a public international organization, as well as any Person acting in an official capacity for or on behalf of any such Governmental Entity, or for or on behalf of any such public international organization.

"Governmental Entity" means any United States, non-United States, supranational or transnational governmental (including public international organizations), quasi-governmental, regulatory or self-regulatory authority, agency, commission, body, department or instrumentality or any court, tribunal or arbitrator or other entity or subdivision thereof or other legislative, executive or judicial entity or subdivision thereof, in each case, of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, temporary, preliminary or permanent injunction, decree, ruling, stipulation, determination, or award entered by or with any Governmental Entity.

"Guilds" means guilds, unions or other labor organizations, domestic or foreign, that relate to or support the development, production, release, exhibit, performance, broadcast or other form of use or exploitation of audio or audiovisual content or works of any kind (e.g., the Screen Actors Guild, the Writers Guild of America, the Directors Guild of America, the International Alliance of Theatrical Stage Employees, International Brotherhood of Teamsters and American Federation of Musicians or other union if the bargaining unit is employed in connection with the development, production, release, exhibit or performance, broadcast or other form of use or exploitation of audio or audiovisual content or work of any kind).

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"Hazardous Substance" means any substance regulated under Environmental Law as being harmful or hazardous to human health or the environment including those listed, classified or regulated as "hazardous," "toxic," a "pollutant," a "contaminant," or words of similar meaning and regulatory effect pursuant to any Environmental Law and also including any petroleum product or by-product, asbestos-containing material, lead-containing paint, mold, polychlorinated biphenyls or radioactive materials.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvement Act of 1976.

"Indebtedness" means, with respect to any referenced Person, (a) all indebtedness of such Person for borrowed money evidenced by credit agreements, loan agreements or notes, bonds, debentures, other debt securities or similar debt instruments, other than letters of credit and performance bonds and (b) all indebtedness of the type referred to in clause (a) of another Person that is guaranteed by, or secured by a Lien on any property or assets of, such referenced Person. For the avoidance of doubt, all leases shall be excluded from clause (a).

"Information Technology," means all software, computer systems (including computers, screens, servers, middleware, workstations, routers, hubs, switches, networks, data communications lines and hardware), network and telecommunications systems hardware and other information technology equipment.

"Intellectual Property," means, collectively, all United States and non-United States intellectual property rights, including all such rights in (a) patents and patent applications, including divisions, continuations, continuations-in-part, extensions, reissues, reexaminations, and any other governmental grant for the protection of inventions or industrial designs ("Patents"); (b) trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, logos, designs, symbols, trade dress, trade names, Internet domain names, social media handles, and other indicia of source or origin, including all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby ("Trademarks"); (c) published and unpublished works of authorship in any media (including software, source code, object code, information, data, databases and other compilations of information), copyrights therein and thereto, and registrations and applications therefor, including all renewals, extensions, restorations and reversions thereof, and including all derivative, compilation and ancillary rights of every kind, whether now known or hereafter recognized, related to copyrights ("Copyrights"); (d) trade secrets and all other confidential and proprietary information, including, rights in know-how, processes, schematics, business methods, formulae, technical data, specifications, operating and maintenance manuals, drawings, prototypes, models, designs, customer lists and supplier lists ("Trade Secrets"); and (e) moral rights, rights of publicity and rights of privacy.

"Intervening Event" means a material event or circumstance that (1) was not known to the Company Board on the date of this Agreement (or if known, the consequences of which were not known or reasonably foreseeable to the Company Board), which event or circumstance, or any consequence thereof, becomes known to the Company Board prior to the Company Stockholder Approval, (2) does not relate to any inquiry, offer or proposal that constitutes or would reasonably be expected to lead to an Acquisition Proposal, or the consequences thereof, and (3) does not relate to the fact, in and of itself, that the Company meets or exceeds any internal or published or third party projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial metrics or any budgets, plans, projections or forecasts of its revenues, earnings or other financial performance or results of operations for any period, or any changes after the date of this Agreement in the price or trading volume of the Buyer Common Stock or the Company Stock (it being understood that the event or circumstance underlying any of the foregoing in this clause (3) may be taken into consideration, unless otherwise excluded by the exceptions to this definition).

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"IRS" means the United States Internal Revenue Service.

"Key Property" means (i) the Intellectual Property set forth in Section A(4) of the Company Disclosure Letter and (ii) any Content IP of Content that has not been published or distributed commercially as of the date of this Agreement.

"Key Out-License Agreements" means the material Contracts pursuant to which any COT Property is licensed by any the Company or any of its Subsidiaries or any of their predecessors to a third party, copies of which have been provided to the Buyer in the virtual data room for review.

"Key Out-License Summary" means the information set forth in Section A(3) of the Company Disclosure Letter.

"Knowledge" when used in this Agreement (i) with respect to the Company, means the actual knowledge of the Persons listed in Section A(1) of the Company Disclosure Letter and (ii) with respect to Buyer, means the actual knowledge of the Persons listed in Section A(2) of the Buyer Disclosure Letter.

"Labor Union" means any labor union, works council or similar employee or labor organization, including any Guild.

"Laws" means any federal, state, local, foreign, international or transnational law, statute, ordinance, common law, rule, regulation, standard, judgment, determination, order, writ, injunction, decree, arbitration award, treaty, agency requirement, authorization, license or permit of any Governmental Entity.

"Licenses" permits, licenses, certifications, approvals, registrations, consents, authorizations, franchises, variances, exemptions and orders issued or granted by a Governmental Entity.

"Lien" means a lien, charge, pledge, security interest, claim or other encumbrance.

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"Multiemployer Plan" means any "multiemployer plan" within the meaning of Section 3(37) of ERISA.

"NASDAQ" means the NASDAQ Stock Market.

"Ordinary Course" means, with respect to an action taken by any Person, that such action is consistent with the ordinary course of business and past practices of such Person.

"Organizational Documents" means (i) with respect to any Person that is a corporation, its articles or certificate of incorporation, memorandum and articles of association, as applicable, and bylaws, or comparable documents, (ii) with respect to any Person that is a partnership, its certificate of partnership and partnership agreement, or comparable documents, (iii) with respect to any Person that is a limited liability company, its certificate of formation and limited liability company or operating agreement, or comparable documents, (iv) with respect to any Person that is a trust or other entity, its declaration or agreement of trust or other constituent document or comparable documents and (v) with respect to any other Person that is not an individual, its comparable organizational documents.

"Patents" has the meaning set forth in the definition of "Intellectual Property."

"PBGC" means the Pension Benefit Guaranty Corporation.

"Per Share Merger Consideration" means \$31.00, *plus*, if applicable, the Ticking Consideration.

"Permitted Company Financing Activities" has the meaning set forth in Section 6.1(a) of the Company Disclosure Letter.

"Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

"Personal Data" means, with respect to a Party, any data or information in any media that can reasonably be used to identify a particular individual or device, including any data or other information that constitutes "personal information," "personal identifying information" or analogous term under any applicable Law.

"Proceeding" means any action, cause of action, claim, charge, demand, litigation, suit, investigation, grievance, citation, summons, subpoena, inquiry, audit, hearing, originating application to a tribunal, arbitration or other similar proceeding of any nature, civil, criminal, regulatory, administrative or otherwise, whether in equity or at law, in contract, in tort or otherwise.

"Proxy Statement" means the proxy statement relating to the matters to be submitted to the holders of Company Stock at the Company Stockholder Meeting to be filed by the Company with the SEC.

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“Registered” means issued by, registered with, or the subject of a pending application for issuance or registration before, any Governmental Entity.

“Registered Company IP” means Company Owned IP that is Registered.

“Representative” means, with respect to any Person, any director, officer, principal, partner, manager, member (if such Person is a member-managed limited liability company or similar entity), employee, consultant, investment banker, financial advisor, legal counsel, attorneys-in-fact, accountant or other advisor, agent or other representative of such Person, in each case acting in their capacity as such.

“Rights Offering” means a registered public offering to certain non-affiliated stockholders of the Company of rights to subscribe for Buyer Class B Common Stock effected in connection with the PIPE Transaction, containing such terms and conditions as are finally approved and authorized by the Buyer Board in consultation with the Buyer Board Independent Committee.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Executive” means with respect to the Company and its Subsidiaries, any of the Company’s executive officers (as such term is defined in the Exchange Act).

“Subsidiary,” means, with respect to any Person, any other Person (i) of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of its Subsidiaries or (ii) of which such Person, directly or indirectly, possesses the power to direct or cause the direction of the management and policies by Contract.

“Takeover Statute” means a “fair price,” “moratorium,” “control share acquisition” or other similar anti-takeover statute or regulation.

“Tax” or “Taxes” means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers compensation, unemployment, disability, property, ad valorem, value added, stamp, excise, severance, occupation, service, digital services, environmental, sales, consumption, turnover, goods and services, use, license, lease, transfer, import, export, customs duty, escheat, alternative minimum, estimated or other tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax), imposed by any Governmental Entity or political subdivision thereof, and any interest, penalty, additions to tax or additional amounts in respect of the foregoing.

“Tax Law” means the Law of any Governmental Entity or political subdivision thereof relating to any Tax.

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"Tax Return" means any report of Taxes due, any claim for refund of Taxes paid, any information return with respect to Taxes, any documentation with respect to transfer pricing or any other similar report, statement, declaration, or document filed or required to be filed under the Code or other Tax Law with respect to Taxes, including any attachments, exhibits, or other materials submitted with any of the foregoing, and including any amendments or supplements to any of the foregoing.

"Ticking Consideration" means, if the Closing Date occurs after September 30, 2026, an amount in cash equal to \$0.00277778 multiplied by the number of calendar days elapsed after September 30, 2026 to and including the Closing Date (which, for the avoidance of doubt, shall not exceed \$0.25 per 90 calendar day period).

"Trademarks" has the meaning set forth in the definition of "Intellectual Property."

"Trade Secrets" has the meaning set forth in the definition of "Intellectual Property."

"Trading Day" means a day on which shares of Buyer Class B Common Stock are traded on NASDAQ.

"Transaction Documents" means this Agreement, the Ellison Guarantee, the Subscription Agreements and the Commitment Letter, including all annexes, Exhibits, Schedules, attachments and appendices thereto.

"Transactions" means the transactions contemplated by this Agreement and the other Transaction Documents.

"Willful Breach" means an intentional and willful material breach, or an intentional and willful material failure to perform, in each case that is the consequence of an act or omission by a Party with the knowledge that the taking of such act or failure to take such act would cause a breach of this Agreement, provided that, for the avoidance of doubt, if (x) each of the conditions set forth in Section 7.1 and Section 7.3 shall have been satisfied or waived in writing by Buyer (not including conditions which are to be satisfied by actions taken at the Closing, provided that such conditions would be capable of being satisfied if the Closing were to occur) and (y) Buyer fails to consummate the Closing on the date required pursuant to Section 1.2, such failure to consummate the Closing shall constitute a Willful Breach of this Agreement by Buyer.

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EXHIBIT A

Form of Certificate of Incorporation of the Surviving Corporation

[See attached.]

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**FOURTH RESTATED
CERTIFICATE OF INCORPORATION
OF
WARNER BROS. DISCOVERY, INC.**

FIRST

The name of the corporation (the "Corporation") is Warner Bros. Discovery, Inc.

SECOND

The Corporation's registered office in the State of Delaware is located at 251 Little Falls Drive, City of Wilmington 19808, County of New Castle. The name and address of the Corporation's registered agent for service of process in Delaware is:

Corporation Service Company
251 Little Falls Drive
Wilmington, Delaware 19808

THIRD

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended ("DGCL") or any successor statute.

FOURTH

The total number of shares of all classes of stock that the Corporation shall have authority to issue is One Thousand (1,000) shares, all of which are Common Stock with a par value of \$0.01.

FIFTH

In furtherance and not in limitation of the powers conferred by statute, it is provided that:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
2. The Board of Directors is expressly authorized to adopt, alter, amend or repeal the bylaws of the Corporation.

SIXTH

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

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SEVENTH

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director; provided that nothing contained in this Article Seventh shall eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Neither the amendment nor repeal of this Article Seventh, nor the adoption of any provision of this Fourth Restated Certificate of Incorporation, nor, to the fullest extent permitted by the DGCL, any modification of law shall eliminate, reduce or otherwise adversely affect any right or protection of a current or former director of the Corporation existing at the time of, or prior to, such amendment, repeal, adoption or modification.

EIGHTH

Subject to such limitations as may be from time to time imposed by other provisions of this Fourth Restated Certificate of Incorporation, by the bylaws of the Corporation, by the DGCL or other applicable law, or by any contract or agreement to which the Corporation is or may become a party, the Corporation reserves the right to amend or repeal any provision contained in this Fourth Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this express reservation.

NINTH

Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a duty (including any fiduciary duty) owed by any current or former director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any current or former director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the DGCL or this Fourth Restated Certificate of Incorporation or the bylaws of the Corporation, or (iv) any action asserting a claim against the Corporation or any current or former director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Unless the Corporation gives an Alternative Forum Consent, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, or the rules and regulations thereunder. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing, otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Ninth. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Article Ninth with respect to any current or future actions or claims.

Case: 26-6423, 09/30/2026, DktEntry: 2.1, (236 of 466)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, et al.

RECORD APPENDIX
VOLUME 3

District Court No. 4:26-cv-03790-AMO

APP 233-343

September 30, 2026

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Case: 26-6423, 09/30/2026, DktEntry: 2.1, (237 of 466)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**FIRST AMENDED COMPLAINT FOR
 VIOLATION OF SECTION 7 OF THE
 CLAYTON ACT; DAMAGES UNDER
 SECTION 4; AND INJUNCTIVE RELIEF
 UNDER SECTION 16**

FIRST AMENDED COMPLAINT FOR VIOLATION OF SECTION 7 OF THE CLAYTON ACT; DAMAGES UNDER SECTION 4; AND INJUNCTIVE RELIEF UNDER SECTION 16 CASE NO. 4:26-cv-03790-AMO

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INTRODUCTION

1. This is a private antitrust action under Section 7 of the Clayton Act, 15 U.S.C. § 18, seeking damages under Section 4, 15 U.S.C. § 15, and prospective injunctive relief under Section 16, 15 U.S.C. § 26. Plaintiffs challenge Skydance Media’s completed acquisition of Paramount Global and Paramount Skydance Corporation’s proposed acquisition of Warner Bros. Discovery.

2. Section 7 addresses probabilities, not certainties, and prohibits an acquisition when its effect “may be substantially to lessen competition.” The proposed acquisition would eliminate Warner Bros. Discovery as an independent competitor and place formerly competing subscription services, content libraries, studios, and consumer relationships under a single owner.

3. Plaintiffs do not sue merely as viewers or observers of media consolidation. They purchase the products in the affected consumer markets, intend to continue purchasing them, and face higher prices, reduced output, lower quality-adjusted value, and fewer independently controlled purchasing alternatives.

4. Warner Bros. Discovery stockholders approved the transaction on April 23, 2026. Paramount has reported to investors that the transaction has obtained regulatory clearances across the relevant jurisdictions and that it fully expects the acquisition to close. The remaining restraint on consummation is the stipulation entered in the related antitrust actions pending before this Court, under which Paramount Skydance Corporation and Warner Bros. Discovery, Inc. agreed not to close or consummate the transaction while the stipulation remains operative. Paramount is otherwise prepared to consummate the acquisition, making the threatened combination concrete and imminent.

LEGAL STANDARDS

5. Section 7 prohibits an acquisition where, in any line of commerce and in any

FIRST AMENDED COMPLAINT FOR VIOLATION OF SECTION 7 OF THE CLAYTON ACT; DAMAGES UNDER SECTION 4; AND INJUNCTIVE RELIEF UNDER SECTION 16

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section of the country, “the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. § 18. The statute does not require proof that the market will become uncompetitive, that remaining rivals will be unable to compete effectively, or that higher prices, reduced output, or other consumer harms are certain to occur. Section 7 reaches anticompetitive tendencies in their incipency and concerns probabilities rather than certainties. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317, 323 (1962).

6. Competitive injury is not limited to a nominal price increase. Competition protects output, quality, variety, innovation, promotional terms, and consumer choice. Eliminating a competitor may leave consumers with “fewer choices, higher prices, and lower-quality products.” *PLS.com, LLC v. National Association of Realtors*, 32 F.4th 824, 840 (9th Cir. 2022).

7. Section 7 also reaches a nontrivial acquisition that contributes to an industry trend toward concentration. *United States v. Pabst Brewing Co.*, 384 U.S. 546, 550–52 (1966), enjoined the combination of brewers whose combined national share was approximately 4.49 percent. *United States v. Von’s Grocery Co.*, 384 U.S. 270, 272–73, 277–78 (1966), enjoined a combination with a combined share of approximately 7.5 percent because it eliminated an independent rival amid continuing consolidation.

8. The challenged transactions arise in a rapidly consolidating industry. Disney acquired 21st Century Fox, Amazon acquired MGM, and Discovery combined with WarnerMedia to form Warner Bros. Discovery. Skydance then acquired Paramount Global and now seeks to combine Paramount with Warner Bros. Discovery. Each successive transaction places additional programming, distribution, and consumer relationships under fewer independent decisionmakers.

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9. Section 7 is not limited to acquisitions between firms that compete at the same level of distribution. A merger may substantially lessen competition when it combines a firm operating in a relevant market with control over a product or service rivals use to compete in that market, thereby enabling and incentivizing the firm to limit rivals' access and thereby weaken competition. *See* 2023 Merger Guidelines, Guideline 5; *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 592-95 (1957).

10. Section 16 authorizes injunctive relief against threatened loss or damage from an antitrust violation. 15 U.S.C. § 26. A plaintiff need only demonstrate a significant threat of injury from an impending violation and need not wait until the acquisition closes or the threatened consequences have fully materialized. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (1969).

PARTIES

11. Plaintiffs Pamela Faust, Len Marazzo, Lisa McCarthy, Deborah Rubinsohn, and Gary Talewsky are natural persons residing in the United States. They purchase subscription streaming services, paid video packages containing national television news, and admissions to first-run theatrical motion pictures, as alleged below.

12. Defendant Paramount Skydance Corporation is a Delaware corporation with its principal place of business in New York, New York. It operates Paramount Pictures, CBS, CBS News, Paramount+, and other film, television, streaming, news, and entertainment businesses.

13. Defendant Skydance Media, LLC, was an independent producer and financier of premium film and television programming before Skydance acquired Paramount Global. Following the closing, Skydance and Paramount operate as a single entity under David Ellison, who serves as Chairman and Chief Executive Officer.

14. Warner Bros. Discovery owns HBO Max, HBO, CNN, Warner Bros. Pictures,

**FIRST AMENDED COMPLAINT FOR VIOLATION OF SECTION 7 CASE NO. 4:26-cv-03790-AMO
OF THE CLAYTON ACT; DAMAGES UNDER SECTION 4;
AND INJUNCTIVE RELIEF UNDER SECTION 16**

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New Line Cinema, and other significant streaming, news, film, television, and entertainment properties.

JURISDICTION AND VENUE

15. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1337 because this action arises under Sections 4, 7, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 18, and 26.

16. This Court has personal jurisdiction over Defendants because they transact business throughout the United States and purposefully direct the challenged conduct toward United States consumers, including Plaintiffs.

17. Venue is proper under 28 U.S.C. § 1391 and Section 12 of the Clayton Act, 15 U.S.C. § 22, because Defendants transact business and the challenged conduct has effects in this District.

FACTUAL BACKGROUND

A. Skydance's Completed Acquisition of Paramount Global

18. On July 7, 2024, Skydance announced an approximately \$8 billion transaction to acquire Paramount Global, including payments to National Amusements and Paramount stockholders, as well as an infusion of capital into Paramount. The transaction closed on August 7, 2025.

19. Marazzo and Rubinsohn had subscribed to Paramount+ since approximately 2021. Before August 7, 2025, each purchased Paramount+ from independently managed Paramount Global. When Skydance completed the acquisition, it obtained control over Paramount+, including its prices, tiers, discounts, promotions, free trials, programming expenditures, and distribution strategy.

20. Before Skydance acquired Paramount, Skydance independently supplied premium

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1 programming to competing services, including Netflix, Apple TV+, and Amazon Prime Video.

2 Its productions included Grace and Frankie, The Old Guard 2, Spellbound, Foundation, Luck,
3 The Gorge, Reacher, Cross, and Balls Up.

4
5 21. The completed acquisition eliminated Skydance as an independent supplier and
6 placed its development, financing, licensing, exclusivity, windowing, and platform-allocation
7 decisions under the same corporate control as Paramount+.

8
9 22. Following the acquisition, Skydance's production assets and development
10 pipeline were placed under the same corporate control as Paramount+. Skydance's animation
11 operations were integrated with Paramount Animation, and Skydance's film and television
12 productions became available for coordinated development, licensing, windowing, and
13 distribution across Paramount's platforms.

14
15 23. Following the acquisition, the new management immediately adopted a direct-to-
16 consumer strategy emphasizing increased average revenue per user, reduced reliance on low-
17 margin subscriptions, retirement of free trials, and review of discounting practices.

18
19 24. In a shareholder letter filed with the Securities and Exchange Commission on
20 November 10, 2025, Paramount Skydance announced that it would increase Paramount+ prices
21 in the United States during the first quarter of 2026. Paramount also identified increased average
22 revenue per user and subscriber monetization as components of its post-acquisition direct-to-
23 consumer strategy.

24
25 25. Paramount implemented the announced increase effective January 15, 2026. The
26 Essential monthly price increased from \$7.99 to \$8.99, approximately 12.5 percent, and the
27 Premium monthly price increased from \$12.99 to \$13.99, approximately 7.7 percent. Marazzo
28 and Rubinsohn paid the increased charges.

26. The price increase followed the transfer of Paramount+ pricing authority to Skydance and the adoption of the new management's post-acquisition monetization strategy. Skydance acquired Paramount, obtained control over Paramount+ pricing and consumer terms, adopted and disclosed a strategy emphasizing average revenue per user and profitability, announced the price increase, and implemented it through Paramount+. Other streaming companies did not establish the amount Paramount+ charged Marazzo and Rubinsohn.

B. Proposed Acquisition of Warner Bros. Discovery

27. Paramount pursued Warner Bros. Discovery through successive offers beginning in 2025. Warner Bros. Discovery accepted Paramount's proposal, and its stockholders approved the transaction on April 23, 2026.

28. Paramount's transaction materials identify the combination of the Paramount+ and HBO Max streaming businesses, consolidation of technology and operations, elimination of redundancies, increased scale, and substantial synergies as central transaction objectives.

29. The proposed financing includes substantial new debt and equity commitments. The projected leverage and stated deleveraging targets make increased cash flow, subscriber monetization, cost reductions, and achievement of synergies central to the transaction's economics.

30. On August 4, 2026, Paramount Chairman and Chief Executive Officer David Ellison publicly defended the proposed acquisition of Warner Bros. Discovery in both Paramount's second-quarter earnings materials and public statements concerning the transaction. Ellison described the transaction as creating a company with the scale to compete alongside Netflix, Amazon, Apple, and other major media platforms and stated that the combination would benefit consumers, theatrical exhibition, and creators. Paramount likewise told investors that its strategy is to scale its direct-to-consumer business, increase engagement, improve the user

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1 experience, and invest in programming that attracts and retains audiences.

2 31. Ellison expressly described the merger as a response to competition for consumer
3 attention. He stated that the combined company would compete against Netflix, Amazon, Apple,
4 and other large platforms and argued that those companies possess resources that substantially
5 exceed Paramount's. He admitted that Paramount and Warner Bros. Discovery together would
6 account for nearly 20 percent of American television viewing time, or approximately 13 percent
7 if YouTube user-generated content is included in the denominator. Ellison's own comparison
8 therefore measures the transaction by the share of consumer viewing held by competing
9 platforms and treats audience attention as a competitive resource.
10

11 32. Ellison further admitted that audiences ultimately determine the commercial
12 success of the products supplied by the combined company. In defending the transaction, he
13 stated that it is "the audience — the American people — who have the final say" in whether a
14 movie succeeds or fails and whether a news organization thrives or withers. He explained that
15 the purpose of building a company with greater "strength and resources" is to deliver for those
16 audiences. Ellison thus identified consumers' choices as the key to Paramount's success in
17 theatrical, television, streaming, and news products.
18

19 33. Paramount's own operating disclosures confirm the same relationship in
20 subscription streaming. Paramount measures Paramount+ performance through subscriber
21 growth, retention, viewing hours, engagement, and the ability of particular programming to
22 attract and retain subscribers. In the second quarter of 2026, Paramount reported approximately
23 81.6 million Paramount+ subscribers, its best retention quarter, double-digit growth in viewing
24 hours, and significant subscriber and engagement gains associated with specific programming.
25 Paramount also stated that its streaming investments are intended to improve discovery,
26
27
28

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1 personalization, engagement, advertising experience, and monetization. Consumers who
2 subscribe, remain subscribed, cancel, change services, or devote viewing time to competing
3 services therefore supply the demand that Paramount+ and HBO Max compete for.

4
5 34. Marazzo and Rubinsohn are among the consumers whose subscription payments
6 and viewing choices Paramount and Warner Bros. Discovery compete to obtain. As alleged
7 below, both presently purchase Paramount+ and HBO Max and independently decide whether to
8 retain, cancel, upgrade, downgrade, or substitute those services based on price, programming,
9 advertising load, promotional terms, quality, and overall value. Their recurring purchasing
10 decisions are therefore part of the consumer demand that Ellison himself identifies as
11 determining whether the combined company and its competing services succeed.

12
13 35. Ellison similarly described theatrical success as dependent upon audience choice.
14 Paramount's August 4 disclosures state that the company applies audience insights and analytics
15 to theatrical greenlighting, marketing, and distribution decisions, and evaluates those decisions
16 based on resulting box-office performance. Ellison separately stated that the American audience
17 has the final say in whether a movie succeeds or fails. The proposed acquisition would combine
18 two studios that presently make independent decisions about which films to greenlight, produce,
19 market, schedule, and release theatrically for consumers.

20
21 36. Plaintiffs regularly purchase admission to first-run theatrical films and choose
22 among differentiated films based on genre, cast, director, franchise, quality, reviews, release
23 date, theater placement, showtime, premium-format availability, and other attributes. They are
24 therefore members of the audience whose purchasing decisions drive box-office demand, which
25 Ellison identifies as a determinant of whether theatrical films succeed. A reduction in
26 independently greenlit or released films, competing release windows, genre and budget variety,
27
28

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1 or other theatrical alternatives would reduce the number of products available for Plaintiffs to
2 purchase.

3 37. Ellison made the same consumer-centered point concerning national television
4 news. In discussing CNN and CBS News, he admitted the importance of audience trust,
5 journalistic independence, and news organizations' ability to serve the people who rely on them.
6 He admitted that whether a news organization "thrives or withers" ultimately depends upon the
7 audience. Those admissions recognize that independence, credibility, reporting quality, and
8 audience trust are competitive attributes affecting consumer demand for national television news.
9

10 38. Marazzo, McCarthy, Rubinsohn, and Talewsky pay for television packages that
11 provide national television news and regularly consume CNN, CBS News, or competing national
12 news programming. Their payments and viewing decisions are therefore part of the audience
13 demand that CNN and CBS News compete for. A merger-induced reduction in original
14 reporting, investigative output, staffing, live coverage, independence, credibility, differentiation,
15 or other competitive attributes would reduce the value of the national news programming
16 included in the products that those Plaintiffs purchase.
17

18 39. Ellison's own defense of the transaction thus identifies consumers as the ultimate
19 decisionmakers across the relevant consumer markets alleged here. Streaming services compete
20 for subscribers, subscription spending, viewing time, and engagement; theatrical studios produce
21 and release films whose success depends upon moviegoer demand; and national television news
22 organizations compete for audiences whose viewing and trust determine whether those
23 organizations thrive. Plaintiffs participate in those competitive processes through the recurring
24 purchases alleged above. They do not assert injury merely as observers of media consolidation.
25 They are consumers whose payments, viewing choices, and purchasing decisions constitute the
26
27
28

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1 demand for the products that Paramount and Warner Bros. Discovery compete over.

2 40. Ellison's contention that the combined company would lack sufficient market
3 power to dictate what audiences watch does not dispute that Paramount and Warner Bros.
4 Discovery compete for those audiences. To the contrary, his defense assumes that consumer
5 choice determines which films, streaming services, and news organizations succeed. The
6 proposed acquisition would eliminate one independent competitor that seeks the same consumer
7 payments and viewing choices.

8
9 **C. Industry-wide consolidation trend**

10 41. The proposed acquisition is part of an accelerating pattern of consolidation among
11 firms controlling premium film, television, and streaming assets. In 2019, Disney acquired most
12 of 21st Century Fox's entertainment assets, combining major film and television studios,
13 programming libraries, networks, and interests in Hulu under Disney's control and eliminating
14 Fox as an independent entertainment competitor.

15
16 42. In 2022, the WarnerMedia and Discovery transaction created Warner Bros.
17 Discovery and placed HBO, Warner Bros., CNN, Discovery, and extensive film and television
18 libraries under common ownership. Warner Bros. Discovery subsequently integrated substantial
19 Discovery programming into HBO Max. It relaunched the service as HBO Max, demonstrating
20 how a corporate combination can consolidate formerly separate content and streaming strategies
21 under one platform and set of economic incentives.

22
23 43. On August 7, 2025, Skydance acquired Paramount Global, eliminating Paramount
24 as an independently controlled company. As alleged above, the new owner then changed
25 Paramount+ pricing, promotional, subscriber, and profitability policies, and implemented a price
26 increase that Plaintiffs paid.
27
28

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1 44. On June 15, 2026, Fox Corporation announced a definitive agreement to acquire
2 Roku for approximately \$22 billion in enterprise value. Fox stated that the acquisition would
3 combine Fox's premium content and Tubi service with Roku's connected-television platform,
4 The Roku Channel, first-party data, and direct relationships with more than 100 million global
5 streaming households. Fox described the result as one of the largest streaming businesses in the
6 United States and the third-largest player in United States television by share of viewing.

8 45. Fox and Roku used the same scale and monetization rationale Paramount invokes
9 here. Fox stated that the transaction would create a scaled media and technology platform with
10 greater reach, engagement, monetization capability, subscription opportunities, and
11 approximately \$400 million in run-rate cost synergies. The contemporaneous Fox-Roku
12 transaction confirms that acquisition-driven consolidation is occurring across streaming content,
13 platforms, distribution, advertising, and direct consumer relationships.

15 46. These transactions have progressively placed major studios, programming
16 libraries, streaming services, distribution technology, consumer data, and direct subscriber
17 relationships into fewer hands. The resulting trend toward concentration increases the
18 competitive significance of eliminating the present independent rivalry between Paramount+ and
19 HBO Max, even if Paramount disputes Plaintiffs' precise market shares or identifies other large
20 firms that will remain after closing. *United States v. Pabst Brewing Co.*, 384 U.S. 546, 550-53
21 (1966).
22

24 47. The cumulative pattern also increases the risk that remaining firms will respond to
25 consolidation with additional acquisitions rather than independent entry, output expansion, price
26 competition, and content investment. Section 7 was enacted to stop that progression before
27
28

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concentration becomes irreversible. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317-23, 343-46 (1962); *United States v. Pabst Brewing Co.*, 384 U.S. 546, 552-53 (1966).

D. Debt Load, Deleveraging, and Dependence on Streaming Cash Flow

48. Paramount's own transaction presentation states that the combined company is expected to have approximately \$79 billion in net debt at closing. Paramount initially described \$54 billion in debt commitments, including approximately \$39 billion of new debt, \$15 billion to refinance Warner Bros. Discovery's existing bridge facility, and a bridged revolving credit facility.

49. Subsequent Securities and Exchange Commission disclosures described contemplated permanent acquisition financing that included approximately \$39.5 billion of first-lien secured indebtedness and approximately \$12.4 billion of second-lien secured indebtedness. Paramount acknowledged that the form, amount, pricing, and terms of that indebtedness remained subject to market conditions and might not be obtained on favorable terms.

50. Paramount projects a net-debt-to-adjusted-EBITDA ratio of approximately 4.3x at closing only on a fully synergized basis. The denominator therefore assumes realization of the expected annual synergies before Paramount has actually achieved them. Paramount has committed to deleverage to below 3.75x adjusted EBITDA by fiscal year 2028 and to below 3.0x by fiscal year 2029, and has stated that it and its controlling stockholder will take steps to meet those targets.

51. Paramount projects that the transaction will generate more than \$6 billion in annual synergies, with approximately 30 percent of those savings expected in the first year after closing, approximately 70 percent by the second year, and the full amount by the third year.

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52. Those commitments create a concrete post-closing cash-allocation constraint. The combined company must pay interest and principal, achieve rapid deleveraging, fund transaction integration, maintain ordinary operations, and finance the promised film and television slate from the same enterprise cash flows. If revenue or projected synergies fall short, the pressure to increase subscription revenue, reduce discounts and trials, increase advertising, consolidate services, eliminate overlapping expenditures, defer investment, or reduce programming becomes greater.

53. Paramount's own presentation connects that financial plan directly to direct-to-consumer streaming. David Ellison stated that "DTC growth will be essential to the success of the combined company" and that Paramount will combine the two companies' streaming portfolios "into one stronger platform." He later confirmed that Paramount plans "to put the 2 services together" and use the same unified-stack approach Paramount employed in consolidating its existing services.

54. Paramount projects that the combined company's revenue growth will be driven by its direct-to-consumer and studio businesses, that margins will depend on meaningful scaling and increased profitability of streaming, and that free cash flow conversion is a central management objective. Paramount's promise to produce at least 30 theatrical films and approximately 170 television series annually is therefore not backed by a capital pool insulated from streaming performance, debt service, or the synergy program. Under Paramount's own projections, continued content investment depends materially on the combined streaming business generating increased revenue, profitability, and cash flow.

55. The promised slate does not eliminate the threatened substantial lessening of competition should the acquisition be consummated. It is a forward-looking commitment that

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depends on Paramount achieving its revenue, synergy, margin, and deleveraging assumptions. A company cannot use projected streaming cash flow to justify an acquisition while simultaneously treating the prices, terms, programming expenditures, and service quality used to generate that cash flow as unrelated to the transaction.

56. Paramount's conduct following the Skydance-Paramount acquisition demonstrates that post-acquisition integration can include programming reductions. In its filing covering the post-closing period beginning August 7, 2025, Paramount disclosed that a content portfolio review led it to abandon certain Skydance content, principally development projects, and to record programming charges. The same filing disclosed severance associated with transformation initiatives and aligning the business around post-transaction strategic priorities.

57. Paramount has similarly announced consolidation of Paramount+ and HBO Max technology stacks, cloud providers, marketing, business services, real estate, overhead, and other information-technology systems; described streaming growth and profitability as essential; committed to rapid deleveraging; and previously abandoned development projects following an acquisition-related content review.

58. Plaintiffs do not allege that debt alone establishes a Section 7 violation or makes a price increase certain. The approximately \$79 billion net debt load, secured-financing structure, aggressive deleveraging timetable, synergy commitments, unified-platform plan, prior Paramount+ price increase, reduced trials and discounts, and prior content abandonment together make it plausible that common ownership will produce higher actual or quality-adjusted subscription prices and fewer or worse consumer-facing services than independent competition would produce.

TIMELINESS

59. Plaintiffs acted after Paramount emerged as the successful bidder and the

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1 proposed transaction became concrete and imminent. They were not required to sue upon an
2 expression of interest, a rejected offer, a competing bid, or a preliminary proposal.

3 60. The April 23, 2026 stockholder approval removed a major condition to closing.
4 The transaction remains unconsummated, and an injunction would preserve rather than disrupt
5 the status quo. Ordinary transaction expenses and voluntary integration planning do not
6 constitute prejudice caused by Plaintiffs.

7
8 61. On July 20, 2026, in the related action brought by twelve States challenging the
9 same proposed acquisition, this Court entered a temporary restraining order preventing
10 Paramount and Warner Bros. Discovery from consummating the transaction. The Court found
11 that the States had made a strong showing that the transaction would substantially lessen
12 competition in wide-release theatrical film distribution and had, at minimum, raised serious
13 questions going to the merits of their Section 7 claim.

14
15 62. The Court further found that consummation would be difficult, if not impossible,
16 to unwind due to anticipated consolidation of operations, the sharing of business-sensitive
17 information, and the potential termination or reassignment of employees. Pre-closing relief
18 therefore preserves the independent competitive structure while the legality of the transaction is
19 adjudicated.
20

21 **RELEVANT MARKETS AND ANTICOMPETITIVE EFFECTS**

22 **A. Direct-to-Consumer (“DTC”) Subscription Streaming Market**

23 63. The relevant product market is the distribution of premium film and television
24 programming to United States consumers through paid, direct-to-consumer subscription
25 streaming services (the “Direct-to-Consumer Subscription Streaming Market”). Participants
26 include Paramount+, HBO Max, Netflix, Disney+, Hulu, Apple TV+, Amazon Prime Video, and
27 comparable paid subscription services.
28

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64. These services compete for consumers' limited subscription budgets and viewing time through price, tiers, discounts, free trials, advertising load, bundles, library depth, exclusive programming, release cadence, genre and budget variety, interface quality, and the ability to subscribe, cancel, and rotate among services.

65. Short-form user-generated video, social-media video, free broadcast programming, physical media, and theatrical exhibition are not reasonably interchangeable substitutes for a paid, on-demand library of professionally produced premium film and television programming.

66. The relevant geographic market is the United States because services are marketed and priced nationally, content rights are negotiated subject to United States territorial restrictions, and the material competitive conditions are substantially national.

67. Consumers determine competitive success in this market through their subscription payments, retention decisions, cancellations, upgrades, downgrades, viewing time, and engagement. Streaming services therefore compete not only to acquire subscribers, but to retain their recurring payments and viewing attention over time.

**i. Effects and Threatened Effects of Skydance's Acquisition of
Paramount Global in the DTC Market**

68. Before Skydance acquired Paramount, Skydance independently supplied premium programming to competing services, including Netflix, Apple TV+, and Amazon Prime Video. Its productions included *Grace and Frankie*, *The Old Guard 2*, *Spellbound*, *Foundation*, *Luck*, *The Gorge*, *Reacher*, *Cross*, and *Balls Up*.

69. The completed acquisition eliminated Skydance as an independent supplier and placed its development, financing, licensing, exclusivity, windowing, and platform-allocation

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1 decisions under the same corporate control as Paramount+. Following the acquisition,
2 Skydance's production assets and development pipeline were placed under the same corporate
3 control as Paramount+. Skydance's animation operations were integrated with Paramount
4 Animation, and Skydance's film and television productions became available for coordinated
5 development and distribution across Paramount's platforms.
6

7 70. Premium film and television programming is differentiated by title, franchise,
8 cast, creative personnel, genre, audience recognition, exclusivity, and consumer demand. A
9 streaming service that loses timely or favorable access to a particular Skydance-produced series
10 or film cannot obtain an identical substitute from another producer.
11

12 71. Skydance programming was competitively significant to streaming rivals because
13 differentiated films and television series help those services attract and retain subscribers,
14 increase viewing, and distinguish their offerings.
15

16 72. The acquisition placed control over Skydance's development, licensing,
17 exclusivity, windowing, and platform-allocation decisions in the same firm that controls
18 Paramount+. Paramount therefore can determine whether, when, for how long, on what terms,
19 and with what degree of exclusivity Skydance programming is made available to streaming
20 services that compete with Paramount+.
21

22 73. Paramount need not deny competing streaming services access to Skydance
23 programming to weaken their ability to compete. It can reserve programming for Paramount-
24 controlled platforms, delay or shorten rival access, alter exclusivity or licensing terms, or
25 otherwise make rival access less timely or valuable.
26

27 74. The acquisition also changes the economic incentives governing those decisions.
28 Before the acquisition, Skydance could benefit by supplying programming to competing

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distributors according to the value of the production, licensing, or distribution opportunity. After the acquisition, the combined company may also consider whether providing programming to a competing streaming service strengthens that service's position relative to Paramount+.

75. Paramount+ competes with the streaming services for which Skydance supplied programming, including subscriptions, consumer spending, and viewing time. Paramount can therefore benefit if restricting or worsening rivals' access to differentiated Skydance programming makes those services less attractive and shifts consumer demand toward Paramount+.

76. Marazzo and Rubinsohn had subscribed to Paramount+ since approximately 2021. Before August 7, 2025, each purchased Paramount+ from independently managed Paramount Global. When Skydance completed the acquisition, it obtained control over Paramount+, including its prices, tiers, discounts, promotions, free trials, programming expenditures, and distribution strategy.

77. Following the acquisition, the new management adopted a direct-to-consumer strategy emphasizing increased average revenue per user, reduced reliance on low-margin subscriptions, retirement of free trials, and review of discounting practices.

78. In a shareholder letter filed with the Securities and Exchange Commission on November 10, 2025, Paramount Skydance announced that it would increase Paramount+ prices in the United States during the first quarter of 2026 and identified increased average revenue per user and subscriber monetization as components of its post-acquisition direct-to-consumer strategy.

79. The post-acquisition price increase provides a concrete example of the change in economic incentives that follows an acquisition. Skydance acquired control over Paramount+

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pricing and consumer terms; the new management adopted a monetization strategy emphasizing increased average revenue per user; Paramount announced and implemented the price increase; and Marazzo and Rubinsohn paid the resulting higher charges.

80. The acquisition may substantially lessen competition in the Direct-to-Consumer Subscription Streaming Market even though Skydance did not itself operate a competing subscription-streaming service before the acquisition. The transaction gives Paramount+ control over differentiated programming that its streaming rivals use to compete, permitting the combined firm to limit or worsen rivals' access to that programming and thereby reduce the competitive constraints those rivals impose on Paramount+.

81. Weakening those rivals reduces the competitive constraints they impose on Paramount+, which in turn permits Paramount to charge higher subscription prices, reduce discounts or promotional terms, and increase advertising, or otherwise reduce the economic value offered to consumers. *See* 2023 Merger Guidelines, Guideline 5 (explaining that a merger may substantially lessen competition when it gives a market participant control over a product or service its rivals use to compete and creates the ability and incentive to limit rivals' access); *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 592-95 (1957) (Section 7 reaches a vertical acquisition that places control over a competitively significant input or source of supply in a firm positioned to restrict competition in the market in which that input is used).

ii. Threatened Effects of Paramount's Proposed Acquisition of Warner Bros. Discovery in the DTC Market

82. Paramount Skydance owns and operates Paramount+, and Warner Bros. Discovery owns and operates HBO Max. Both are nationwide, paid, direct-to-consumer subscription streaming services that offer consumers on-demand access to professionally

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1 produced films and television programming through recurring subscription plans, including ad-
 2 supported and higher-priced premium tiers. Paramount+ distributes programming from
 3 Paramount, CBS, Showtime, and related libraries and franchises, while HBO Max distributes
 4 programming from HBO, Warner Bros., DC, and other Warner Bros. Discovery properties. The
 5 two services compete for consumers who decide whether to subscribe, remain subscribed,
 6 cancel, upgrade, downgrade, or allocate their subscription spending and viewing time to
 7 competing streaming services.

8
 9 83. Paramount+ and HBO Max presently operate under separate ownership and must
 10 each maintain a programming slate capable of attracting and retaining subscribers and
 11 independently justifying the price of that service. Separate ownership therefore creates ongoing
 12 competitive pressure on each company to invest in original series, films, library content, release
 13 cadence, programming variety, promotional terms, and other features that enhance the service's
 14 value to consumers.

15
 16 84. That competition occurs directly at the consumer level. Paramount+ and HBO
 17 Max compete for recurring subscription payments, viewing time, and retention by offering
 18 differentiated programming at independently determined prices and terms. A consumer
 19 dissatisfied with the price, programming, advertising load, or overall value of one service may
 20 cancel it, reduce spending on it, or allocate that spending and viewing time to the other or to
 21 another competing subscription service.

22
 23 85. The proposed acquisition would eliminate that independent rivalry and may
 24 substantially lessen competition by placing Paramount+ and HBO Max under common
 25 ownership. The combined firm would no longer face the same economic consequence when a
 26 consumer shifts subscription spending or viewing time between Paramount+ and HBO Max
 27
 28

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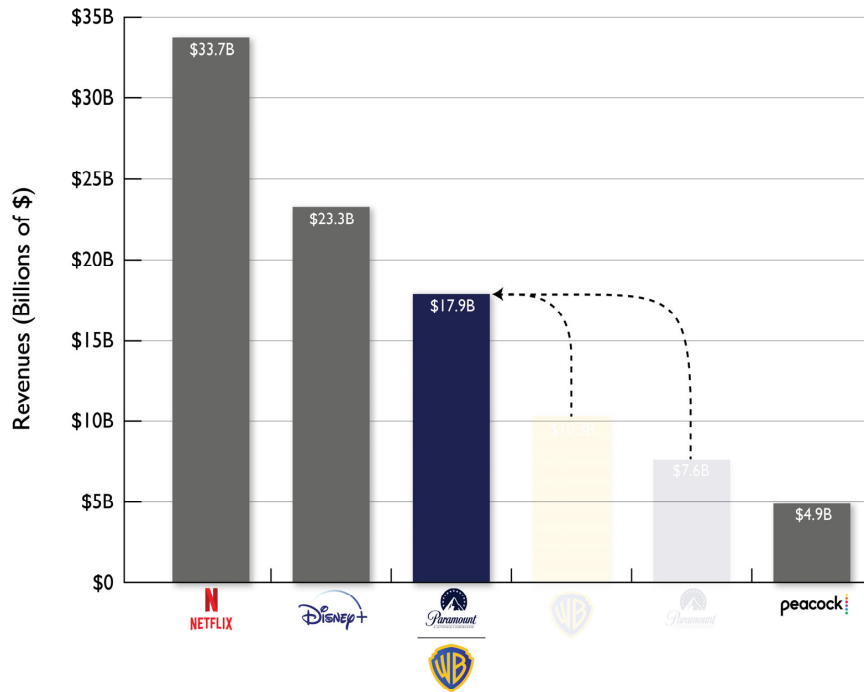
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1 because the same company would own both services. Common ownership therefore reduces the
2 incentive for each service to improve independently on price, programming, promotional terms,
3 quality, and other attributes to win or retain consumers from the other.
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86. Before the proposed transaction, Warner Bros. Discovery's United States streaming revenue was approximately \$10.3 billion, and Paramount's was approximately \$7.6 billion. Combining them would place approximately \$17.9 billion in streaming revenue under common control.

Domestic Rankings of Top U.S. Video Streaming Services Revenues (Post-Merger)

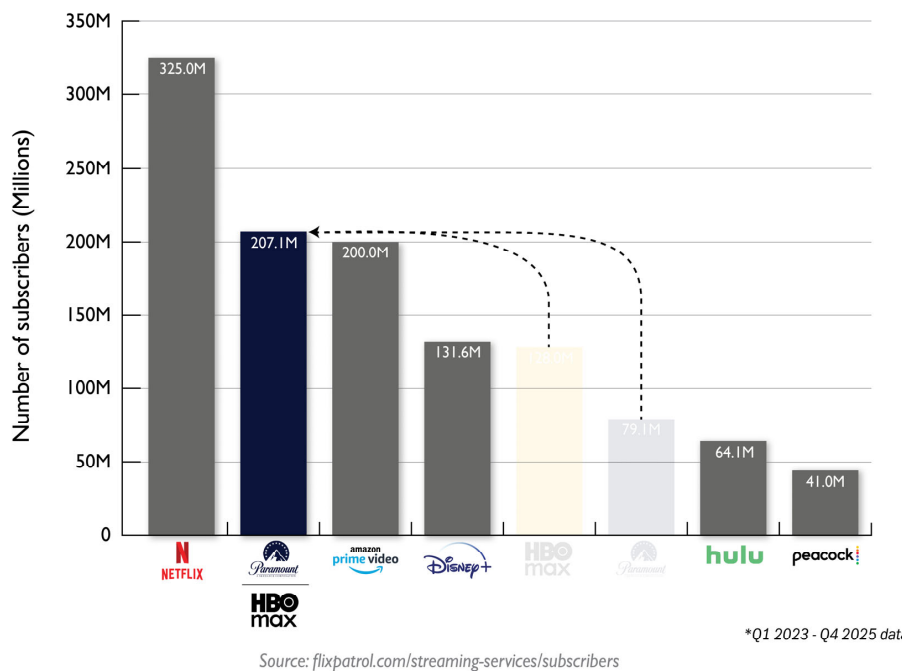


Source: hollywoodreporter.com

3

87. HBO Max had approximately 128 million subscribers and Paramount+ approximately 79.1 million subscribers. Their combination would place approximately 207.1 million gross subscriptions under a single owner, subject to adjustment for overlapping subscribers.

Domestic Rankings of Top U.S. Video Streaming Services Number of Subscribers (Post-Merger)



88. The admitted subscriber overlap identifies consumers who currently purchase both services and whose two recurring purchases will be combined under a single seller. That overlap is evidence of direct competition, not a reason to disregard the loss of rivalry.

89. The proposed acquisition would permit Paramount to replace independently priced services with an integrated or bundled product, increase the aggregate price of accessing both libraries, eliminate overlapping discounts and free trials, increase advertising, and move

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desired programming into higher-priced tiers. It would also place Paramount+'s and HBO Max's programming decisions under common control, allowing the combined company to reduce programming that previously existed to make each service independently competitive, eliminate projects regarded as duplicative across the two services, and reduce aggregate content expenditures without risking the loss of subscribers from one independently owned service to the other.

90. Ellison's own description of the transaction demonstrates its extraordinary scale. He acknowledged that Paramount and Warner Bros. Discovery together would account for nearly 20 percent of all American television viewing time. Even under Ellison's broader measure, which includes forms of viewing outside the Direct-to-Consumer Subscription Streaming Market alleged here, his admission places nearly one-fifth of American television viewing under common ownership and control. Section 7 has prohibited acquisitions involving combined shares far below that level. *See United States v. Pabst Brewing Co.*, 384 U.S. 546, 550-52 (1966) (holding that the merger of two competing brewers violated Section 7 where their combined national sales accounted for only approximately 4.49 percent of the market, in light of the continuing concentration of the brewing industry and the elimination of an independent competitor); *United States v. Von's Grocery Co.*, 384 U.S. 270, 272-78 (1966) (holding that the merger of two competing Los Angeles grocery chains violated Section 7 where their combined share was approximately 7.5 percent, against a background of declining independent competitors and increasing concentration).

91. Ellison's assertion that Paramount requires greater "scale" and "resources" to compete with Netflix, Amazon, and Apple does not justify eliminating Warner Bros. Discovery as an independent competitor. The Supreme Court rejected the same type of defense in *United*

1 *States v. Philadelphia National Bank*, 374 U.S. 321, 370-71 (1963), where the merging banks
 2 argued that the combination would create a larger institution with greater lending capacity and
 3 prestige that could compete more effectively against much larger out-of-state banks. The Court
 4 held that the proposed consolidation could not be justified on that basis. *Id.* (rejecting the
 5 argument that a merger creating a larger local bank was justified because the combined firm
 6 would be better able to compete with large New York banks for major customers and loans).
 7 Section 7 protects the existing competition between independent firms; a defendant cannot
 8 justify eliminating that competition merely by asserting that the resulting larger company will
 9 compete more effectively against still larger rivals.
 10
 11

12 **B. Paid National Television News Market**

13 92. A relevant product market is nationally distributed television news programming
 14 supplied to consumers through paid cable, satellite, and live-TV streaming packages in the
 15 United States (the “Paid National Television News Market”). CNN and CBS News compete for
 16 viewers, advertising, journalists, sources, reputation, and consumer trust.
 17

18 93. National television news is distinguished by nationwide newsgathering capacity,
 19 correspondents and bureaus, institutional credibility, original reporting, and nationally distributed
 20 programming.
 21

22 94. National television news programming supplied through paid television packages
 23 is not reasonably interchangeable with local television news, newspapers, radio, podcasts, social-
 24 media posts, or digital written journalism. Those products may provide information about some
 25 of the same events; however, they do not provide the same combination of nationwide
 26 audiovisual newsgathering, correspondents and bureaus, immediate live coverage of national and
 27 international events, studio programming, interviews, continuous or regularly scheduled national
 28 television presentation, and institutional television-news production.

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95. Consumers may obtain national television news alongside newspapers, websites, radio, podcasts, or social media sources without treating those products as substitutes. The simultaneous use of multiple sources reflects differentiation among news products rather than interchangeability. A consumer seeking live, nationally distributed television coverage of a breaking national or international event cannot obtain the same product merely by substituting a newspaper, local newscast, radio program, or social media feed.

96. CNN and CBS News compete notwithstanding differences in the precise schedules and distribution methods of particular programs. They compete for national audiences, journalists, sources, exclusive reporting, reputation, distribution, and investment in newsgathering and programming. Those competitive decisions determine the quantity, quality, differentiation, and value of the national television news programming ultimately supplied to consumers through paid television services.

97. The relevant geographic market is the United States because distribution, branding, carriage, advertising, and competitive effects are national in scope.

98. The completed Skydance-Paramount acquisition provides a concrete example of how changes in corporate control can affect the competitive attributes of national television news, including editorial independence, reporting decisions, staffing, credibility, and audience trust. Those attributes are not abstract political interests. They affect the quality and value of the news product supplied to viewers, as well as consumers' willingness to choose, watch, and continue relying on a particular news organization.

99. During the regulatory review of the Skydance-Paramount transaction, CBS's flagship news program, 60 Minutes, experienced an unusual conflict with Paramount management over editorial independence. In April 2025, 60 Minutes Executive Producer Bill

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Owens resigned after concluding that he no longer had the independence necessary to run the program as he believed journalism required. Paramount had imposed additional review of 60 Minutes stories before broadcast while Paramount was simultaneously seeking regulatory approval of the Skydance transaction and defending litigation brought by President Trump concerning a 60 Minutes interview with then-Vice President Kamala Harris.

100. The conflict was sufficiently serious that longtime *60 Minutes* correspondent Scott Pelley addressed viewers on the program itself. Pelley explained that Paramount had begun supervising *60 Minutes* stories in new ways and stated that Owens believed he had lost the independence that honest journalism required. Pelley told the audience that “none of us is happy” about the additional corporate supervision.

101. The dispute extended beyond *60 Minutes*. In May 2025, CBS News Chief Executive Officer Wendy McMahon resigned, stating that she and the company no longer agreed on the path forward. McMahon, like Owens, had opposed settling President Trump’s lawsuit concerning the *60 Minutes* interview. Paramount subsequently agreed to pay \$16 million to resolve that litigation while the Skydance acquisition remained subject to federal regulatory approval.

102. Skydance’s acquisition of Paramount Global occurred amid substantial political and regulatory pressure related to Paramount’s news and entertainment properties. During the regulatory review period, President Trump maintained litigation against CBS arising from a 60 Minutes interview, while Paramount required Federal Communications Commission approval for broadcast license transfers necessary to complete the acquisition. Paramount ultimately paid \$16 million to settle President Trump’s lawsuit during that approval period. On information and belief, Paramount’s decision to resolve that litigation was influenced by its need to secure

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1 governmental approval of the Skydance transaction. The alleged use of media and editorial
 2 interests to obtain political or regulatory support resembles the political “horse trading”
 3 described in *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1209 (N.D. Cal. 2000), where
 4 evidence showed that favorable editorial treatment was offered in exchange for political support
 5 for an acquisition and that the transaction was pursued in the form selected because it was
 6 believed necessary to obtain political and regulatory approval. On information and belief,
 7 Paramount’s \$16 million settlement of President Trump’s lawsuit was a quid pro quo intended to
 8 secure federal regulatory approval of Skydance’s acquisition of Paramount Global.

10
 11 103. The political pressure surrounding the transaction also extended to The Late Show
 12 with Stephen Colbert. After Paramount settled President Trump’s lawsuit, CBS announced that it
 13 would not renew The Late Show. Colbert was a prominent critic of the Trump Administration
 14 and had publicly criticized Paramount’s settlement of President Trump’s lawsuit, including
 15 referring to the settlement on air as a “big fat bribe.” On information and belief, CBS’s decision
 16 to cancel or terminate The Late Show with Stephen Colbert was influenced by Colbert’s
 17 criticism of President Trump and Paramount’s settlement while Paramount was seeking
 18 regulatory approval of the Skydance acquisition. Plaintiffs allege these circumstances as further
 19 evidence that control over Paramount’s media properties was subject to political pressure
 20 connected to the transaction rather than solely ordinary competitive and editorial considerations.

22
 23 104. The FCC thereafter approved the broadcast-license transfers associated with
 24 Skydance’s acquisition by a 2-1 vote. The dissenting commissioner characterized the agency’s
 25 involvement and the conditions associated with approval as “unprecedented” and identified
 26 requirements affecting CBS News governance and newsroom decision-making. CBS also agreed
 27 to appoint an ombudsperson to receive and evaluate complaints concerning bias and related
 28

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1 matters. The acquisition closed on August 7, 2025, after Paramount settled President Trump's
 2 lawsuit; CBS announced the end of Colbert's program following his criticism of that settlement;
 3 and the FCC approved the license transfers, subject to conditions affecting CBS News
 4 governance and corporate policy. Plaintiffs allege that these events reflect the same type of
 5 transaction-related political influence identified in *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192,
 6 1209 (N.D. Cal. 2000), and demonstrate how common ownership can expose national news
 7 operations to centralized political and regulatory pressure.

9 105. After Skydance acquired Paramount, the new ownership materially changed CBS
 10 News management, acquired The Free Press, and appointed its founder, Bari Weiss, editor-in-
 11 chief of CBS News.

13 106. The acquisition of The Free Press was negligible in scale compared with the CBS
 14 News operation over which its founder was immediately given authority. The Free Press had
 15 approximately 170,000 paid subscribers when Paramount acquired it and lacked CBS News's
 16 national broadcast infrastructure, newsgathering operations, bureaus, correspondents, and
 17 institutional reach. The commercial significance of the transaction therefore cannot be
 18 understood merely as Paramount adding another substantial national news competitor to its
 19 portfolio. Paramount used the acquisition of a comparatively small digital publication to install
 20 its founder as editor-in-chief of CBS News and transfer substantial editorial authority over an
 21 established national television-news organization to the new owner's chosen editor. Weiss was
 22 given authority over CBS News and *60 Minutes*, and Paramount publicly stated that she had the
 23 support of Paramount and David Ellison as the editorial leader overseeing both.

26 107. The consequences were not limited to changes in titles or reporting lines. In
 27 December 2025, CBS News withheld a scheduled *60 Minutes* investigative report concerning
 28

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1 allegations of abuse suffered by men deported by the Trump Administration to a prison in El
2 Salvador. Weiss stated that the report required additional administration comment before
3 broadcast. The decision sparked an internal and public dispute over 60 Minutes' editorial
4 independence.

5
6 108. The conflict continued in 2026. CBS removed or declined to retain several
7 prominent *60 Minutes* journalists and producers, including Scott Pelley, Sharyn Alfonsi, Cecilia
8 Vega, and senior production personnel. Alfonsi publicly alleged that CBS had penalized her for
9 resisting efforts to alter factually accurate reporting. At the same time, the remaining
10 correspondents, Lesley Stahl, Bill Whitaker, and Jon Wertheim, stated that they were "deeply
11 upset" by the dismissals and would remain with the program to protect its independence and
12 integrity.

13
14 109. During the same period, reported consumer trust in CBS News declined sharply.
15 Data from the 2026 Reuters Institute Digital News Report, based on its United States brand-trust
16 results, showed that trust in CBS News fell from approximately 48 percent in 2025 to 38 percent
17 in 2026, while the share reporting that they did not trust CBS News increased from
18 approximately 30 percent to 39 percent.

19
20 110. The experience at CBS News therefore provides evidence of the competitive
21 significance of preserving independent ownership of national news organizations. Corporate
22 control can affect which investigations are pursued, what stories are broadcast, who makes
23 editorial decisions, how much is invested in reporting and staffing, and whether viewers continue
24 to trust the resulting product. The proposed acquisition would now place CNN and CBS News
25 under the same corporate owner, eliminating an independent newsroom owner and allowing a
26 single management structure to influence the competitive attributes of both organizations.
27
28

111. Plaintiffs who pay for television packages containing CNN, CBS News, and competing national television news programming purchase a product whose value depends in part on original reporting, journalistic independence, credibility, staffing, live coverage, and consumer trust. The deterioration of those attributes reduces the quality and economic value of the programming included in the packages Plaintiffs pay for. The threatened injury is therefore not disagreement with editorial viewpoint. It is the loss of competitive attributes of a product Plaintiffs themselves purchase.

C. Consumer Market for First-Run Theatrical Motion Pictures

112. A relevant product market is the sale of admission to differentiated first-run theatrical motion pictures to consumers in the United States (the “Consumer Market for First-Run Theatrical Motion Pictures”). Studio-distributors compete through the films they greenlight, finance, produce, market, license, and release for purchase through theatrical exhibitors.

113. Home streaming is not a reasonable substitute for first-run theatrical admission for consumers seeking the initial theatrical release of a film. The theatrical product provides time-sensitive access during the theatrical window, along with large-screen presentation, premium sound, premium formats, communal viewing, and an event experience that later home viewing cannot reproduce. Consumers who value those attributes may later stream the same film without treating later home viewing as a substitute for the initial theatrical experience.

114. A deterioration in the price, availability, variety, or quality of first-run theatrical offerings would not lead to sufficient substitution into later home streaming to eliminate competition for first-run theatrical attendance. The temporary nature of the theatrical window itself prevents later streaming from replacing contemporaneous access to a film during its first-run theatrical release.

115. The market contains finite screens, premium-format auditoriums, release dates,

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1 and peak-period showtimes. Separate studios compete through output, slates, genre and budget
2 diversity, release timing, marketing, windowing, and placement.

3 116. Theatrical competition also occurs on a finite annual release calendar. Paramount
4 and Warner Bros. Discovery presently make independent decisions concerning which films to
5 release, when to release them, and whether to compete directly for the same audiences during
6 valuable theatrical windows. That rivalry creates incentives to improve films, marketing, release
7 strategies, and audience appeal because each studio can take sales from the other.
8

9 117. Common ownership changes that incentive. A single owner has less reason to
10 release two of its own films against one another during the same theatrical window because the
11 films may cannibalize the combined company's own box-office receipts. The acquisition
12 therefore creates an incentive to separate formerly competing releases, eliminate overlapping
13 projects, and reduce the number of release weekends contested by independently owned studios.
14

15 118. The relevant geographic market is the United States because wide-release
16 calendars, marketing campaigns, licensing, and exhibitor negotiations are planned nationally.
17

18 119. The Disney acquisition of 21st Century Fox illustrates the effect of placing
19 competing theatrical slates under common ownership. Before that acquisition, Disney and Fox
20 together released an average of approximately 25.6 wide-release films per year. After the
21 acquisition, that figure fell to approximately 12.6 wide releases per year, excluding the pandemic
22 years.
23

24 120. The reduction was particularly pronounced at the acquired studio. During the
25 decade preceding the acquisition, 20th Century Fox released approximately 15 films annually,
26 with the majority of them original. After the acquisition, Disney released approximately 5 films
27 annually under the 20th Century Studios label, most of which were franchise films or legacy Fox
28

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properties.

121. Disney also eliminated entire sources of differentiated theatrical output. It closed Fox 2000, which had specialized in mid-budget original adult dramas and literary adaptations, and shuttered Blue Sky Studios, Fox's animation studio, while absorbing its intellectual property into Disney's existing operations. The transaction therefore reduced not only aggregate output but also independent sources of original, mid-budget, and differentiated films.

122. The Disney-Fox experience therefore provides a factual example of how common ownership reduces independently determined theatrical output and eliminates differentiated sources of film production.

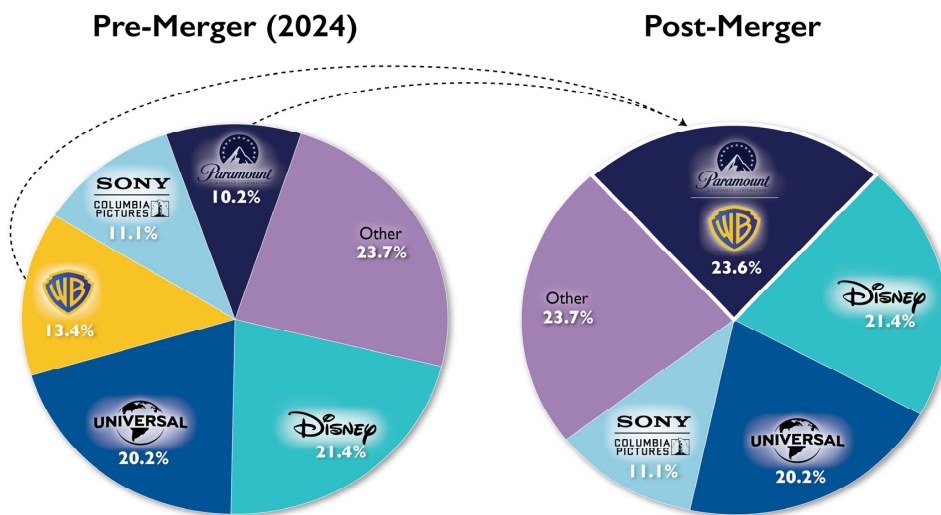
123. Increased concentration among major studios also creates incentives to concentrate investment in lower-risk, franchise-driven films at the expense of original, mid-budget, and creatively differentiated films. The loss of an independent studio, therefore, threatens more than just the aggregate title count. It eliminates the need for a separate set of greenlight criteria, development priorities, and creative strategies that govern which films reach consumers. Maintaining separate studio labels after an acquisition does not preserve that competition.

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124. If Paramount acquires Warner Bros. Discovery, Paramount and Warner Bros. would combine into a single firm with approximately 23.6% market share, making the combined Paramount/Warner Bros. entity the largest studio shown in the chart. The post-merger top four studios would be Paramount/Warner Bros. at approximately 23.6%, Disney at approximately 21.4%, Universal at approximately 20.2%, and Sony/Columbia at approximately 11.1%, for a combined top-four share of approximately 76.3%. The proposed transaction, therefore, would not merely combine two studios; it would increase top-four concentration by approximately 10.2 percentage points and eliminate Paramount as an independent studio competitor.¹

Market Share of Motion Picture Studios In U.S. and Canada



Source: statista.com

7

¹ The presently available market-share data report theatrical box-office performance for the United States and Canada together. Plaintiffs rely on those publicly available figures because the more granular transaction-specific data necessary to calculate precise United States shares are principally within Defendants' possession. The publicly available figures nevertheless plausibly demonstrate the substantial scale of the combination and the elimination of Paramount and Warner Bros. Discovery as independent theatrical competitors.

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1 125. Ellison admits that the combined company would account for approximately 18
2 percent of domestic box office over the preceding twelve months and approximately 22 percent
3 over two years. Those admissions confirm a substantial existing share under Paramount's own
4 measure.

5
6 126. Ellison has stated that the combined company intends to release at least 30
7 theatrical films annually. That 30-film projection is extremely unrealistic. In 2025, Warner Bros.
8 released approximately 11 theatrical films, and Paramount released approximately 9. No single
9 studio has produced and distributed more than approximately 20 theatrical films in a single
10 recent calendar year. Since 2022, Paramount has released approximately eight to nine major
11 theatrical films per year, while Warner Bros. has released approximately ten to twelve. Their
12 recent combined output therefore has generally been approximately 18 to 21 major theatrical
13 releases annually, well below the 30 releases Ellison projects after the acquisition. Reaching 30
14 annual releases would therefore require the combined company not merely to preserve the
15 studios' existing output, but also to materially expand it, despite the reduced incentive to release
16 films that compete with other titles owned by the same company.

17
18
19 127. Current release plans provide another concrete example of head-to-head
20 competition that common ownership could diminish. Paramount is scheduled to release *Street*
21 *Fighter* on October 16, 2026, just one week before Warner Bros. Discovery releases DC Studios'
22 *Clayface* on October 23. Both are major franchise-based films aimed at overlapping action and
23 genre audiences during the same theatrical period. While Paramount and Warner Bros. remain
24 independent, each has an incentive to compete for those moviegoers through film quality,
25 marketing expenditures, release placement, premium-format screens, and audience appeal.
26 Common ownership would reduce the incentive to position two films seeking substantially the
27
28

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1 same audience in directly competing release windows.

2 128. Paramount and Warner Bros. Discovery also compete independently over the
3 terms and placement through which their films reach moviegoers. They negotiate with exhibitors
4 concerning box-office revenue splits, minimum ticket prices, discounting, complimentary tickets,
5 exclusivity periods, release dates, screen allocation, and premium-format placement. Separate
6 ownership gives exhibitors alternatives and incentivizes each studio to secure superior placement
7 for its own films.

8
9 129. Entry or expansion by smaller studios would not be timely enough to replace the
10 competition eliminated by the acquisition. Wide theatrical release at scale requires established
11 relationships with theater chains, coordinated nationwide screen allocation and release planning,
12 substantial marketing infrastructure, and sufficient capital to absorb large production and
13 marketing expenditures when a film underperforms.

14
15 130. Those barriers are greater for anticipated top-grossing films. Sustaining a slate of
16 such films commonly requires valuable franchise intellectual property, large-scale production
17 and visual effects resources, established marketing capabilities, international distribution
18 relationships, and an ancillary revenue infrastructure involving licensing and merchandising.
19 Those capabilities have been developed over many years and cannot be replicated quickly in
20 response to Warner Bros. Discovery's elimination as an independent studio competitor.

21
22 131. Streaming-focused firms do not provide a complete substitute for the theatrical
23 competition eliminated by the transaction. Netflix generally distributes films through its
24 subscription platform rather than through sustained wide theatrical release. Apple lacks a
25 proprietary theatrical distribution operation and produces a materially smaller theatrical slate.
26 Amazon has historically emphasized streaming or limited theatrical releases and has relied on
27
28

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1 third parties for portions of theatrical distribution. Those firms therefore do not replicate the
2 nationwide theatrical production and distribution capabilities of Paramount and Warner Bros.
3 Discovery.

4 132. The acquisition would also increase the likelihood of coordination among the
5 remaining major studio-distributors. Major theatrical release schedules are unusually transparent
6 because studios publicly announce release dates months or years in advance. A studio's decision
7 to move a major release into or out of another studio's release window is therefore readily
8 observable to competitors.
9

10 133. Reducing the number of independent major studios makes it easier for the
11 remaining firms to avoid competing release windows, detect deviations from established release
12 patterns, and accommodate one another's major releases. With four studios accounting for
13 approximately 93 percent of the box-office revenue generated by films released in more than
14 3,000 theaters, reduced rivalry may diminish the competitive pressure to increase output, develop
15 differentiated films, and compete aggressively during desirable release windows.
16

17 134. For the reasons alleged above, the transaction threatens Plaintiffs with reduced
18 theatrical output, variety, independently developed slates, contested release windows, and
19 meaningful ticket-purchasing alternatives.
20

21 ARTICLE III STANDING

22 A. Completed Skydance-Paramount Acquisition

23 135. Marazzo and Rubinsohn have subscribed to Paramount+ since approximately
24 2021. Before August 7, 2025, each purchased Paramount+ from independently managed
25 Paramount Global. On August 7, 2025, Skydance acquired Paramount Global, ending Paramount
26 Global's independent control of Paramount+ and placing the service's prices, tiers, discounts,
27 promotions, free trials, programming expenditures, and distribution strategy under Skydance's
28

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control.

136. The new management announced a coordinated direct-to-consumer strategy emphasizing profitability, free cash flow generation, increased average revenue per user, reduced reliance on low-margin subscriptions, the retirement of free trials, and a review of discounting practices.

137. On November 10, 2025, only about three months after Skydance acquired Paramount Global, Paramount Skydance announced that it would increase Paramount+ prices in the United States in the first quarter of 2026. The short interval between the acquisition, the new management's adoption of its monetization strategy, and the announced price increase supports the inference that the increase was part of the post-acquisition change in pricing and monetization policy.

138. Paramount implemented the announced increase effective January 15, 2026. The Essential monthly price increased from \$7.99 to \$8.99, approximately 12.5 percent, and the Premium monthly price increased from \$12.99 to \$13.99, approximately 7.7 percent. Marazzo and Rubinsohn paid the increased charges.

139. The causal chain is direct and plausible: Skydance acquired Paramount; Skydance obtained control over Paramount+ pricing and consumer terms; the new management adopted and disclosed a strategy emphasizing average revenue per user, profitability, reduced discounts, and retired trials; the new management announced the increase; Paramount implemented it; and Marazzo and Rubinsohn paid it directly. The post-acquisition price increase is a concrete manifestation of the lessening of competition resulting from the acquisition. By placing Paramount+ and Skydance's programming assets under common control, the transaction altered the combined firm's incentives for pricing, monetization, licensing, and distribution of

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1 Paramount+ and Skydance programming.

2 140. Other streaming companies' price increases did not set Paramount+'s prices or
3 compel Paramount to raise its prices. General industry pricing pressure does not sever the fairly
4 traceable connection between the acquisition-related transfer of control, the post-acquisition
5 monetization strategy, and the increased Paramount+ charges paid by Plaintiffs.

6 141. Paramount's disclosures later reported increased average revenue per user on
7 Paramount+ and confirmed that subscriber monetization was an intended component of the post-
8 acquisition strategy. Marazzo's and Rubinsohn's monetary injuries are concrete, particularized,
9 fairly traceable to the completed acquisition, and redressable by damages and appropriate
10 structural relief.
11

12 **B. Proposed Paramount-Warner Bros. Discovery Acquisition**

13 142. Marazzo and Rubinsohn presently subscribe to both Paramount+ and HBO Max
14 and intend to continue subscribing to paid subscription-streaming services, including
15 Paramount+ and HBO Max. Each makes recurring payments for both products, whose
16 independent competition the proposed acquisition would eliminate. Each separately evaluates the
17 price, programming, advertising load, promotional terms, quality, and overall value of
18 Paramount+ and HBO Max in deciding whether to retain, cancel, downgrade, upgrade, or
19 substitute one service for another.
20

21 143. Paramount+ and HBO Max presently operate under separate ownership and
22 independently compete for Marazzo's and Rubinsohn's recurring subscription payments and
23 viewing time.
24

25 144. The proposed acquisition will eliminate that independent rivalry by placing
26 Paramount+ and HBO Max under common ownership and control.
27

28 145. The threatened injuries do not depend upon the discretionary conduct of an

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1 independent third party. Paramount itself will obtain authority to change the terms on which
2 Marazzo and Rubinsohn purchase Paramount+ and HBO Max and will no longer face the
3 competitive constraint created by independent ownership.

4 146. The threatened injuries are concrete economic injuries to the products Marazzo
5 and Rubinsohn regularly purchase. Paying more for the same subscription product, paying the
6 same amount for less programming or lower quality, losing discounts or promotional terms,
7 receiving more advertising, receiving fewer new programs, or receiving a narrower or less
8 differentiated library each reduces the economic value received in exchange for their
9 subscription payments.
10

11 147. Those threatened injuries are imminent rather than conjectural. The transaction
12 has received stockholder approval, is financed, and is being pursued with stated objectives that
13 include integration, monetization, cost reductions, synergies, and deleveraging. Marazzo and
14 Rubinsohn presently purchase both affected services and intend to continue those purchases.
15

16 148. The completed Skydance-Paramount acquisition, as alleged above, provides
17 additional factual support for the threatened injury from placing HBO Max under the same
18 management.
19

20 149. Plaintiffs' threatened injuries do not depend on Paramount announcing before
21 consummation a particular future subscription increase, program cancellation, newsroom
22 reduction, or the elimination of a theatrical project. The transaction itself transfers presently
23 independent pricing, programming, investment, greenlight, and release decisions to a common
24 owner and eliminates the competitive constraint created by independent ownership. The precise
25 consumer-facing decisions through which that reduction in competition will manifest cannot be
26 known before the firms combine their operations; however, the elimination of the independent
27
28

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1 competitive incentives alleged above follows directly from consummation.

2 150. An injunction preventing consummation would prevent the ownership
3 consolidation that threatens these injuries. Paramount+ and HBO Max would remain separate,
4 independently owned competitors, each with its own pricing, programming, promotional,
5 investment, and consumer-retention incentives. The requested relief therefore directly redresses
6 the threatened injuries to Marazzo and Rubinsohn.
7

8 **C. Paid National Television News Market**

9 151. Marazzo purchases DirecTV and Hulu + Live TV; McCarthy purchases
10 DirecTV's Ultimate package; Rubinsohn purchases Verizon FiOS, Hulu + Live TV, and Philo;
11 and Talewsky receives Hulu + Live TV through a T-Mobile package and purchases traditional
12 cable service. Each pays for access to nationally distributed television programming, regularly
13 watches national television news provided through those paid services, and intends to continue
14 purchasing paid packages that include CNN, CBS News, and competing national television news
15 programming.
16

17 152. These Plaintiffs are consumers of the national television news product whose
18 competitive attributes the challenged acquisition threatens to diminish. Cable, satellite, and live-
19 TV streaming providers are the distribution channels through which that programming is
20 delivered to paying consumers. Plaintiffs' injury therefore concerns the competitive attributes of
21 the national news programming they purchase, not an injury occurring only in an unrelated
22 market.
23

24 153. The acquisition will transfer CNN to Paramount and place CNN and CBS News
25 under a single corporate owner, giving Paramount direct authority over the competitive inputs of
26 both organizations.
27

28 154. Plaintiffs' threatened injury is not ideological disagreement with the viewpoint or

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editorial content of a news organization and is not a claim for a carriage-fee overcharge passed through an intermediary. Their injury is economic: they will continue paying for packages that contain a less competitive national news product if common ownership reduces original reporting, investigative output, staffing, live coverage, independence, credibility, differentiation, or other attributes for which they pay. The threatened reduction of those attributes will diminish the value of programming included in Plaintiffs' paid packages.

155. An injunction preventing the acquisition will preserve CNN and CBS News as separately owned organizations with independent budgets, personnel, programming, editorial structures, investment incentives, and incentives to compete for viewers. The threatened injury includes degradation of product attributes such as original reporting, investigative capacity, staffing, live coverage, independence, credibility, differentiation, and consumer trust. Those attributes have economic value to consumers who pay for packages containing national television news, even though the precise dollar value of a lost investigative unit, fewer correspondents, reduced newsroom staffing, diminished independence, or declining consumer trust cannot readily be isolated and calculated after the harm occurs. Preserving independent ownership before consummation therefore prevents an injury that would be difficult to reconstruct or adequately compensate after separate newsrooms, personnel, budgets, and reporting capabilities have been consolidated. *See Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1023 (9th Cir. 2016) (affirming preliminary injunctive relief against a proposed acquisition and holding that "[a] lessening of competition constitutes an irreparable injury" where the merger threatened to reduce competition in the relevant markets).

156. The threatened loss is heightened by the transaction's stated objective of achieving substantial synergies through integration and elimination of redundancies. Paramount

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1 has told investors that it is preparing to integrate Warner Bros. Discovery and expects significant
 2 benefits from operating the combined company more efficiently. At the same time, its SEC
 3 disclosures expressly identify the realization of merger synergies and successful integration of
 4 Warner Bros. Discovery as central transaction objectives. Those objectives create a foreseeable
 5 incentive to identify overlapping personnel, functions, facilities, programming, and operations
 6 for consolidation or elimination.

8 157. CNN and CBS News are precisely the type of separately operated organizations in
 9 which common ownership creates overlapping functions. Each maintains journalists, producers,
 10 editors, correspondents, bureaus, management, technical personnel, newsgathering operations,
 11 studios, and national programming. A transaction premised in part on integration, efficiency, and
 12 the elimination of redundancies creates a substantial risk that some of those independently
 13 maintained resources will be treated as duplicative after closing. The resulting consolidation
 14 could reduce the number of independently employed journalists, producers, editors,
 15 correspondents, bureaus, and investigative resources available to produce competing national-
 16 news products.

19 158. Once those independently maintained resources are eliminated, the competitive
 20 loss cannot necessarily be repaired by a later monetary award. A terminated investigative team
 21 cannot simply be recreated, departed journalists and sources cannot necessarily be reassembled,
 22 lost institutional knowledge cannot readily be restored, and diminished audience trust cannot be
 23 purchased back at a readily measurable price. Prospective relief preserving CNN and CBS News
 24 as independent competitors therefore directly prevents the threatened degradation of the product
 25 Plaintiffs purchase before those competitive attributes are lost.

27 159. Plaintiffs' injury does not depend on a cable, satellite, or live-TV distributor
 28

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1 passing through an increased carriage fee. Those distributors are the channels through which
 2 Plaintiffs receive and pay for national television news programming; they do not independently
 3 determine the amount of original reporting CNN or CBS News produces, the number of
 4 journalists or bureaus each maintains, whether investigative programs are funded or eliminated,
 5 or whether the two organizations remain independently controlled competitors. If common
 6 ownership reduces those competitive attributes, Plaintiffs receive a diminished product through
 7 the same distribution channel for which they continue to pay.

9 160. The threatened injury therefore reaches Plaintiffs without any necessary
 10 discretionary decision by the distributor. A cable or live-TV provider cannot restore an
 11 investigative report that the combined company does not fund, replace journalists or bureaus that
 12 the combined company eliminates, recreate competing newsroom judgment that common
 13 ownership removes, or restore independently produced programming that the combined
 14 company treats as duplicative. The loss occurs when the common owner reduces the competitive
 15 attributes of the national-news product, and that diminished product is then delivered to
 16 Plaintiffs.

17
 18
 19 161. Alternatively, even if the Court characterizes competition among national-news
 20 organizations as occurring at an upstream level from Plaintiffs' purchases of television packages,
 21 Plaintiffs' injury is inextricably intertwined with the threatened reduction in that competition.
 22 CNN and CBS News produce national news programming to attract and retain audiences,
 23 increase viewership, and generate economic returns driven by consumer demand. Plaintiffs are
 24 members of the audience Ellison himself identifies as the ultimate decisionmakers in the success
 25 of national news organizations. In defending the proposed acquisition, Ellison stated that "the
 26 audience, the American people, have the final say" in whether a news organization thrives or
 27
 28

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1 withers. A reduction in the quantity, quality, differentiation, independence, or credibility of the
2 programming available to Plaintiffs is therefore a direct and foreseeable consequence of
3 eliminating independent competition between CNN and CBS News. See *Blue Shield of Virginia*
4 *v. McCready*, 457 U.S. 465, 479-84 (1982) (allowing recovery by an insurance subscriber whose
5 injury was inextricably intertwined with the alleged restraint against psychologists, although she
6 was not herself a competitor in the restrained professional-services market).

8 **D. Consumer Market for First-Run Theatrical Motion Pictures**

9 162. Each Plaintiff regularly purchases admission to first-run theatrical motion pictures
10 in the United States and intends to make additional purchases following the proposed transaction.
11 Plaintiffs select among differentiated films based on genre, cast, director, franchise, quality,
12 reviews, release date, theater placement, showtime, premium-format availability, and other
13 attributes of individual films.

14 163. Plaintiffs therefore participate as purchasers in the Consumer Market for First-
15 Run Theatrical Motion Pictures alleged in this Complaint. They are not seeking relief for injury
16 suffered by a film studio, writer, exhibitor, distributor, or other third party. Their threatened
17 injury concerns the number, variety, quality, timing, and availability of the first-run theatrical
18 films for which Plaintiffs themselves purchase admission.

19 164. The proposed acquisition will place Paramount's and Warner Bros. Discovery's
20 independently made theatrical greenlight, production, slate, and release decisions under common
21 ownership.

22 165. The injury from those decisions reaches Plaintiffs without any necessary
23 intervening decision by an independent exhibitor. A theater cannot sell Plaintiffs admission to a
24 film that Paramount or Warner Bros. does not greenlight, cancels, does not produce, removes
25 from the theatrical slate, delays to avoid another release, or redirects to streaming. Once the
26
27
28

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combined studio eliminates the film or its theatrical release, the corresponding purchasing opportunity ceases to exist.

166. Plaintiffs therefore face threatened injury in the form of fewer purchasable films, fewer independently developed slates, reduced genre and budget variety, fewer competing releases directed toward the same audiences, reduced premium-format and showtime alternatives, and fewer meaningful choices among differentiated first-run theatrical products. Those injuries reduce the quantity, variety, quality, and economic value of products Plaintiffs regularly purchase.

167. The threatened injury is imminent because Plaintiffs regularly purchase first-run theatrical admission and intend to continue doing so. The transaction will combine the relevant studio decision-making authority upon consummation. Their injury does not depend on speculation about whether Plaintiffs will enter the market in the future; they already participate in it and have an established pattern of purchases.

168. An injunction preventing consummation will preserve Paramount and Warner Bros. Discovery as independent studio decisionmakers with independent incentives to greenlight, finance, produce, market, schedule, and theatrically release films. The requested relief therefore directly prevents and redresses Plaintiffs' threatened loss of output, variety, quality, and purchasing alternatives.

ANTITRUST STANDING AND ANTITRUST INJURY

169. Article III injury and antitrust injury are distinct requirements, and Plaintiffs satisfy both. The injuries alleged above are concrete economic injuries to products Plaintiffs purchase. They also constitute antitrust injury because they are the types of losses that reduced competition is likely to cause and flow from the feature that makes the proposed acquisition unlawful: the elimination of an independent competitor and the resulting reduction in

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independent price, output, quality, investment, variety, and consumer-choice incentives.

Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977).

170. As alleged above, Plaintiffs purchase the products in each market in which they allege competition will be restrained and therefore suffer the threatened injuries as market participants rather than participants in collateral markets. *American Ad Management, Inc. v. General Telephone Co. of California*, 190 F.3d 1051, 1057 (9th Cir. 1999).

A. Direct-to-Consumer Subscription Streaming Market

171. As alleged above, Marazzo and Rubinsohn purchase Paramount+ and HBO Max. They have already suffered economic injury from the post-acquisition Paramount+ price increase, which is fairly traceable to Skydance's acquisition of Paramount Global and the resulting transfer of control over Paramount+ pricing and monetization. They also face threatened economic injury from Paramount's proposed acquisition of Warner Bros. Discovery, which would eliminate the independent competition between Paramount+ and HBO Max for their recurring subscription payments, viewing time, and retention. Paramount and HBO Max presently compete for their recurring subscription payments through independently determined prices, programming, promotions, advertising loads, and other terms. Common ownership would eliminate that independent pricing constraint, place both recurring purchases under one seller, and give Paramount the ability and incentive to increase the aggregate price of accessing both libraries, eliminate overlapping discounts, alter tiers, or otherwise reduce the economic value of the services. The threatened price injury is therefore tied to a transaction that would directly transfer control over the prices Plaintiffs pay to the acquiring firm.

172. Those injuries are of the type the antitrust laws protect against. Competition constrains subscription prices and creates incentives to improve quality, increase programming output, offer discounts and promotional terms, and provide consumers greater value. As alleged

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above, the completed Skydance acquisition changed the economic incentives governing Paramount+ and was followed by the price increase paid by Marazzo and Rubinsohn. The proposed acquisition would further reduce competition by eliminating the independent constraint that Paramount+ and HBO Max currently impose on each other.²

173. The causal relationships are direct. With respect to the completed acquisition, Skydance obtained control over Paramount+ pricing, adopted the post-acquisition monetization strategy alleged above, announced and implemented the price increase, and Marazzo and Rubinsohn paid the increased charges directly to Paramount. With respect to the proposed acquisition, consummation itself would place Paramount+ and HBO Max under common ownership and eliminate their independent incentives to compete for Plaintiffs' subscription payments and viewing choices. Neither theory depends upon a passed-through overcharge or the discretionary act of an unrelated market participant.

B. Paid National Television News Market

174. As alleged above, Marazzo, McCarthy, Rubinsohn, and Talewsky purchase and consume the affected national news product through paid distribution channels. Their alleged injury is to the competitive attributes of that product rather than to a passed-through overcharge.

175. Plaintiffs seek prospective relief preserving independent competition, not damages calculated by tracing a carriage fee or other upstream charge through a distribution chain. There is therefore no need to determine whether or to what extent a distributor passed an upstream charge to Plaintiffs, and no risk that Plaintiffs and a distributor would recover the same alleged overcharge.

² At the July 16, 2026 hearing on the dismissal of the original Complaint, Defendants expressly acknowledged that "the injury of a price increase from a merger would be an antitrust injury." Tr. 6:19-22.

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C. Consumer Market for First-Run Theatrical Motion Pictures

176. As alleged above, Plaintiffs repeatedly purchase admission to differentiated first-run films and face threatened loss of output, variety, and purchasing opportunities in that consumer market.

177. The presence of theatrical exhibitors does not convert Plaintiffs' output-and-choice injury into an injury belonging to another market. Exhibitors are the distribution channel through which consumers purchase theatrical admission. Plaintiffs do not seek damages for an overcharge first imposed upon exhibitors, and no calculation of pass-through is necessary to establish their threatened loss of theatrical output, variety, or purchasing opportunities.

178. The threatened output injury is directly linked to the challenged consolidation for the reasons alleged above; an exhibitor cannot restore a film that the combined studio does not greenlight, produce, or theatrically release.

179. Alternatively, if the Court characterizes studio distribution to exhibitors as a separate upstream market, Plaintiffs' injury is inextricably intertwined with the threatened reduction in theatrical output. Studios greenlight, finance, market, and distribute theatrical films for the purpose of generating moviegoer demand and box-office receipts, and Plaintiffs' purchases constitute the consumer demand those decisions seek to capture. The loss of films available for Plaintiffs to purchase is therefore a necessary and foreseeable consequence of the alleged reduction in independent studio output. As consumers of first-run theatrical motion pictures, Plaintiffs are within the area of the economy endangered by the breakdown in competitive conditions resulting from the elimination of Paramount and Warner Bros. Discovery as independent studio competitors. *See Blue Shield of Virginia v. McCready*, 457 U.S. 465, 480-81, 484 (1982) (holding that a consumer of psychotherapy services was within the area of the economy endangered by the alleged restraint even though the challenged conduct operated

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through an insurance reimbursement arrangement).

180. Plaintiffs are appropriate private enforcers of the requested prospective relief. They are identifiable, recurring consumers of the products at issue; their threatened injuries are direct and non-speculative; the requested relief avoids duplicative damages and complex apportionment; and no more immediate consumer exists whose purchasing injury better corresponds to the threatened reduction in price, output, quality, variety, and choice alleged in these consumer markets.

CLAIMS FOR RELIEF

COUNT I

Violation of Section 7 of the Clayton Act, 15 U.S.C. § 18; Damages Under Section 4, 15 U.S.C. § 15; and Injunctive Relief Under Section 16, 15 U.S.C. § 26 (Completed Skydance-Paramount Acquisition)

181. Plaintiffs reallege and incorporate the preceding allegations.

182. Skydance's acquisition of Paramount Global was an acquisition within the meaning of Section 7 that substantially lessened competition in the Direct-to-Consumer Subscription Streaming Market. The transaction combined Paramount+, a participant in that market, with an independent supplier of differentiated premium programming used by competing streaming services, placed Skydance's licensing, exclusivity, windowing, and platform-allocation decisions under Paramount's control, and created the ability and incentive to limit rivals' access to that programming while benefiting from any resulting weakening of competition with Paramount+.

183. Marazzo and Rubinsohn sustained economic injury by paying the post-acquisition Paramount+ increase. They are entitled to recover damages, costs, and reasonable attorneys' fees under Section 4. Plaintiffs are also entitled to appropriate structural relief under Section 16.

COUNT II

Violation of Section 7 of the Clayton Act, 15 U.S.C. § 18; Injunctive Relief Under Section 16, 15 U.S.C. § 26 (Proposed Paramount-Warner Bros. Discovery

FIRST AMENDED COMPLAINT FOR VIOLATION OF SECTION 7 OF THE CLAYTON ACT; DAMAGES UNDER SECTION 4; AND INJUNCTIVE RELIEF UNDER SECTION 16

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Acquisition)

184. Plaintiffs reallege and incorporate the preceding allegations.

185. Paramount's proposed acquisition of Warner Bros. Discovery is an acquisition within the meaning of Section 7 whose effect may be substantially to lessen competition in the Direct-to-Consumer Subscription Streaming Market, Paid National Television News Market, and Consumer Market for First-Run Theatrical Motion Pictures.

186. For the reasons alleged above, the transaction would eliminate Warner Bros. Discovery as an independent competitor and may substantially lessen competition in each of the alleged relevant markets.

187. As alleged above, Plaintiffs presently purchase the products in the relevant consumer markets and intend to continue those purchases.

188. Plaintiffs therefore face the imminent, threatened losses alleged above, which will be prevented and redressed by an injunction that preserves Paramount and Warner Bros. Discovery as separately owned competitors.

JURY TRIAL DEMAND

189. Plaintiffs demand a jury trial on all claims and issues for which a jury trial is available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment and the following relief:

190. Declaring that Skydance's acquisition of Paramount Global violated Section 7 of the Clayton Act;

191. Awarding Marazzo and Rubensohn damages, costs, and reasonable attorneys' fees under Section 4;

192. Ordering appropriate structural relief sufficient to restore competition affected by

FIRST AMENDED COMPLAINT FOR VIOLATION OF SECTION 7 OF THE CLAYTON ACT; DAMAGES UNDER SECTION 4; AND INJUNCTIVE RELIEF UNDER SECTION 16

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the completed acquisition;

193. Declaring that Paramount's proposed acquisition of Warner Bros. Discovery violates Section 7;

194. Preliminarily and permanently enjoining Paramount from consummating the proposed acquisition;

195. Awarding all costs and attorneys' fees recoverable by law; and

196. Granting such other relief as the Court deems just and proper.

DATED: August 14, 2026

ALIOTO LAW FIRM

/s/ Joseph M. Alioto

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Tatiana V. Wallace, Esq.
Attorneys for Plaintiffs

FOREMAN & BRASSO

/s/ Ronald D. Foreman

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, LEN MARAZZO, LISA
McCARTHY, DEBORAH RUBINSOHN,
and GARY TALEWSKY,

Plaintiffs,
vs.

PARAMOUNT SKYDANCE
CORPORATION (formerly Paramount
Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**DECLARATION OF JOSEPH M.
ALIOTO IN SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION**

**DECL. OF JOSEPH M. ALIOTO ISO PLAINTIFFS' MO.
FOR LEAVE TO FILE MO. FOR RECONSIDERATION**

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I, Joseph M. Alioto, declare:

1. I am an attorney duly admitted to practice before this Court and counsel of record for Plaintiffs. I have personal knowledge of the matters stated in this declaration and, if called as a witness, could and would testify competently to them.

2. On August 4, 2026, The New York Times published an opinion piece entitled “David Ellison: In Defense of the Paramount-Warner Deal,” authored by David Ellison, Chairman and Chief Executive Officer of Defendant Paramount Skydance Corporation.

3. A true and correct copy of that opinion piece is attached as **Exhibit A**.

4. The article was published after briefing on Defendants’ motion to dismiss had concluded and one day before the Court entered its August 5, 2026 Order. Plaintiffs therefore had no reasonable opportunity to present the article before the Court ruled.

5. In the article, Ellison discusses the purpose, competitive position, anticipated scale, content investment, output commitments, and consumer effects of Paramount’s proposed acquisition of Warner Bros. Discovery. Among other things, Ellison states that the combined company would compete against Netflix, Amazon, and Apple, account for nearly 20 percent of American television watch time, and possess greater “strength and resources” to compete for audiences.

6. Ellison’s statements reflect a plausible economic inference that the proposed acquisition will affect consumers in the markets identified in the Complaint. Ellison states that the transaction will combine Paramount’s and Warner’s resources, increase the combined company’s scale, place a substantial share of consumer viewing under common control, and affect programming investment and output. Because Plaintiffs purchase and use the subscription services and programming subject to that control, these statements support a plausible, nonattenuated connection between the acquisition and Plaintiffs’ threatened injuries for purposes of Article III traceability.

7. Plaintiffs offer Ellison’s statements as statements of an opposing party made by Paramount Skydance Corporation’s Chairman and Chief Executive Officer concerning matters

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1 within the scope of that relationship while it existed. The statements are therefore not hearsay
2 under Federal Rule of Evidence 801(d)(2)(C) and (D).

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct. Executed on August 11, 2026, in Diablo, California.
5

6 /s/ Joseph M. Alioto

7 Joseph M. Alioto, Esq.

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Exhibit A

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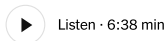
The New York Times

<https://www.nytimes.com/2026/08/04/opinion/david-ellison-paramount-warner-deal.html>

GUEST ESSAY

David Ellison: In Defense of the Paramount-Warner Deal

Aug. 4, 2026



By David Ellison

Mr. Ellison is the chief executive of Paramount Skydance.

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Many people have weighed in on Paramount's agreement to acquire Warner Bros. Discovery — media analysts, power brokers, political commentators, competitors and, of course, lawyers. For a transaction of this size, that is expected and appropriate. The one person you haven't heard from is me.

There is a reason for that. I believe that anyone who oversees a news organization — I am chief executive of Paramount, which owns CBS — shouldn't put a finger on the scale, especially on matters involving his own company. So when California's attorney general, 11 other state attorneys general and, a day later, the Writers Guild of America sued to stop the deal, I stayed quiet. I quickly learned such restraint has costs. While I was silent, others were happy to write my story for me. No more.

The states claim this deal will give one company too much influence over theatrical releases and cable operators, while the W.G.A. argues that our combined market power will hurt writers. Both suits imagine a Hollywood that no longer exists — an industry ruled by a handful of legacy studios.

Add up every hour Americans spend watching television, and a combined Paramount-Warner would account for less than 20 percent of all watch time — competing every day against Netflix, Amazon, Apple, which are all companies whose resources dwarf ours. Include YouTube's user-generated content in that math, and our share would drop to around 13 percent. A combined company would account for just 18 percent of the domestic box office over the past 12 months and only 22 percent, on average, over the past two years. Those are not the numbers of a company that can dictate what audiences watch or what writers get paid.

I believe this fight is not really about market share. If it were, it wouldn't have been reviewed and approved by regulators reflecting 65 countries, including the United States and China, as well as the European Union. I believe a plainer worry sits beneath the briefs and the news releases: the news. The issue is whether I can be trusted as a steward of Warner's CNN. There has been speculation about my politics, my loyalties, my intentions.

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Unfortunately, I can't give anyone a view into my heart and mind, but I can share this: I have regularly voted for candidates of both parties; I hold some views that would be called conservative and others that would be called liberal, just like most Americans; and when it comes to our news operations, I do not aspire to lead these companies to bend their newsrooms to my views. I believe that news should be based on facts and truth.

Great news organizations like CNN and CBS News are here to tell it straight down the middle. That requires newsrooms that reflect the whole world, not one side of it. And it requires independence. Our journalists will continue to answer to the facts and to all the people they serve — not to any party or cause. These were founding principles for both CNN and CBS News, for legends like Ted Turner and Edward R. Murrow, and it is exactly that kind of independence that has always fueled the greatness of “60 Minutes.”

There is much ground to recover. By Gallup's latest measure, just 28 percent of Americans said they trust the news — the lowest share ever recorded. The temptation is to say the problem lies elsewhere. Our obligation is to look inward and say: We can do better. We are in a moment when Americans trust few institutions, but journalists haven't always helped their case by refusing to engage with critiques.

Trust can't be argued back, but it can be earned back — story by story, day by day. In an age when so much of what fills our screens is machine-generated or engineered to enrage, journalism from real reporters matters more than ever. That is the work I intend to pay for, patiently, for a long time.

Which brings me to what we aim to build. The Paramount-Warner deal began with the movies. I have loved film since I was old enough to sit still for one, and scenes from the movies have shaped who I am: a boy riding a bicycle silhouetted against the full moon, twin suns setting over the desert, jets dogfighting off California. Behind each of those moments stands real money, real risk and hundreds of brilliant artists who tell stories and who count on movies to keep them employed.

That machinery is in trouble. Hollywood is losing ground to technology platforms whose algorithms reward the loudest voices. The work is leaving, especially from California — where I grew up and where I'm raising my family — draining the deepest pool of creative talent ever assembled.

I understand that promises from an executive in the middle of a merger invite skepticism. So judge us by the year we just had.

Since I took over Paramount, we have nearly doubled our theatrical slate from eight films last year to 15 and greenlit 40 new or returning series for Paramount+, our streaming service. You can expect 90 series from our television studios in 2026. We raised our content investment by \$1.5 billion. We did that before the deal was signed and any lawsuit was filed, because making more is the whole point of the company we are building.

The commitments we have made for the proposed Paramount-Warner extend that trajectory: 30 theatrical films a year; 170 television series annually, for our own platforms and for our competitors'; more than \$30 billion in annual content investment. I have learned better than to promise hits. In my career, “G.I. Joe: Retaliation” met financial expectations, “Top Gun: Maverick” exceeded them, and “Terminator: Dark Fate” fell short. I am proud of all these films, but nobody can dictate what audiences will love. What I can promise is the work, and more of it.

A deal this size is lived out in public, and I have felt every bit of that. I don't ask to be taken at my word; the commitments are in writing, and the work will be on screens where anyone can judge it.

Hollywood's story can have a happy ending only when we connect with our audience. It's the audience — the American people — that has the final say in whether a movie succeeds or fails, whether a news organization thrives or withers and therefore whether our industry succeeds or fails. I want to build a company with the strength and

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Opinion by David Ellison: In Defense of the Paramount-Warner Deal - The New York Times

resources to deliver for those audiences who turn to us, for the storytellers who rely on us and for the country that dreamed this all up.

David Ellison is the chief executive of Paramount Skydance.

The Times is committed to publishing a diversity of letters to the editor. We'd like to hear what you think about this or any of our articles. Here are some tips. And here's our email: letters@nytimes.com.

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A version of this article appears in print on , Section A, Page 23 of the New York edition with the headline: In Defense of the Paramount-Warner Deal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAMELA FAUST, et al.,
Plaintiffs,

v.

PARAMOUNT SKYDANCE
CORPORATION, et al.,
Defendants.

Case No. 26-cv-03790-AMO

**ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
FOR SCHEDULING ORDER**

Re: Dkt. No. 36, 78

This is an antitrust case. Defendants Paramount Skydance Corporation's and Skydance Media, LLC's ("Defendants") motion to dismiss was heard before this Court on July 17, 2026. Having read the papers filed by the parties and carefully considered their arguments therein and those made at the hearing, as well as the relevant legal authority, the Court **GRANTS** Defendants' motion for the following reasons.

I. BACKGROUND

For purposes of this Order and in the interest of providing the parties with speedier resolution of the pending motion, the Court largely assumes familiarity with the factual background of the case. Plaintiffs are consumers who purchase streaming services, cable or live-TV packages, theatrical movie tickets, and related premium video products. Compl. ¶¶ 24-46. Len Marazzo, Deborah Rubensohn, and Gary Talewsky are current Paramount+ subscribers who paid increased subscription charges after the January 15, 2026 Paramount+ price increase. Compl. ¶¶ 28-29. Pamela Faust and Lisa McCarthy are prospective Paramount+ subscribers deterred by increased costs and reduced consumer-friendly terms. Compl. ¶¶ 30-31. Defendant Paramount Skydance Corporation ("Paramount"), the company resulting from the acquisition of Paramount Global by Skydance Media, is a global media and entertainment company operating through

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studios, direct-to-consumer, and TV media. Compl. ¶ 18. Its portfolio includes Paramount Pictures, Paramount Television, CBS, CBS News, CBS Sports, 60 Minutes, Nickelodeon, MTV, BET, Comedy Central, Showtime, Paramount+, Paramount TV, and Skydance’s animation, film, television, interactive/games, and sports divisions. *Id.* Paramount also controls a substantial film and television library. *Id.* Defendant Warner Bros. Discovery (“Warner Bros.”) creates and distributes branded content across television, film, streaming, and gaming. Compl. ¶ 20. It owns major entertainment, news, sports, cable, streaming, motion-picture, television-production, animation, and gaming assets, including HBO Max, discovery+, CNN, DC, TNT Sports, HBO, Warner Bros. Motion Picture Group, Warner Bros. Television Group, Warner Bros. Games, New Line Cinema, Cartoon Network, Adult Swim, and related properties. *Id.* Warner Bros. also controls a substantial film and television library. *Id.*

Plaintiffs initiated this lawsuit on April 30, 2026, advancing antitrust claims based on both (1) the completed acquisition of Paramount Global by Skydance Media and (2) the anticipated acquisition of Warner Bros. by the presently-constituted Paramount Skydance. *See* Dkt. No. 1. The Court denied Plaintiffs’ motion for preliminary injunction from the bench during the hearing on July 16, 2026. Dkt. No. 69.

II. DISCUSSION

Defendants move to dismiss under Rule 12(b)(1) for lack of standing and under Rule 12(b)(6) for failure to state a claim. Dkt. No. 36. Though Defendants offer strong arguments for dismissal of the antitrust claims for insufficient pleading of relevant markets, the analysis here focuses on standing.

The Court evaluates challenges to Article III standing under Rule 12(b)(1), which governs motions to dismiss for lack of subject matter jurisdiction. *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). Rule 12(b)(1) motions may be either facial, where the inquiry is confined to the allegations in the complaint, or factual, where the court is permitted to look beyond the complaint to extrinsic evidence. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). When a defendant challenges jurisdiction “facially,” all material allegations in the complaint are assumed

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1 true, and the court determines whether the factual allegations are sufficient to invoke the court’s
2 subject matter jurisdiction. *Id.*

3 “Article III confines the federal judicial power to the resolution of ‘Cases’ and
4 ‘Controversies.’ For there to be a case or controversy under Article III, the plaintiff must have a
5 ‘personal stake’ in the case – in other words, standing.” *TransUnion LLC v. Ramirez*, 594 U.S.
6 413, 423 (2021) (citation omitted). To have standing, Article III requires that “[t]he plaintiff must
7 have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
8 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v.*
9 *Robins*, 578 U.S. 330, 330 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
10 (1992)). “To establish an injury in fact, a plaintiff must show that [they] suffered ‘an invasion of a
11 legally protected interest’ that is ‘concrete and particularized.’ ” *In re Facebook, Inc. Internet*
12 *Tracking Litig.*, 956 F.3d 589, 597 (9th Cir. 2020) (quoting *Spokeo*, 578 U.S. at 339). “The party
13 invoking federal jurisdiction bears the burden of establishing these elements.” *Lujan*, 504 U.S. at
14 561. “At the pleadings stage,” this means the Plaintiffs “must clearly . . . allege facts
15 demonstrating each element.” *Winsor v. Sequoia Benefits & Ins. Servs., LLC*, 62 F.4th 517, 523
16 (9th Cir. 2023). And because “standing is not dispensed in gross, . . . plaintiffs must demonstrate
17 standing for each claim that they press and for each form of relief that they seek.” *TransUnion*
18 *LLC v. Ramirez*, 594 U.S. 413, 431 (2021). In an antitrust case, that requires demonstrating
19 standing in each alleged market. See *In re Apple iPhone Antitrust Litig.*, No. 11-CV-06714-YGR,
20 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013) (purchasing iPhone insufficient to establish
21 standing for claimed overcharges in a separate “aftermarket”).

22 Based on Plaintiffs’ need to demonstrate standing in each alleged market, Defendants
23 advance a multi-part attack on Plaintiffs’ standing assertions. First, Defendants undercut
24 Plaintiffs’ claims of harm arising from the premium video distribution market, including both
25 monetary harm and threats of harm to competition. Second, Defendants aver that Plaintiffs fail to
26 establish antitrust standing as to the remaining two markets, the national TV news market and the
27 theatrical distribution market. The Court takes up the two attacks in turn.

A. Plaintiffs' Claims of Harm

Plaintiffs allege a handful of purported harms that has and would inure to them based on the two challenged mergers, including an increase in price, Compl. ¶¶ 28-30, and other harms to competition, including “lower quality and variety” and “decreased consumer choice,” *id.* ¶¶ 2, 90; *see also id.* ¶¶ 26, 43, 113. Defendants challenge these purported harms on several bases, emphasizing that “standing is not dispensed in gross” and that Plaintiffs must establish it plaintiff-by-plaintiff, claim-by-claim, and market-by-market. Dkt. No. 36 at 18 (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021); *In re Apple iPhone Antitrust Litig.*, 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013)). Indeed, Defendants highlight that the various Plaintiffs stand differently as to each of the challenged mergers, the increase in price, and the remaining asserted harms to competition. *See* Dkt. No. 36 at 19-22. Plaintiffs counter that they do not assert a “generalized grievance but are purchasers and consumers who personally receive less value when competition is reduced through higher prices, reduced output, narrowed content choice, reduced promotional availability, diminished news quality, and fewer independent sources of premium programming.” Dkt. No. 49 at 12 (citing Compl. ¶ 25). Plaintiffs rest on these purported harms as sufficiently concrete and particularized to establish standing. *Id.* (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339-41 (2016)). Pressing further, Plaintiffs insist that they sufficiently allege monetary injury as to Paramount+ subscribers and “threatened injury as to ongoing and future purchases.” *Id.* (citing Compl. ¶¶ 26-46). This breakdown provides the most helpful structure for analyzing standing here: (1) monetary harms for Paramount+ subscribers and (2) threats of harm to competition. The Court considers these two arguments regarding harm in turn.

1. Monetary Harms

Plaintiffs allege only one concrete and particularized injury – a single, historical price increase on Paramount+. *See* Compl. ¶¶ 28-31. But this injury was not suffered in the same way by all five of the Plaintiffs.

First, Plaintiffs’ allegations of “direct out-of-pocket harm in the form of” higher subscription charges for Paramount+, do not apply to Plaintiffs Faust and McCarthy because they do not claim to be Paramount+ subscribers and thus do not and cannot claim to have paid any

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price for Paramount+, let alone an increased price. Compl. ¶¶ 28-30. Faust and McCarthy allege instead that the 2026 price increase has “deterred” them from subscribing to Paramount+. Compl. ¶ 30. Defendants argue that such an allegation fails to sufficiently show injury by analogizing to a Seventh Circuit case in which farmers “refraining from selling soybeans” fell short of establishing standing to assert antitrust claims based on the “depressed price” of soybeans. Dkt. No. 36 (citing *Sanner v. Bd. of Trade of Chi.*, 62 F.3d 918, 923-24 (7th Cir. 1995)). Though *Sanner* is not binding nor squarely applicable, it is nonetheless persuasive, especially as Plaintiffs fail to identify a single case in which a purchaser’s “deterrence” from buying a product sufficed to establish injury-in-fact. Because Faust and McCarthy have insufficiently shown injury, they fail to carry their Article III burden to establish standing. *In re Facebook*, 956 F.3d at 597.

Second, the other three Plaintiffs – Marazzo, Rubinsohn, and Talewsky – allege they paid an “increased amount” for Paramount+ beginning on January 15, 2026. Compl. ¶ 28. These Plaintiffs, however, fail to allege any facts to show that this increased price was “fairly traceable to the challenged action of the defendant,” i.e., the Skydance-Paramount merger. *See Lujan*, 504 U.S. at 560. Plaintiffs ask the Court to infer causation from a temporal sequence, i.e., that the price increase was caused by the merger because it occurred five months after the merger. *See, e.g.*, Compl. ¶¶ 91, 98. But Plaintiffs fail to cite any authority for the premise that a price increase five months after a merger shows sufficient temporal proximity to merit an inference of causation that would support their standing to bring the antitrust claims at issue. Perhaps more importantly, Plaintiffs’ temporal proximity argument is severely undermined by their express allegation that prices for all “leading streaming services . . . have increased materially over time,” independent of the merger. Compl. ¶ 98. If prices across the relevant market increased during the relevant period, then Plaintiffs’ fail *Lujan*’s traceability requirement, and they fail to satisfy an essential element to establish standing.

For both these reasons, the lack of injury based on Faust and McCarthy’s “deterrence” harm and the lack of traceability for the price increase incurred by Marazzo, Rubinsohn, and Talewsky, Plaintiffs fail to establish standing based on purported monetary harm. The analysis turns to assess whether Plaintiffs may establish standing based on threats of harm to competition.

2. Threats of Harm to Competition

Plaintiffs’ other allegations of harm from the mergers are too vague and speculative to establish standing. The Complaint contains a boilerplate assertion of competitive harms, such as “lower quality and variety” and “decreased consumer choice,” Compl. ¶¶ 2, 90; *see also id.* ¶¶ 26, 43, 113, but it fails to allege any facts to plausibly show how those claimed harms have materialized or would materialize. Such “naked assertions devoid of further factual enhancement” are insufficient. *Blantz v. Ca. Dept. Corr. & Rehab.*, 727 F.3d 917, 927 (9th Cir. 2013); *see also Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954-55 (9th Cir. 2011) (“This list of alleged [statutory] violations cannot substitute for the factual allegations required in the complaint to satisfy Article III’s requirement of an injury-in-fact.”). Plaintiffs have simply asserted no allegations that plausibly show how the merger has caused or would cause injury to any of the Plaintiffs “in a personal and individual way.” *Kumar v. Koester*, 131 F.4th 746, 751 (9th Cir. 2025).

In sum, Plaintiffs’ standing theory amounts to little more than the assertion that they are consumers who watch television and go to the movies, and therefore a merger between entertainment companies would injure them. Plaintiffs cite to no authority establishing that the generalized asserted competitive harms constitute concrete harms that support standing, instead simply relying on *Spokeo* and arguing that the monetary injury certain of them suffered by increased Paramount+ prices is sufficiently concrete to support standing for each of them and for both challenged mergers. *See* Dkt. No. 49 at 12-13. This is insufficient. Accordingly, Plaintiffs fail to establish standing, and the Court must dismiss on this basis.

B. Plaintiffs’ Antitrust Standing

Defendants assert that Plaintiffs fail to show cognizable economic injuries of the sort the antitrust laws were designed to against in two of their proposed markets: Theatrical Distribution and National TV News. While there is no exact standard by which to measure antitrust standing, the Ninth Circuit requires trial courts to balance the following factors in making the assessment:

- (1) the nature of the plaintiff’s alleged injury; that is, whether it was the type the antitrust laws were intended to forestall;
- (2) the directness of the injury;

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- (3) the speculative measure of the harm;
- (4) the risk of duplicative recovery; and
- (5) the complexity in apportioning damages.

Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal., 190 F.3d 1051, 1054 (9th Cir. 1999) (citations omitted). “[N]o single factor is decisive,” but courts give “great weight to the nature of the plaintiff’s alleged injury.” *Id.* at 1054 (citations omitted).

There are four requirements for showing antitrust injury: “(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent.” *City of Oakland v. Oakland Raiders*, 20 F.4th 441, 456 (9th Cir. 2021) (quoting *Am. Ad Mgmt.*, 190 F.3d 1051, 1055 (9th Cir. 1999) (quotations omitted); see also *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977)). In particular, antitrust injury “ensures that the harm claimed by the plaintiff corresponds to the rationale for finding a violation of the antitrust laws in the first place.” *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990). To allege antitrust injury, a plaintiff must allege injury to “competition in the market as a whole” – such as marketwide reduction in output or increase in prices – “not merely injury to itself as a competitor.” *Gorlick Distrib. Ctrs., LLC v. Car Sound Exhaust Sys., Inc.*, 723 F.3d 1019, 1024-25 (9th Cir. 2013). “Thus, a plaintiff may not merely allege that the defendant is engaged in some anticompetitive conduct and that ‘some injury is occurring.’ ” *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1110 (N.D. Cal. 2022) (quoting *Town Sound & Custom Tops, Inc. v. Chrysler Motors Corp.*, 959 F.2d 468, 486-87 (3d Cir. 1992)). Demonstration of antitrust injury requires a plaintiff to “link the two showings with a theory of causation that is both plausible and cognizable by the antitrust laws.” *Id.* The alleged harm also must be “ ‘attributable to an anticompetitive aspect of the practice under scrutiny’ ” – “harm that could have occurred under the normal circumstances of free competition” does not suffice. *In re NFL’s Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1150 (9th Cir. 2019) (quoting *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990)).

1. National TV News market

In the alleged National TV News market, Plaintiffs fail to show that alleged losses of “editorial independence” or “viewpoint diversity” are cognizable antitrust injuries. Dkt. No. 36 at

23-24. Plaintiffs also cite no support for their assertion that “editorial independence” or “viewpoint diversity” are cognizable economic harms protected by antitrust laws, rather than social or political harms. Dkt. No. 49 at 15. Though Plaintiffs discuss the Newspaper Preservation Act to show a legal importance to the protection of editorial independence or viewpoint diversity, such discussion brings into relief the lack of cognizable injury under the antitrust laws, in addition to highlighting that Plaintiffs did not allege a Newspaper Protection Act cause of action. *See* Dkt. No. 49 at 14-15. And although Plaintiffs contend their claim in the alleged National TV News market concerns “quality, variety, and innovation,” they cite no authority showing that such concerns give rise to antitrust injury. Plaintiffs fail to allege antitrust standing related to the National TV News market.

2. Theatrical Distribution market

With respect to the alleged Theatrical Distribution market, Plaintiffs allege that they routinely attend theatrical motion pictures, intend to continue doing so, and will face fewer independent theatrical-distribution decision-makers, fewer competing release slates, reduced genre and budget variety, and fewer meaningful theatrical choices if Paramount acquires Warner Bros. Compl. ¶¶ 41-42. But Plaintiffs fail to respond to the requirement that they must participate and suffer injury “in the market where competition is being restrained” to have antitrust standing. *Hogan v. Amazon.com, Inc.*, 2025 WL 869202, at *1 (9th Cir. Mar. 20, 2025); *see* Dkt. No. 36 at 24-25. Instead, Plaintiffs admit they are not participants in the alleged “Theatrical Distribution Market,” foreclosing them from claiming antitrust injury there. *See* Dkt. No. 49 at 15-16; *see also Am. Ad Mgmt.*, 190 F.3d at 1057 (“Parties whose injuries . . . are experienced in another market do not suffer antitrust injury.”). Further, Plaintiffs confirm that they participate in a market “downstream” from the purported Theatrical Distribution market they allege would be restrained by the merger. Dkt. No. 49 at 15. Their claim that they have antitrust standing when they allege an injury at a different “level” of the supply chain than the one “at which competition is restrained,” is wrong as a matter of law. *See Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019, 1027-28 (N.D. Cal. 2015) (dismissing complaint where plaintiffs alleged injury was not in “the market in which the alleged anticompetitive conduct occurred”). Plaintiffs thus fail to allege antitrust

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standing for the Theatrical Distribution market and the Complaint must face dismissal on this basis as well.

C. Leave to Amend

“Generally, Rule 15 advises the court that leave shall be freely given when justice so requires. This policy is to be applied with extreme liberality.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotations and citations omitted). Courts may deny leave to amend “only if there is strong evidence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc.” *Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)) (modification in original).

At this stage, the Court cannot determine as a matter of law that amendment would prove futile. Plaintiffs may still be able to proffer factual allegations that support standing to prosecute these antitrust claims. In light of this potential, as well as the extreme liberality with which the Court must apply Rule 15, the Court will grant Plaintiffs leave to file an amended complaint.

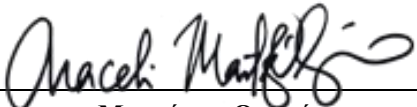
III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants’ motion to dismiss the Complaint. Plaintiffs may file any amended complaint by no later than August 26, 2026. No parties or claims may be added without leave of Court or stipulation of Defendants.

Discovery in this matter shall remain closed, at least until Plaintiffs can establish standing to proceed with their claims. Accordingly, the Court **DENIES** Plaintiffs’ motion to set a case management conference and for entry of a Rule 16 scheduling order, Dkt. No. 78.

IT IS SO ORDERED.

Dated: August 5, 2026


ARACELI MARTÍNEZ-OLGUÍN
United States District Judge

Appendix G

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA, et al.,
Plaintiffs,
v.
PARAMOUNT SKYDANCE
CORPORATION, et al.,
Defendants.

Case No. 26-cv-07116-AMO

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 27

This is an antitrust case. Plaintiffs, the State of California, State of Arizona, State of Colorado, State of Connecticut, Commonwealth of Massachusetts, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, and State of Washington (collectively, the “Plaintiff States”), bring this lawsuit under the Clayton Act to halt a merger between Defendants Paramount Skydance Corporation (“Paramount”) and Warner Bros. Discovery, Inc. (“Warner Bros.”). The Plaintiff States advance that this merger (the “Transaction”) will eliminate competition between two of the remaining five major Hollywood studios in addition to combining two of the nation’s largest cable television programmers. Before the Court is the Plaintiff States’ motion for a temporary restraining order (“TRO”) prohibiting Paramount and Warner Bros from consummating the Transaction or otherwise acting to consolidate their operations. Defendants oppose the motion. The Court heard oral argument on the motion on July 17, 2026. Having read the papers filed by the parties and carefully considered their arguments therein and those made at the hearing, as well as the relevant legal authority, and good cause appearing, the Court **GRANTS** the motion for TRO for the following reasons.

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United States District Court
Northern District of California

I. BACKGROUND

Due to the expedited nature of the motion for TRO and the parties' desire for speedy resolution of the motion, the Court only summarizes the facts relevant to disposition of the motion.¹

Paramount is a global media conglomerate registered in Delaware and headquartered in New York. Paramount's portfolio includes Paramount Pictures (one of the "big five" Hollywood film studios); the CBS broadcast network; basic cable channels (including Nickelodeon, Comedy Central, MTV, and BET); the Showtime premium cable channel; and the Paramount+ streaming service. Compl. ¶¶ 32, 35. Warner Bros. is a global media conglomerate also registered in Delaware and headquartered in New York. Warner Bros.'s portfolio includes Warner Bros. Pictures studio (another of the "big five" Hollywood film studios); basic cable channels; the HBO premium cable channel; and the HBO Max and Discovery+ streaming services. Compl. ¶¶ 33, 35. Both Paramount and Warner Bros. maintain studio lots and production facilities in California, where they also employ thousands of California residents. Compl. ¶ 17.

On February 27, 2026, Paramount and Warner Bros. agreed that Paramount would acquire all Warner Bros.'s outstanding shares for \$31 per share for a total transaction value of approximately \$110 billion. Compl. ¶ 34. The combined entity would control two of the "big five" film studios (Paramount Pictures and Warner Bros. Pictures), more than fifty basic cable channels spanning every major programming genre, leading premium cable television channels (HBO and Showtime), the most-watched broadcast network (CBS), three subscription streaming services (Paramount+, HBO Max, and Discovery+), and three of the most prolific television production studios (Paramount Television Studios, CBS Studios, and Warner Bros. Television Studios). Compl. ¶ 35; Lee Decl. ¶¶ 9, 42-43, 127-128, fig. 17.

The Plaintiff States filed this lawsuit, as well as the instant motion seeking a TRO, on July 13, 2026. Dkt. Nos. 1, 27. The Plaintiff States move to enjoin Paramount and Warner Bros

¹ The parties submitted certain materials related to both the pleadings and the briefing of the instant motion provisionally under seal in accordance with Civil Local Rule 79-5. *See* Dkt. Nos. 6, 29, 105, 113. The Court will rule on the motions to seal after receiving a proposed omnibus sealing order, due in the course of the preliminary injunction briefing.

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1 from closing or otherwise consummating the Transaction before this Court decides whether it is
2 unlawful. Dkt. No. 27.

3 **II. DISCUSSION**

4 Federal Rule of Civil Procedure 65 authorizes a trial court to grant a temporary restraining
5 order “to preserve the status quo and the rights of the parties until a final judgment issues in the
6 cause.” *See Ramos v. Wolf*, 975 F.3d 872, 887 (9th Cir. 2020) (quoting *U.S. Philips Corp. v. KBC*
7 *Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010)). The status quo in this context “refers not simply
8 to any situation before the filing of a lawsuit, but instead to ‘the last uncontested status which
9 preceded the pending controversy[.]’ ” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210
10 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir.
11 1963)). “The standard for issuing a temporary restraining order is identical to the standard for
12 issuing a preliminary injunction.” *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F.
13 Supp. 1320, 1323 (N.D. Cal. 1995).

14 To obtain preliminary injunctive relief, the moving party must show: (1) a likelihood of
15 success on the merits, (2) a likelihood of irreparable harm to the moving party in the absence of
16 preliminary relief, (3) the balance of equities tips in the favor of the moving party, and (4) an
17 injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
18 (2008). Where the government is a party, courts merge the analysis of the final two *Winter*
19 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d
20 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Courts “explore the
21 relative harms to applicant and respondent, as well as the interests of the public at large.” *Barnes*
22 *v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (internal
23 quotation marks and citation omitted). The *Winter* factors may be evaluated on a sliding scale,
24 such that preliminary relief may be issued when the moving party demonstrates “that serious
25 questions going to the merits were raised and the balance of hardships tips sharply in the
26 plaintiff’s favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)
27 (citation omitted).
28

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In support of their Clayton Act claim, the Plaintiff States identify three relevant United States markets for the (1) distribution of wide-release theatrical films, (2) distribution of anticipated top-grossing theatrical films, and (3) licensing of basic cable channels to distributors. Compl. ¶ 36; Lee Decl. ¶¶ 11, 13-15, 38. While Defendants dispute the market definitions, they assume them for purpose of argument for the instant motion. *See* Dkt. No. 114 at 7. Because the Plaintiff States are entitled to a TRO if they make a sufficient showing in only a single relevant market, the Court evaluates the factors for preliminary injunctive relief focusing on the market for distribution of wide-release theatrical films.²

A. Likelihood of Success

The Plaintiff States bring a single claim for violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. To determine the likelihood of success on the merits of a Section 7 claim, courts employ a burden-shifting framework. *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.* (“*St. Alphonsus*”), 778 F.3d 775, 783 (9th Cir. 2015); *see also Olin Corp. v. FTC*, 986 F.2d 1295, 1305 (9th Cir. 1993); *United States v. Baker Hughes Inc.*, 908 F.2d 981 (D.C. Cir. 1990). Under this framework, “the plaintiff must first establish a prima facie case that a merger is anticompetitive,” and then the burden shifts to the defendant to rebut the prima facie case before “the burden of production shifts back to the [plaintiff] and merges with the ultimate burden of persuasion[.]” *St. Alphonsus*, 778 F.3d at 783.

At the first step, a merger that would result in “a significant increase in the concentration of firms in that market” establishes a presumption that the merger “is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.” *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 363 (1963). Demonstrating that a merger would result in “a significant increase in the concentration of firms in that market” establishes a presumption that the merger will substantially lessen competition. *Philadelphia Nat'l Bank*, 374 U.S. at 363; *Baker Hughes*, 908 F.2d at 982. Courts rely on two metrics to assess market concentration – the proposed

² The Court may revisit its reliance on this sole market in evaluating the anticipated motion for preliminary injunction.

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combined firm’s anticipated market share and the Herfindahl-Hirschman Index (“HHI”). *DIRECTV, LLC v. Nexstar Media Grp., Inc.*, No. 2:26-CV-00976-TLN-CKD, 2026 WL 851401, at *6 (E.D. Cal. Mar. 27, 2026); *see also* Fed. Trade Comm’n & U.S. Dep’t of Justice, Merger Guidelines § 2.1 (2023). A merger that creates a firm with a combined market share of 30 percent or more is presumed likely to violate the antitrust laws. *Philadelphia Nat’l Bank*, 374 U.S. at 364. (“Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat.”). Relatedly, “[m]ergers that increase the HHI more than 200 points and result in highly concentrated markets are presumed to be likely to enhance market power.” *St. Alphonsus*, 778 F.3d at 786 (internal quotation marks & citation omitted).³ Where plaintiffs demonstrate a presumption of illegality by way of undue market concentration, they need not offer “elaborate proof of market structure, market behavior, or probable anticompetitive effects.” *Philadelphia Nat’l Bank*, 374 U.S. at 363; *see also Fed. Trade Comm’n v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 347 (3d Cir. 2016) (a plaintiff “can establish a prima facie case simply by showing a high market concentration based on HHI numbers.”).

Here, Plaintiffs present compelling evidence that the combined firm resulting from the transaction will possess substantial market share in the wide-release theatrical distribution market. *See* Lee Decl ¶¶ 83, 88, 89 (anticipating 27% market share for wide-release theatrical distribution market). On this combined firm market share alone, the Court is persuaded that it can presume the proposed merger is likely to violate antitrust laws. *See Boardman v. Pacific Seafood Grp.*, 822 F.3d 1011, 1021 (9th Cir. 2016) (a “prima facie case can be established simply by showing” that such “a high market share would result from the proposed merger”); *see also United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36, 72 (D.D.C. 2011) (concluding plaintiffs established a presumption of anticompetitive effects where the combined firm would hold a 28.4 percent market

³ HHI is “calculated by summing the squares of the individual firms’ market shares,” which “gives proportionally greater weight to the larger market shares.” *St. Alphonsus*, 778 F.3d at 786 (citing *ProMedica Health Sys., Inc. v. FTC*, 749 F.3d 559, 568 (6th Cir. 2014); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 716 (D.C. Cir. 2001)). The HHI analysis considers “both the post-merger level of the HHI and the increase in the HHI resulting from the merger.” *Id.*

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share). Plaintiffs additionally show the transaction would result in significant market concentration based on market HHI along with a significant change in HHI. *See* Lee Decl. ¶ 84 (showing an increase in HHI by approximately 359 points, resulting in a post-merger HHI of 2,074 for the wide-release theatrical distribution markets). Though Defendants highlight that the market-concentration thresholds represented in HHI and the merger guidelines are not binding on courts, Defendants present no countervailing evidence related to market concentration.⁴ *See* Dkt. No. 114 at 16-18. The Plaintiff States thus make a strong showing that the Transaction will substantially lessen competition.

Defendants focus their opposition to Plaintiff States' motion on the second stage of the burden-shifting analysis. Defendants present the expert opinion of a competing economic expert for the premise that Plaintiff States' showing falls short regarding both theatrical film-focused markets due to fundamental misunderstandings and incorrect assumptions regarding the economics of theatrical film distribution in the United States. *See* Dkt. No. 114 at 18-24 (citing Murphy Decl.). Defendants further argue that the absence of significant entry barriers in the theatrical market undermines the Plaintiff States' showings regarding market concentration. *Id.* Moreover, Defendants rely on the expert for the premise the Plaintiff States' showing similarly fails because it rests on false assumptions regarding activity in the market for licensing basic cable channels to distributors. *Id.* Defendants' proof, contrary to the matter of *United States v. General Dynamics Corp.*, 415 U.S. 486 (1974), on which they rely so heavily, Dkt. No. 114 at 19, does not establish that the merger would not substantially lessen competition. At best, Defendants' proof regarding these robust, dynamic markets creates disputes regarding the facts and legality of the Transaction's market effects. At this stage, crediting Defendants' evidence and stopping short of

⁴ "Although the Merger Guidelines are 'not binding on the courts,' . . . they 'are often used as persuasive authority.'" *Saint Alphonsus*, 778 F.3d at 784 n.9 (quoting *Olin Corp. v. FTC*, 986 F.2d 1295, 1300 (9th Cir. 1993); *Chicago Bridge & Iron Co. N.V. v. F.T.C.*, 534 F.3d 410, 431 n.11 (5th Cir. 2008)).

1 completing the entire burden-shifting analysis in the absence of a full record, the Court recognizes
2 that Plaintiff States have raised serious questions about the merits of their antitrust claim.⁵

3 Plaintiff States' showing at least demonstrates that serious questions going to the merits
4 remain, weighing in favor of preliminary injunctive relief.

5 **B. Irreparable Harm**

6 Under Ninth Circuit law, "[a] lessening of competition constitutes an irreparable injury."
7 *Boardman*, 822 F.3d at 1023. Because the Plaintiff States make a strong showing that the
8 Transaction will substantially lessen competition in the wide-release theatrical distribution market,
9 they demonstrate irreparable harm would result if a TRO does not issue. The Transaction would
10 also be difficult, if not impossible, to unwind if permitted to proceed given the anticipated
11 consolidation of operations, sharing of business-sensitive information, and potential termination or
12 reassignment of employees. *See United States v. Trib. Publ'g Co.*, No. 16-cv-1822-AB, 2016 WL
13 2989488, at *5 (C.D. Cal. Mar. 18, 2016); *Penn State Hershey*, 838 F.3d at 352-53 ("since it is
14 extraordinarily difficult to 'unscramble the egg,' 'it will be too late to preserve competition if no
15 preliminary injunction has issued.' " (citations and footnote omitted)). The Plaintiff States have
16 sufficiently established that irreparable harm would result in the absence of a TRO.

17 **C. Balance of Equities & Public Interest**

18 The public interest and the balance of hardships inquiries are interrelated and both weigh in
19 favor of an injunction. The Ninth Circuit recognizes that appropriate enforcement of the antitrust
20 laws for the protection of competition is "vital to the public interest." *Boardman*, 822 F.3d at
21 1024 (quoting *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 988 (9th Cir. 2000)).
22 Indeed, "[i]n a Government case the proof of the violation of law may itself establish sufficient
23 public injury to warrant relief." *California v. Am. Stores Co.*, 495 U.S. 271, 295 (1990). Further,
24 the public interest includes ensuring the practical availability of "effective relief" remains

25
26 ⁵ The Court notes separately that it cannot accept Defendants' argument that the Transaction will
27 produce efficiencies in the streaming market. *See* Dkt. No. 114 at 21-22. Courts have expressly
28 and repeatedly rejected the defense that a challenged merger will result in economic efficiencies
ancillary to competition in the relevant market. *St. Alphonsus*, 778 F.3d at 789 (citing *Brown Shoe*
Co. v. United States, 370 U.S. 294, 344 (1962); *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 580
(1967)).

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1 available if Plaintiff States “succeed[] at the merits trial.” *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1,
2 86-87 (D.D.C. 2015). Here, Plaintiff States seek a TRO to preserve the status quo and ensure that
3 Defendants do not effectuate the Transaction while the Court evaluates the proposed merger. Dkt.
4 No. 27 at 29-30. Because the Plaintiff States demonstrate at least serious questions regarding the
5 merits of their antitrust claim, the public equities of preserving competition and ensuring a
6 practical remedy remains available weigh in favor of granting preliminary injunctive relief. *See*
7 *FTC v. Kroger Co.*, Case No. 3:24-CV-00347-AN, 2024 WL 5053016, at *38 (D. Or. Dec. 10,
8 2024) (“Because plaintiffs have established a likelihood of success on the merits, the public
9 equities weigh in favor of granting the motion for preliminary injunction to effectively enforce the
10 antitrust laws.”).

11 Defendants did not offer a countershowning of private equities in opposition to the Plaintiff
12 States’ motion. Defendants will suffer no apparent harm in the near term if enjoined from
13 consummating the Transaction – they concede that they will not begin to incur carrying costs for a
14 delayed merger until the end of September 2026. *See, e.g.*, Dkt. No. 64 (proposing August hearing
15 schedule); Dkt. No. 65-2. Even if Defendants argued that they would suffer economic harm as a
16 result of delaying the merger, the equities do not weigh in their favor when contrasted with the
17 potential public harms that would result from consummation of the Transaction, including the loss
18 of competition. *See FTC v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984)
19 (“Although private equities may be considered, public equities receive far greater weight.”) (citing
20 *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1083 (D.C. Cir. 1981)). Paramount and Warner Bros.
21 will continue to operate as separate, viable companies competing in the marketplace while they
22 wait for the Court to adjudicate this case. The balance of equities, combined with the public’s
23 vital interest in antitrust enforcement, therefore tips sharply in favor of the requested injunctive
24 relief.

25 III. CONCLUSION

26 For the foregoing reasons, the Court **GRANTS** the Plaintiff States’ motion for a temporary
27 restraining order. Because the Plaintiff States raise serious questions on the merits of their
28 Clayton Act claim and because the balance of equities and public interest tip sharply in favor of

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the Plaintiff States, the Court ultimately finds the public interest favors their requested TRO to stay the merger in the interim. *All. for the Wild Rockies*, 632 F.3d. at 1131-34.

The Court **ORDERS** as follows:

- Defendants are temporarily **enjoined and restrained** from closing or consummating the Transaction or taking any steps, directly or indirectly, to integrate or consolidate their operations pursuant to the Transaction. This Order extends to Defendants' agents, officers, servants, employees, attorneys, and other persons who are in active concert or participation with Defendants.
- The Court waives the security requirement under Federal Rule of Civil Procedure 65(c) and Local Civil Rule 65-1 because Plaintiffs have demonstrated that Plaintiff States bring suit to enforce important public interests. *See Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (noting a "district court retains discretion as to the amount of security required, *if any*" (emphasis in original) (internal quotation marks and citation omitted)).
- This Order shall remain in effect for 14 days. Under Federal Rule of Civil Procedure 65(b)(2), a TRO must expire no later than 14 days after the time it is issued unless the Court extends it for good cause. Therefore, the Court **SETS** the following schedule:
 - Plaintiffs' motion for preliminary injunction due by July 23, 2026;
 - Defendants' opposition brief due by July 27, 2026;
 - Plaintiffs' reply due by July 30, 2026;
 - Parties' joint proposed omnibus sealing motion (see below) due by July 31, 2026;
 - Hearing on Plaintiffs' preliminary injunction motion at 3:00 p.m. on Monday, August 3, 2026, in Oakland.
 - The parties may stipulate to an extended briefing schedule and later hearing date, provided that the parties also stipulate that the temporary restraining order will continue in effect until that hearing date.
- The Court **ORDERS** the parties to prepare a single proposed order that brings together in one chart all the documents or portions of documents sought to be sealed through the

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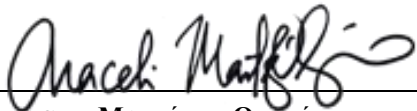
pending administrative motions to seal. The chart should be organized in the following format:

Document or Portion of Document Sought to be Sealed	Evidence offered in Support of Sealing	Objections	Ruling

The Parties' joint proposed omnibus sealing motion shall be filed on the docket and submitted as a Word version to amopo@cand.uscourts.gov.

IT IS SO ORDERED.

Dated: July 20, 2026


ARACELI MARTÍNEZ-OLGUÍN
United States District Judge

United States District Court
Northern District of California

Appendix G

Case: 26-6423, 09/30/2026, DktEntry: 2.1, (317 of 466)

Polly Meno

From: ECF-CAND@cand.uscourts.gov
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Subject: Activity in Case 4:26-cv-03790-AMO Faust et al v. Paramount Skydance Corporation et al Motion Hearing

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U.S. District Court**California Northern District****Notice of Electronic Filing**

The following transaction was entered on 7/17/2026 at 9:37 AM and filed on 7/16/2026

Case Name: Faust et al v. Paramount Skydance Corporation et al

Case Number: [4:26-cv-03790-AMO](#)

Filer:

Document Number: 69(No document attached)

Docket Text:

Minute Entry for proceedings held before Judge Haywood S. Gilliam, Jr.:

Motion Hearing held on 7/16/2026.

Total Time in Court: 39 minutes.

Court Reporter: Kelly Shainline.

Plaintiff Attorney: Joseph Alioto; Ian Hansen; Ronald Foreman; and Tatiana Wallace.

Defendant Attorney: Jeffrey Kessler; Maggie Sullivan; Jennifer Parsigian; Ashley Kaplan; and James Weingarten.

The Court advises the parties that the administrative motion for leave to serve limited expedited discovery before rule 26(f) conference (docket no. [30]) is DENIED for the reasons stated on the record. The Court disregards all evidence and verification submitted by plaintiff after the defendants opposition brief. Motion for preliminary injunction (docket no. [12]) is

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argued and submitted by the parties and is **DENIED** by the Court. Motion to dismiss (docket no. [36]) is taken under submission by the Court. Written order to issue.

(This is a text-only entry generated by the court. There is no document associated with this entry.) (ndr, COURT STAFF) (Date Filed: 7/16/2026)

4:26-cv-03790-AMO Notice has been electronically mailed to:

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Appendix G

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4:26-cv-03790-AMO Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Araceli Martínez-Olguín, Judge

PAM FAUST, LEN MARAZZO, LISA)
 MCCARTHY, DEBORAH RUBINSOHN,)
 and GARY TALEWSKY,)

Plaintiffs,)

VS.)

NO. 4:26-cv-03790-AMO

PARAMOUNT SKYDANCE CORPORATION)
 (formerly Paramount Global), and)
 SKYDANCE MEDIA, LLC,)

Defendants.)

Oakland, California
 Thursday, July 16, 2026

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1 Thursday - July 16, 2026

2:01 p.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE COURTROOM DEPUTY:** Your Honor, we are calling
5 CV-26-3790, Faust, et al. vs. Paramount Skydance Corporation,
6 et al.

7 Counsel, please step forward and state your appearances
8 for the record, please.

9 **MR. HANSEN:** Good afternoon, Your Honor. Ian Hansen
10 on behalf of plaintiffs.

11 **THE COURT:** Good afternoon.

12 **MR. FOREMAN:** Ronald Foreman for the plaintiffs,
13 Your Honor.

14 **MS. WALLACE:** Tatiana Wallace for the plaintiffs.

15 **MR. KESSLER:** Good afternoon, Your Honor. Jeffrey
16 Kessler from Winston Taylor for the defendant.

17 **THE COURT:** Good afternoon.

18 **MS. PARSIGIAN:** Good afternoon. Jeanifer Parsigian
19 from Winston Taylor for the defendant.

20 **MS. SULLIVAN:** Good afternoon, Your Honor. Maggy
21 Sullivan from Latham & Watkins on behalf of the defendant.

22 **MR. ALIOTO:** Good afternoon, Your Honor. Joseph
23 Alioto for the plaintiffs.

24 **THE COURT:** Good afternoon.

25 All right. Folks, we're here on plaintiffs' motion for

1 preliminary injunction as well as defendants' motion to
2 dismiss. I'm going to give you each a few minutes to speak
3 about the merits of your respective motions, but there are a
4 few things I want to cover first as it will shape our
5 conversation today.

6 First, I'm denying plaintiffs' administrative motion for
7 leave to serve expedited discovery, and that's Docket
8 Number 30. Though the motion was presented as an
9 administrative motion, it seeks relief under Rule 26 and, thus,
10 is outside the boundaries of Civil Local Rule 7-11, which
11 allows for administrative motion seeking relief not based on a
12 federal rule. That's basis alone for denying it.

13 Further, the motion fails on the merits. Plaintiffs do
14 not establish a good cause in support of early discovery.
15 Plaintiffs seek, admittedly, confidential materials on an
16 expedited basis in an effort to establish their entitlement to
17 a preliminary injunction, yet they brought their motion for
18 discovery some two months after filing this action and nearly
19 two weeks after filing their motion for preliminary injunction.

20 This does not demonstrate diligence and it doesn't support
21 good cause. Plaintiffs should not expect the Court to save
22 them from their own failure to provide evidentiary support for
23 their motion by granting them early discovery.

24 Relatedly, I'm sustaining defendants' objections and
25 granting defendants' request to strike the new evidence

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1 plaintiffs submitted with their reply brief. All evidence and
2 verification submitted by plaintiffs after defendants'
3 opposition brief will be disregarded.

4 It was plaintiffs' obligation to submit evidence in
5 support of their motion for preliminary injunction and no
6 matter their arguments to the contrary, evidence submitted for
7 the first time on reply is procedurally improper and is not
8 countenanced by the Ninth Circuit.

9 This brings me to the next thing -- that brings me to the
10 next thing I want to say before turning the floor over, which
11 is I just want to preview for you-all that I'm inclined to deny
12 this motion for preliminary injunction.

13 It's extraordinary preliminary relief and plaintiffs
14 failed to submit a single item of evidence in support of the
15 motion. Moreover, I have some serious doubts about plaintiffs'
16 standing to pursue these antitrust claims.

17 I have just a hand full of questions for you-all, and then
18 I will give you some time to make whatever argument or
19 presentation you would like.

20 My first question is for defendants. You are welcome
21 to -- we are welcome to -- actually, I would ask you to please
22 come to the lectern and because there are so many of you on
23 each side, maybe I'll pose the question and then you-all can
24 figure out who's going to answer it.

25 But for defendants, I want you to help me understand the

1 breakdown of your standing argument. Does your argument about
2 the lack of concrete harm or injury in fact apply most directly
3 to plaintiffs' allegations of price increase and the premium
4 video distribution market?

5 **MR. KESSLER:** It applies to all three markets,
6 Your Honor. The reason we discuss the price increase in the
7 video market at some length is because it is the only claim of
8 particularized injury for all three markets.

9 In other words, there is no comparable claim in the news
10 market or in the theatrical market that's even been alleged so
11 we focused on the one concrete item that they identified, which
12 we also believe doesn't give them standing in the video market
13 either, but the Article III argument applies across the board.

14 **THE COURT:** Okay. And then with regard to your
15 argument about antitrust standing, does it apply to the alleged
16 market for streaming services or does it only apply to the
17 purported markets for theatrical distribution and national
18 television news?

19 **MR. KESSLER:** That one only applies to the other two
20 markets because if they had Article III standing in video, then
21 the injury of a price increase from a merger would be an
22 antitrust injury. It's just that they haven't shown any
23 connection to tie themselves to that injury.

24 **THE COURT:** All right. Thank you, Mr. Kessler.
25 I have a couple more questions and these are for

1 plaintiffs.

2 Thank you, Mr. Alioto.

3 Mr. Alioto, your --

4 **MR. ALIOTO:** May it please Your Honor.

5 **THE COURT:** -- your opposition brief relies very
6 heavily on *Pabst* to support your claims that the mergers are
7 likely to substantially lessen competition, but I remain stuck,
8 as you heard a little bit, at the standing stage. It isn't
9 clear to me that you've sufficiently pleaded injury in fact for
10 each of the purported markets, and I don't think you've drawn a
11 coherent connection between any action by these defendants to
12 such an injury in fact.

13 I'm curious if you were granted leave to amend, what would
14 you add to your pleading to support your allegations of harm?

15 **MR. ALIOTO:** May it please the Court, may I address
16 the two items that you said before responding to what I might
17 add if the Court were of the view?

18 **THE COURT:** Not at this moment, sir. At this moment I
19 would appreciate an answer to my specific question, and then I
20 will give you a time at the end to address anything that you
21 like.

22 **MR. ALIOTO:** Yes, Your Honor. What I would do is this
23 for a response: The Court received in the documents an exhibit
24 from the defendants. It was directed to the State of
25 California. In that document they admitted in Exhibit 2, which

1 is Document Number 65-2, they admitted that they had given the
2 State of California the Hart-Scott-Rodino documents. They have
3 waived their confidentiality. They invited them to depositions
4 to be able to ask questions if they wanted to. They gave them
5 a narrative and apparently they added -- they answered specific
6 questions.

7 We have been denied -- we're a private -- we're a private
8 group. We're not a government. We don't have the tools of a
9 government, but we certainly did not get the kind of response
10 where they're fighting for the Hart-Scott-Rodino documents and
11 they handed them out to California and everything else going to
12 depositions. We couldn't do any of that.

13 And so if the Court allowed a motion to amend, what we
14 would add is we would request that we be given the same thing
15 that they've already given to the government -- not the
16 government but to California, State of California, and then at
17 that time we would obviously add to the complaint.

18 But I do want to say with regard to the complaint, if I
19 might --

20 **THE COURT:** Hold that thought if you would.

21 **MR. ALIOTO:** Okay.

22 **THE COURT:** You will be given an opportunity.

23 I just want to -- and I say this just so I don't lose --
24 I've got just two more questions for you, and then you'll get
25 to keep the microphone for a bit before I pass it back to

1 defendants.

2 Based on your briefing, I'm having a hard time
3 understanding the alleged harm arising from defendants'
4 consolidation of the theatrical distribution market. Could you
5 talk with me a little bit about your theory of the Section 7
6 violation related to theatrical distribution and your best case
7 that you cited for the premise that plaintiffs like yours would
8 suffer injury based on having fewer movie options when they go
9 to the movies.

10 **MR. ALIOTO:** Yes, Your Honor.

11 Let me begin by saying it is not an issue or requirement
12 by the plaintiff to show harm to competition. All the statute
13 requires is to show a lessening of competition. And the
14 lessening of competition in that -- in the theatrical area is
15 that two of the major producers of movies are attempting to
16 join; and if they do, there would be a lessening of competition
17 in a major way.

18 We have put out our charts that have shown that they now
19 will be controlling 23 percent of the production, and they move
20 from instead of four companies of the majors they're -- instead
21 of five, there are now four, and they now become number one.
22 And by becoming number one, the statement of the Supreme Court
23 when that situation occurs, the court says it is more likely
24 that prices will be raised, that people of course will be
25 fired, that output will be lessened.

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1 These plaintiffs are entitled under Section 16 not to show
2 an injury in fact but to show a threat of an injury which the
3 Supreme Court described as more likely.

4 And when the Supreme Court stated the policy of the
5 United States, they said in these instances, it is more likely
6 that consumer choice will be eliminated or substantially
7 eliminated. That is Footnote 72 in the *Brown Shoe* case.

8 The *Pabst* case, if it please Your Honor, specifically
9 referred to the other Supreme Court cases as authority for its
10 position, and the *Pabst* case is binding authority. Of course,
11 it's the Supreme Court.

12 There was an effort, as we pointed out, since the 1980s to
13 disregard all of the Supreme Court decisions. Not by the
14 Supreme Court nor by Congress, but by a couple of folks in the
15 Department of Justice, Judge Bork --

16 **THE COURT:** I'm going to stop you right there,
17 Mr. Alioto.

18 So one of my questions for you was what your best case is,
19 and it sounds like you may be pointing me back to *Pabst*; is
20 that right?

21 **MR. ALIOTO:** No, Your Honor.

22 **THE COURT:** Okay. So what's the best case cited in
23 your papers for if -- I guess I'm still asking you what -- that
24 the -- if it's the lessening -- if it's the lessening of movie
25 options when folks go to the movies, that is sufficient; that

1 the threat of that reduce -- I think this is what -- I'm trying
2 to restate it to some degree in the terms you're using.

3 What's your best case? I hear you saying *Pabst* to me, so
4 what else do you have for me that might be from closer in time
5 or from within the Circuit?

6 **MR. ALIOTO:** If it please the Court, whether it is
7 closer in time or not, I would respectfully submit that none of
8 the Supreme Court decisions have been overruled. We use all of
9 them. We are -- we say that the cases that support us are the
10 *Brown Shoe* case, are the *Alcoa* case, the *Von's* case, the
11 *Philadelphia National Bank* case. Each one of them support
12 fully the plaintiffs' position.

13 We have the charts in our complaint and we have the charts
14 in our motions for a preliminary injunction. They were not
15 refuted. That is fact. Those are facts.

16 And when you have a lessening of competition the way we
17 have shown it, for example, as I said, in terms of the
18 theaters, now they have 23 percent. They would have
19 23 percent, and they move from number two and number five to
20 number one.

21 Okay. That is a lessening of competition, and it's
22 irreparable at the same time because as Justice O'Connor said:
23 When you eliminate a rival competitor, that is irreparable harm
24 because the guy is gone and he is not there anymore.

25 **THE COURT:** So, Mr. Alioto, I want to go ahead and

1 give you -- I want to let you go ahead and sort of make
2 whichever presentation -- those are the end of my questions.
3 So I want to go ahead and give you 10 minutes now to go ahead
4 and sort of make whatever presentation you would like unbound
5 by my questions, and then I'll give defendants the same amount
6 of time to make a presentation.

7 Go ahead, Mr. Alioto.

8 **MR. ALIOTO:** And if it please, Your Honor, this would
9 be the presentation on the preliminary -- motion for
10 preliminary injunction or is this to be the response to the
11 motion to dismiss? Or both I guess. What is the Court's
12 pleasure?

13 **THE COURT:** If you would go ahead -- you know, I'm
14 looking at the rest of my notes for today, and I'm planning to
15 really just deal with the motion for preliminary injunction at
16 this moment.

17 **MR. ALIOTO:** Okay.

18 **THE COURT:** So why don't you go ahead and focus there.

19 **MR. ALIOTO:** Okay. So here are the -- okay. So the
20 plaintiffs, let's talk about the plaintiffs, a group of very,
21 as a matter of fact, courageous people. This isn't the first
22 time that they've done this.

23 And they are entitled by law under -- by the Congress
24 under Section 16, and they give -- and the Congress decided to
25 give them special power. Now, there was an effort by the DOJ

1 at one time, the District of -- the Department of Justice to
2 try to tell the justices in the beef case, in the producer
3 case, that private parties should not be allowed to question
4 these mergers, that this should be solely with the Department
5 of Justice, and the Supreme Court rejected it of course.

6 So the one thing that stands out, or two things actually,
7 one is that neither Congress nor the Supreme Court have pulled
8 back on those decisions. None. And just because they may be
9 old, it doesn't matter. We have a lot of old cases that we
10 still honor. We can talk about the '60s and '70s, and we're
11 still bound by them and the courts are bound by them.

12 Now -- now, what we would say is that when the plaintiffs
13 have this power given to them by the Congress under Section 16,
14 that all they have to show is a threat of injury.

15 Now, we know that in the past when the Skydance crowd
16 bought Paramount Globe to begin with, what did they do? That
17 was only last year. What did they do? They increased the
18 price, and our effort we put in our complaint that we paid that
19 price. That was our allegation. Now, it was questioned so we
20 put in others, but Your Honor struck it so...

21 But the point was that we made that allegation and it
22 happens to be true. We paid the price that was the direct
23 result of the acquisition by Paramount Globe by Skydance.

24 But in the future now, these guys wasted no time. They
25 were in it for one year. And less than one year, it was last

1 August as a matter of fact, it wasn't even a year ago, now
2 their rapaciousness goes to try to get Warner. And now in
3 trying to get Warner, they are threatened, the plaintiffs are
4 threatened, everybody is threatened. What does the Supreme
5 Court say the threat would be? Price changes. They did it
6 before.

7 We're supposed to have to get all the inferences. That's
8 what the Supreme Court says. Not only are the facts that we
9 allege to be true, we get all the inferences. Well, the
10 inference there is what they did less than a year ago, they are
11 certainly going to do if they got Warner Brothers.

12 They have amounted an incredible amount of debt. The
13 purchase is \$110 billion. There's no way they can get that
14 unless, among other things, they raise the price.

15 In addition -- that's a threat.

16 In addition, their output and what they could possibly --
17 as the Supreme Court said, when this happens, these are the
18 three things that happen, more likely the Supreme Court said:
19 One, they raise the price; two, they fire people; three, the
20 output or production is limited; and, four, they get rid of all
21 of the different duplications. That means business. That
22 means studios. That means people. That means managers.
23 Everybody. That means that there is an impact on the service
24 and the quality that is expected to be done.

25 So it's very clear that these people, as everybody, is

1 threatened that the production by these two iconic companies
2 eliminating one, and they would go it is now in number one's
3 position, 23 percent.

4 Okay. Now, in *National* -- in *Philadelphia National Bank*,
5 they didn't speculate but it was about 23 percent. They said
6 anything -- if it ever got to 30 percent, that's it. But all
7 of the other cases that we have given you, *Brown Shoe*, what was
8 the amount? 4 percent. *Alcoa*, what was the amount purchased?
9 1 percent. *Von's*, *Von's* the grocery stores, both of them,
10 4 percent. That's what they're looking at. In this case
11 you're looking at 23 percent.

12 We had charts not only for that but we had the revenue
13 charts, we had the booking charts, and we made all those
14 comparisons; and in each one of those charts, which had to be
15 taken as true, is that there was a substantial lessening of
16 competition in each of those different areas.

17 And so we believe that it's obviously quite supported, but
18 we had to work on -- we're private plaintiffs. Okay? Nobody
19 seems to understand that. Private plaintiffs don't get the
20 special privileges where Paramount trying to accommodate the
21 State of California gives them all that information. 900,000
22 documents they gave them. The Hart-Scott-Rodino documents they
23 gave them.

24 They invited them to depositions. They could ask
25 questions if they wanted to. They were given -- they waived

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1 confidentiality. That's what they did.

2 Okay. What did we get? Nothing. We had to fight to try
3 to get the Hart-Scott-Rodino documents that were prepared and
4 ready to be given at any time and, no, they want to make it a
5 fight.

6 Okay. That's not right. We should have been given that
7 before, but before would be following Rule 26. These
8 defendants don't care about Rule 26. Nobody cares about
9 initial disclosures, defendants in these cases. That's -- they
10 don't pay attention to it and they don't care about it.

11 So if we are given these -- what they already gave to
12 California and especially depositions -- ordinarily, you know,
13 they take -- the governments can take depositions. The
14 governments can have their people, FBI if it's the DOJ. Here,
15 whoever the outfit would be, they go and they question
16 witnesses and everything. They have Grand Juries. They can
17 gather evidence in many, many ways.

18 Private plaintiffs cannot. All private plaintiffs know is
19 that they're scared and that there is a danger that what they
20 are entitled to will be taken away from them.

21 The Congress and the Supreme Court went even farther.
22 When they had Section 4 of the Clayton Act, that means to
23 recover damages, they specifically put in the statute no matter
24 the amount, \$1. It's because it's important to make sure the
25 competition and not combination is the rule of trade in the

1 United States and nothing else will satisfy it.

2 In the terms of Section 16, just a threat; but then also
3 in Section 16 they talk of the danger of what will happen, and
4 that they are hurt -- that they're threatened is obvious
5 because they did it before.

6 But that they are -- but that they are injured by an
7 antitrust -- so-called antitrust injury, one of the inventions
8 out of the 1980s where they tried to change the law and
9 substitute the Supreme Court decisions for what they call the
10 so-called guidelines. We have it in our papers where the FTC
11 had to admit that's not the law, that's not binding on anybody,
12 but he says but it's sure been successful. Okay. That's
13 supposed to be the intellectual avenue? Forget the Supreme
14 Court. That's what they're telling you. That's what they're
15 telling the courts.

16 Okay. Well, when the Supreme Court feels like overruling
17 their cases, they can do it. When the Congress feels like they
18 should overrule those cases, they can do it. They never have
19 and they've had many opportunities to do it.

20 So the focus in these cases are an attempt to get the
21 Court away from these binding Supreme Court decisions. And
22 when the Court says which case, all of these cases go to the
23 same point and that is that it's an elimination of competition.

24 There are two -- I'd like to talk about one case --

25 **THE COURT:** Mr. Alioto, you're actually at time. So

1 I'll let you -- I'll give you another 30 seconds, but you've
2 had your 10 minutes.

3 **MR. ALIOTO:** All right. There's only been one
4 decision -- which they misstated, by the way -- there's only
5 one decision that has analyzed these Supreme Court cases
6 specifically, and that is Judge Posner, and what Judge Posner
7 said, the way he analyzed them, he says: Of course, they're
8 not overruled. He says the way he analyzed them is like this,
9 he said: Is it a nontrivial transaction? It's not like the
10 corner grocery store, nontrivial. In this case it's the
11 largest acquisition in the history of the industry. Okay.
12 It's a nontrivial transaction.

13 Is a rival eliminated, a significant rival? Can anyone
14 say that Warner Brothers is not a significant rival of
15 Paramount. They have been since the 1900s. And -- and a
16 trend -- and the trend is obvious that we put it in our papers.

17 And so that's the way he analyzed it and if the Court
18 analyzes it that way, the Court would, I submit, grant the
19 motion certainly to stop everything until we could get to our
20 regular discovery and certainly deny a motion to dismiss in
21 this case.

22 Thank you, Your Honor.

23 **THE COURT:** Thank you, Mr. Alioto.

24 **MR. KESSLER:** Good afternoon, Your Honor.

25 Your Honor, in the last several years Mr. Alioto has made

1 five prior trips to the Northern District of California filing
2 very similar complaints seeking a preliminary injunction
3 against one or other major merger in this country.

4 Four of those times --

5 **THE COURT:** Mr. Kessler, you would be well advised to
6 focus on this case.

7 **MR. KESSLER:** Okay. I will. I will. I will.

8 I just want to say, Your Honor, four of the times it was
9 these same plaintiffs. And the reason I'm mentioning this is
10 because the same arguments that he presented to Your Honor just
11 now, the same standing issues that are before Your Honor
12 appeared in every one of these prior cases.

13 So if Your Honor asks me which case was most helpful or on
14 point for you to look at, there are five of them. It is the
15 *Fry* case before Judge Gilliam, it is the *Freeland* case before
16 Judge Lee, it is the *Malaney* case before Judge Seeborg, it is
17 the *Bradt* case before Judge Freeman, and it is the *DeMartini*
18 case before Judge Corley, all in this district.

19 And in every one of those cases, the case was either
20 dismissed or the motion was denied. Why? One, because the
21 plaintiffs had no Article III or antitrust standing just like
22 they do not have it in this case; or, two, because the Courts
23 rejected this idea that the *Pabst* case or the *Philadelphia*
24 *National Bank* case or any of those old Supreme Court cases made
25 a rule that simply if it's a nontrivial merger between two

1 horizontal competitors, that that states a Section 7 claim.
2 That's been completely rejected by all those Courts and by the
3 Ninth Circuit, and in the cases that the Ninth Circuit cite in
4 that including the *DeHoog* case, which is another one of
5 Mr. Alioto's cases but with different plaintiffs, where that
6 was specifically rejected.

7 And, third, the PIs get rejected because there's no
8 evidence as Your Honor pointed out; and it's very clear in this
9 circuit and elsewhere that to get a preliminary injunction, you
10 have to make a clear showing with evidence. And when there is
11 no evidence, then you cannot get a preliminary injunction.

12 I want to talk briefly about the standing issue. So in
13 the theatrical production market that Your Honor asked about,
14 there's not even any antitrust standing alleged, and that is
15 because the market is the sellers are the producers and
16 distributors of motion pictures, like my client Paramount, and
17 the buyers are the theaters.

18 The consumers are not directly in that market. They are
19 in a downstream market below that. And the law is very clear,
20 there's no dispute by plaintiffs in their papers, that if you
21 are not a participant in the market that is being restrained,
22 if you're neither a buyer nor a seller nor a competitor in that
23 market, that you are too remote to claim an antitrust injury
24 under the federal antitrust laws.

25 In fact, under the *Illinois Brick* doctrine, they would be

1 indirect purchasers in terms of that. The consumers are in a
2 different market and there's no other allegation of injury to
3 get them in that market.

4 In the market for news, in that market all they claim as a
5 competitive effect is the loss of editorial diversity, it says,
6 and other arguments which are noneconomic injuries that are not
7 cognizable under the antitrust laws. They may be complaints
8 but there's no specific injury alleged under *Twombly* in that
9 market.

10 So then we get, finally, to the streaming market and here
11 they do allege a single price increase. The problem they have
12 is that price increase obviously cannot be attributed to the
13 merger they're seeking to enjoin because that merger hasn't
14 been completed yet. So it could not have caused that single
15 price increase.

16 And they have no allegations specifically of concrete harm
17 in the future. All they have is the conclusory assertions that
18 it will restrain trade, it will reduce competition, it will
19 lead generally to higher prices. Those conclusory assertions
20 without any expert support, without any factual support is
21 exactly what *Fry*, *Freeland*, *Malaney*, *DeMartini*, *Bradt*, *DeHoog*,
22 every one of those cases have said that is insufficient.

23 And with respect to -- I know we're not arguing the motion
24 to dismiss, but with respect to the prior acquisition, which is
25 the subject of the motion to dismiss, that increase could not

1 be caused by that acquisition because Skydance, one of the
2 merging partners, had no streaming service. The only streaming
3 service was in Paramount. So how could a merger between -- it
4 wasn't a horizontal merger in that market. How could a merger
5 between one company that had no streaming service somehow lead
6 to a reduction of competition with the streaming services.

7 So, Your Honor, I don't want to belabor this, but there's
8 no standing, there's no evidence submitted in support of the
9 preliminary injunction so it can't possibly meet the standards
10 for a clear showing, which is what the *Winter* factors require,
11 a clear showing of a likelihood of success.

12 And, finally, they can't rely on these old cases because
13 what the case law says is that it's not that an injury to
14 competition is possible; it has to be probable. And that's
15 clear, and they produced no evidence to show that it would be
16 probable.

17 If I had to go on, Your Honor, they also have no
18 irreparable injury shown because they have no injury shown, so
19 it's certainly not irreparable injury. And clearly the balance
20 of hardships -- the balance of equities does not favor this
21 injunction. This would be putting a halt to a \$110 billion
22 acquisition causing all this disruption with virtually no
23 injury identified for these particular plaintiffs who are the
24 only ones on the other side. And, in fact, even if you
25 credited them and said, "Well, there will be a price increase,"

1 that would be money damages, which is not irreparable.

2 So unless Your Honor has any other questions, that's all I
3 have right now.

4 **THE COURT:** Thank you, Mr. Kessler.

5 **MR. KESSLER:** Thank you.

6 **THE COURT:** Mr. Alioto, to the degree that I asked you
7 to stay on the PI and we heard a little bit on standing, I'm
8 happy to give you maybe four more minutes here to address those
9 questions.

10 **MR. ALIOTO:** Well, I think -- may it please
11 Your Honor, I think they're very important.

12 I want to point out so this is clear, the cases that
13 counsel mentioned, he's absolutely wrong on all of them. He
14 never checked any -- I gave them permission to contact each
15 defendant and if the defendant wants to tell them what
16 happened, they can. I'm not because I'm under an agreement
17 with them not to discuss what we did.

18 I want the Court to understand something. That's true,
19 that these plaintiffs have filed other cases and we're proud
20 that they did. They were sent to me by Senator Harry Reid
21 because the Department of Justice would not challenge these
22 mergers. That's what they wanted to do. Now, the fact that
23 they wanted to do that is clear.

24 Counsel just says that when they had the last -- the first
25 acquisition and they raised the price, of course they bought

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24

1 Paramount and raised the price immediately after and we paid
2 it. Nobody is taking the allegations that we made as being
3 true. The Court must.

4 Counsel is arguing his case. That's different. That's
5 not -- he's not arguing the facts that we had in the complaint,
6 which must be taken as true; and not only must they be taken as
7 true, they also must be given all the inferences. And if you
8 don't think there's an inference that they raised the price
9 when they bought Paramount, that they're going to raise the
10 price when they buy Warner, of course they are. Of course they
11 are in order to cover their debt, otherwise they wouldn't be
12 able to do it. \$110 billion. They even have to have a bunch
13 of foreigners put up \$50 billion to try to save them. They
14 still haven't got that.

15 I think also this should be clear, Your Honor -- let me --
16 in my very short time that you're giving me, I want to read
17 this. This is -- this is from the former chairman of the FTC
18 and he was celebrating the guidelines of 1982, and that's when
19 things started to happen and this is what -- and this is what
20 he says. He says [as read]:

21 "The experience with the 1982 merger guidelines
22 underscores the power of an intellectually sound approach
23 to antitrust policy. The guidelines lack the force of
24 law. They formally bind no one, not the courts, not other
25 countries, not even the Department of Justice, yet they

1 have exerted enormous influence on the antitrust
2 enforcement community and the courts in the
3 United States."

4 So either we adhere to the view that the Supreme Court
5 decisions are binding and not this stuff -- I had to -- I had
6 debates at that time with this guy Mr. Baxter and the judge
7 when they were trying to do this. Where did the guidelines
8 come from? The bowels of the building for the Department of
9 Justice? They hated the decisions by the Supreme Court, but
10 they could not make the Supreme Court change its mind and it
11 hasn't changed its mind; and the Supreme Court is here today,
12 and it binds this Court and it binds all of us and rightfully
13 so.

14 One thing too. Counsel, I don't know where he gets this.
15 Counsel just exorbitantly says: If you're not a buyer and
16 you're not a seller, you can't -- you're not in the market.
17 How absurd. Adam Smith, the guardian of free enterprise, says:
18 Consumption is the sole purpose of production.

19 What did the Supreme Court say in Footnote 72? More
20 likely that consumer choice will be affected. What did the
21 Supreme Court say in *Sonotone*? You use the language antitrust
22 was passed for the consumers. For the consumers. That's what
23 this is about.

24 Thank you.

25 **THE COURT:** Thank you, Mr. Alioto.

1 So, folks, let me give you my ruling on the preliminary
2 injunction. I'm denying plaintiffs' motion for preliminary
3 injunction because as set out in *Winter* and as the Ninth
4 Circuit has repeated several times since, a preliminary
5 injunction is an extraordinary remedy that may only be awarded
6 upon a clear showing that plaintiff is entitled to such relief.

7 Here, plaintiffs fail to meet that standard. Plaintiffs
8 have not offered any evidence and, thus, have not made a clear
9 showing of a likelihood of success nor do they make a clear
10 showing of irreparable harm. Because plaintiffs have offered
11 no evidence, they do not even show that there are serious
12 questions going to the merits such that a sliding approach to
13 *Winter* factors should apply here.

14 Therefore, there's no need for me to reach the parties'
15 remaining arguments regarding the propriety of a preliminary
16 injunction and that motion is denied.

17 As regards the motion to dismiss, I'm going to take it
18 under submission.

19 And, folks, that is all that I had for us today, and I
20 will see some of you tomorrow.

21 **MR. KESSLER:** Thank you, Your Honor.

22 **THE COURT:** Have a good rest of your day.

23 (Proceedings adjourned at 2:40 p.m.)

24 ---oOo---

25

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, July 17, 2026



Kelly Shainline, CSR No. 13476, RPR, CRR
U.S. Court Reporter

Case: 26-6423, 09/30/2026, DktEntry: 2.1, (347 of 466)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re PAMELA FAUST, et al.

RECORD APPENDIX
VOLUME 4

District Court No. 4:26-cv-03790-AMO

APP 344-463

September 30, 2026

Appendix G

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAM FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**LIMITED VERIFICATION OF GARY
 TALEWSKY**

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1 I, Gary Talewsky, declare as follows:

2 1. I am a Plaintiff in this action.

3
4 2. I have reviewed the Complaint filed in this action.

5 3. The allegations in the Complaint concerning my own subscriptions, Paramount+
6 subscription or access, Paramount+ payments or charges, payment or incurring of increased
7 Paramount+ charges, streaming-service use, cable or live-TV use, national-news viewing,
8 moviegoing, purchasing habits, threatened injury, and reasons for seeking injunctive relief are
9 true and correct of my own personal knowledge.
10

11 4. To the extent the Complaint contains allegations made on information and belief, I
12 believe those allegations to be true.

13 5. I understand that this verification is limited to facts within my personal knowledge and
14 to allegations made on information and belief that I believe to be true.
15

16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct.

18 Executed on 10 JUNE, 2026, at BOCA RATON FL

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21 Gary Talewsky
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAM FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**LIMITED VERIFICATION OF
 DEBORAH RUBINSOHN**

Appendix G

Case 4:26-cv-03790-AMO Document 47-1 Filed 06/17/26 Page 2 of 2

I, Deborah Rubinsohn, declare as follows:

1. I am a Plaintiff in this action.

2. I have reviewed the Complaint filed in this action.

3. The allegations in the Complaint concerning my own subscriptions, Paramount+ subscription, Paramount+ payments, payment of increased Paramount+ charges, streaming-service use, paid video-service use, national-news viewing, moviegoing, purchasing habits, threatened injury, and reasons for seeking injunctive relief are true and correct of my own personal knowledge.

4. To the extent the Complaint contains allegations made on information and belief, I believe those allegations to be true.

5. I understand that this verification is limited to facts within my personal knowledge and to allegations made on information and belief that I believe to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 10, 2026, at Toronto Ontario Canada.

Deborah Rubinsohn
Deborah Rubinsohn

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAM FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**LIMITED VERIFICATION OF LISA
 McCARTHY**

Appendix G

Case 4:26-cv-03790-AMO Document 46 Filed 06/17/26 Page 2 of 2

I, Lisa McCarthy, declare as follows:

1. I am a Plaintiff in this action.

2. I have reviewed the Complaint filed in this action.

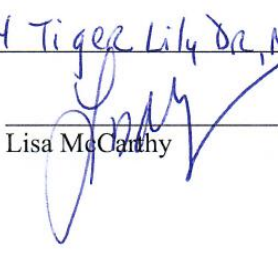
3. The allegations in the Complaint concerning my own subscriptions, paid video-service use, streaming-service use, national-news viewing, consideration of Paramount+, reasons for not subscribing or re-subscribing to Paramount+, moviegoing, purchasing habits, threatened injury, and reasons for seeking injunctive relief are true and correct of my own personal knowledge.

4. To the extent the Complaint contains allegations made on information and belief, I believe those allegations to be true.

5. I understand that this verification is limited to facts within my personal knowledge and to allegations made on information and belief that I believe to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 11, 2026, at 8044 Tiger Lily Dr, Naples, FL.



Lisa McCarthy

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAM FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN,
 and GARY TALEWSKY,

Plaintiffs,
 vs.

PARAMOUNT SKYDANCE
 CORPORATION (formerly Paramount
 Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**LIMITED VERIFICATION OF LEN
 MARAZZO**

Appendix G

Case 4:26-cv-03790-AMO Document 45 Filed 06/17/26 Page 2 of 2

I, Len Marazzo, declare as follows:

1. I am a Plaintiff in this action.

2. I have reviewed the Complaint filed in this action.

3. The allegations in the Complaint concerning my own subscriptions, Paramount+ subscription, Paramount+ payments, payment of increased Paramount+ charges, streaming-service use, paid video-service use, national-news viewing, moviegoing, purchasing habits, threatened injury, and reasons for seeking injunctive relief are true and correct of my own personal knowledge.

4. To the extent the Complaint contains allegations made on information and belief, I believe those allegations to be true.

5. I understand that this verification is limited to facts within my personal knowledge and to allegations made on information and belief that I believe to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 13, 2026, at Reno, NV.



Len Marazzo

Appendix G

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAM FAUST, LEN MARAZZO, LISA
McCARTHY, DEBORAH RUBINSOHN,
and GARY TALEWSKY,

Plaintiffs,
vs.

PARAMOUNT SKYDANCE
CORPORATION (formerly Paramount
Global), and SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**LIMITED VERIFICATION OF PAMELA
FAUST**

Appendix G

Case 4:26-cv-03790-AMO Document 44-1 Filed 06/17/26 Page 2 of 2

1 I, Pamela Faust, declare as follows:

2 1. I am a Plaintiff in this action.

3 2. I have reviewed the Complaint filed in this action.

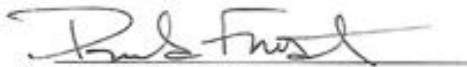
4
5 3. The allegations in the Complaint concerning my own subscriptions, streaming-service
6 use, moviegoing, purchasing habits, consideration of Paramount+, reasons for not subscribing to
7 Paramount+, threatened injury, and reasons for seeking injunctive relief are true and correct of
8 my own personal knowledge.

9
10 4. To the extent the Complaint contains allegations made on information and belief, I
11 believe those allegations to be true.

12 5. I understand that this verification is limited to facts within my personal knowledge and
13 to allegations made on information and belief that I believe to be true.

14
15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed on June 10, 2026, at Loveland OHIO.

18 
19 Pamela Faust

Appendix G

DocuSign Envelope ID: D18149DB-8B2A-3AD4-8228-152033F0F8B3

Case 4:26-cv-03790-AMO Document 35 Filed 06/09/26 Page 1 of 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PAMELA FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN, and
 GARY TALEWSKY

Plaintiffs,

vs.

PARAMOUNT SKYDANCE CORPORATION
 (formerly Paramount Global), and
 SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**DECLARATION OF ANDREW BRANDON-
 GORDON IN SUPPORT OF PARAMOUNT'S
 OPPOSITION TO PLAINTIFFS' MOTION
 FOR PRELIMINARY INJUNCTION**

GORDON DECL.
 CASE No. 4:26-CV-03790-AMO

APP 356

Appendix G

DocuSign Envelope ID: D18149DB-8B2A-3AD4-8228-152033F058B3
Case 4:26-cv-03790-AMO Document 35-1 Filed 10/06/26 Page 2 of 7

I, Andrew Brandon-Gordon, declare and state as follows:

1. I am the Chief Strategy Officer and Chief Operating Officer at Paramount Skydance Corporation (“Paramount”). I make this declaration based on my own personal knowledge and experience, including based on information provided to me, to describe ways that Paramount’s merger with Warner Bros. Discovery, Inc. (“Warner Bros.”) is expected to create synergies, efficiencies, cost savings, and other benefits.

2. I joined Paramount in August 2025 when Skydance Media LLC completed its acquisition of Paramount Global. The focus of my role at Paramount is translating corporate strategy into operational plans that drive performance, efficiency, and long-term growth. My responsibilities have included evaluating Paramount’s potential strategic acquisition of Warner Bros. and overseeing analysis of synergies that the merged company can achieve. I have four decades of experience in investment banking, corporate strategy, and the technology, media, and telecommunications industries.

3. At Paramount, I oversee a team of in-house staff and outside management consultants that has been working to identify potential synergies and cost-savings that Paramount can achieve post-merger without compromising our senior leaderships’ priorities, which include investing to grow Paramount and Warner Bros. into a highly competitive, next-generation media and entertainment company that delivers high-quality content and creates even greater value for customers than the companies can independently.

4. Paramount’s efforts to identify synergies and cost-saving opportunities from the merger began as part of Paramount’s consideration of whether to acquire Warner Bros. and how much would be reasonable to pay for it. The bidding process to acquire Warner Bros. was highly competitive, with Paramount, Netflix, and Comcast making offers to acquire the company at increasing valuations during the autumn of 2025, and continuing until Paramount and Warner Bros. entered their definitive Agreement and Plan of Merger on February 27, 2026 (the “Merger Agreement”), a true and correct copy of which is attached to this declaration as Exhibit 5.

5. When Paramount announced the merger, it publicly disclosed that it expects the merger will yield more than \$6 billion in synergies and described certain of the sources of those synergies. A true and correct copy of the press release announcing the merger and expected synergies is attached as

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DocuSign Envelope ID: D18149DB-8B2A-3AD4-8228-152033F058B3
Case 4:26-cv-03790-AMO Document 35-1 Filed 10/26/26 Page 3 of 7

1 Exhibit 2. Since that time, Paramount has continued to evaluate and refine the synergy plan, including
2 efforts to identify additional cost-saving opportunities.

3 6. Paramount has invested substantial time and effort to analyze the benefits of the merger
4 and is committed to achieving substantial synergies that increase the competitiveness of the combined
5 company. Our synergy plans are designed to allow the combined company to operate more efficiently
6 and invest in its priorities, without reducing the quality or quantity of content that it offers or reducing
7 the value proposition of the companies' offerings to consumers. Our goal is to make investments that
8 attract and engage more consumers across our platforms post-merger, including streaming, linear, and
9 theatrical customers—not to make cuts that hurt our competitiveness.

10 **I. Cost Synergies**

11 7. Paramount expects to realize significant cost savings specific to the Warner Bros. merger
12 in technology, real estate, marketing, labor, and content.

13 8. *Technology synergies.* Paramount anticipates realizing significant cost savings from
14 consolidating the technology infrastructure (or “tech stack”) needed to deliver Paramount and Warner
15 Bros. streaming services to consumers. The tech stack is a major operating cost behind any streaming
16 platform. Among other technology costs, all content must be continuously hosted such that high-
17 definition video can be delivered simultaneously to millions of viewers nationwide and internationally.
18 Further, the streaming service must develop and continuously maintain a user-friendly app interface for
19 numerous smart TVs, PCs, and mobile device platforms, along with software algorithms to help
20 recommend desirable programming to individual viewers and keep them engaged. By consolidating this
21 technology infrastructure into a single tech stack covering all Paramount and Warner Bros. streaming
22 services, Paramount will substantially cut costs while improving performance and user experience.
23 Paramount further anticipates technology savings from migration to a single enterprise resource planning
24 (ERP) system and through other efficiencies in using unified back-office technology across the combined
25 company.

26 9. *Real estate synergies.* Paramount anticipates significant saving in real estate costs as
27 result of the merger. The savings will be achieved in substantial part by consolidating offices facilities
28 in areas where Paramount and Warner Bros. have multiple buildings, some of which are underutilized.

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DocuSign Envelope ID: D18149DB-8B2A-3AD4-8228-152033F058B3
 Case 4:26-cv-03790-AMO Document 35 Filed 10/02/26 Page 4 of 7

1 10. *Marketing synergies.* We estimate that the combined company will be able to reduce
 2 marketing spending by marketing more efficiently, without reducing audience engagement. For
 3 example, with greater data from a larger subscriber base, the company will be better able to identify
 4 groups that prefer certain television series or films, and tailor marketing more efficiently to that audience.
 5 The combined company can also consolidate marketing spending in certain agencies that perform most
 6 effectively.

7 11. *Labor synergies.* Paramount plans to maintain and increase overall investment in creative
 8 talent and production personnel, including actors, writers, directors, and others involved in content
 9 creation. Paramount does, however, anticipate some reductions in the combined companies' workforce,
 10 primarily affecting non-union corporate and administrative employees performing duplicative functions.
 11 However, Paramount is targeting a majority of the anticipated synergies coming from nonlabor sources.
 12 Paramount of course recognizes the significant personal impact of labor reductions and the financial
 13 plans for the merger anticipate paying competitive severance packages to affected employees. As
 14 Paramount continues to increase our own content creation and continues to buy content from other
 15 content creators, this will increase employment of actors, writers, directors, and others in the
 16 entertainment ecosystem in California and New York, among others.

17 12. *Content synergies.* The combined company plans to invest in expanded content and
 18 spend more money on programming and content than the two companies would have spent
 19 independently. At the same time, the combined companies also project savings on existing content by
 20 spending money more efficiently, such as pruning content that is unpopular or overpriced relative to its
 21 viewership.

22 **II. Ongoing Success Achieving Synergies**

23 13. Since Paramount Skydance Corporation was formed in August 2025 through the merger
 24 of Skydance Media and Paramount Global, Paramount's new leadership has been making significant
 25 investments to improve our products and expand content, while also achieving the efficiencies projected
 26 from that prior merger. The synergies we are already achieving from the Skydance-Paramount merger
 27 give us high confidence in our projections of synergies from the Warner Bros. merger.

28

Appendix G

DocuSign Envelope ID: D18149DB-8B2A-3AD4-8228-152033F058B3
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14. For example, Paramount is already achieving technology efficiencies from the Skydance-Paramount merger that are similar to what we project from the Warner Bros. merger. Paramount is already investing to better utilize technology, lower operating costs and improve the consumer experience by transitioning Paramount's entire enterprise to a single technology platform for the first time. Prior to the Skydance merger, Paramount Global operated three different streaming services—Paramount+, BET+, and PlutoTV—each with its own distinct tech stack, which resulted in significant inefficiency. Paramount has already made significant investments to converge Paramount+, BET+, and PlutoTV all into one unified tech stack, which will significantly enhance performance, elevate the consumer experience, and drive meaningful cost savings.

15. Paramount leadership estimates that the 2025 Skydance-Paramount merger will ultimately result in more than \$3 billion in cost savings overall, with technology synergies being a substantial portion of those savings. These initiatives are already well underway and anticipated to achieve \$2.5 billion of the total projected synergies by the end of 2026. The synergies we estimate from the merger with Warner Bros. are above and beyond what we anticipate from the Skydance-Paramount merger.

III. Additional Benefits to Combining Streaming Services

16. The cost savings created by the merger are expected to help Paramount increase investments in areas that directly benefit consumers, including content development, improved streaming technology, and other product improvements. These investments are expected to increase the quality and quantity of content available to consumers and improve Paramount's overall competitiveness.

17. A central thesis of the merger is the opportunity to improve Paramount's direct-to-consumer streaming offering. With the merger, Paramount and Warner Bros. expect to combine their primary streaming platforms—Paramount+ and HBO Max—to offer a more compelling streaming product to consumers than either could alone. Combining' the complementary offerings of Paramount+ and HBO Max will mean more content options for subscribers, especially high-quality content that drives engagement, all on a single platform. Subscribers would have access to the libraries and original content and sports and news from both services through a single, far more competitive library of streaming

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1 content. The combined platform will improve our ability to create and surface relevant content to
2 consumers.

3 18. A better streaming product that draws in more subscribers than either Paramount+ or
4 HBO Max could alone, will also increase revenue. The combined service will thus allow the company
5 to invest in even more content because it can spread the cost of that content across more subscribers,
6 including more local and specialized content that becomes economically viable with a larger subscriber
7 base.

8 19. As we broaden the subscriber base and reach a broader audience with more diverse tastes,
9 we can afford to spend more on content than either platform could on its own. Paramount understands
10 that content drives this business and currently plans to increase content over time. The combined direct-
11 to-consumer streaming service, even after accounting for the planned cost-reductions, currently plans to
12 spend more on content than the two standalone services combined.

13 **IV. Consequences If the Merger Is Delayed**

14 20. Delaying Paramount's combination with Warner Bros. would both delay achieving the
15 merger's benefits for consumers and result in a direct economic cost to Paramount.

16 21. Paramount estimates that 70% of cost synergies from the Warner Bros. merger will be
17 achieved within two years of closing the merger, with the rest achieved within three years of closing.
18 Any delay in closing would correspondingly delay the realization of these synergies. As discussed
19 above, the cost savings created by the merger are expected to directly benefit consumers, but those
20 benefits would be delayed if the merger closing is delayed.

21 22. If the transaction has not closed by September 30, 2026, Paramount will also be
22 responsible for paying Warner Bros. shareholders a \$0.25 per share "ticking fee" for each quarter
23 (measured daily) until closing. Ex. 5, Merger Agreement, Annex A. The ticking fee is calculated under
24 the Merger Agreement as \$.00277778 per share per day after September 30, not to exceed \$0.25 per 90
25 calendar day period. Ex. 5, Merger Agreement, Annex A. Based on the number of Warner Bros. shares
26 outstanding as of May 6, 2026, the ticking fee will be approximately \$6.9 million per day. If Paramount
27 is forced to spend millions per day on a ticking fee, that necessarily means less money available for
28 Paramount to invest in content and services for consumers.

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23. Any delay in closing would also result in continued carrying costs on committed financing, potential expiration or renegotiation of financing commitments, and ongoing uncertainty in the capital markets.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3, 2026.

Andrew Brandon-Gordon
/s/ Andrew Brandon-Gordon

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PAMELA FAUST, LEN MARAZZO, LISA
 McCARTHY, DEBORAH RUBINSOHN, and
 GARY TALEWSKY

Plaintiffs,

vs.

PARAMOUNT SKYDANCE CORPORATION
 (formerly Paramount Global), and
 SKYDANCE MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**DECLARATION OF DANA GOLDBERG IN
 SUPPORT OF PARAMOUNT'S OPPOSITION
 TO PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

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I, DANA GOLDBERG, declare and state as follows:

1. I am the Co-Chair of Paramount Pictures Corporation (“Paramount Pictures”) and the Chair of Paramount Television Studios (“Paramount Television”). My business address is 5555 Melrose Avenue, Hollywood, California.

2. Paramount Pictures is a film production and distribution company. Paramount Television produces television series and sells them to networks, both its owned and operated networks (e.g., CBS) and streaming platforms (e.g., Paramount+), and third-party buyers, such as Amazon, Netflix, and Apple.

3. Both Paramount Pictures and Paramount Television are owned by Paramount Skydance Corporation (“Paramount”).

4. On February 27, 2026, Paramount and Warner Bros. Discovery, Inc. (“Warner Bros.”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) under which Paramount will acquire Warner Bros.

5. The merger was unanimously approved by the Boards of Directors of both companies. Warner Bros. shareholders then approved it on April 23, 2026. The closing of the merger is subject to customary closing conditions and obtaining applicable regulatory clearances.

6. The purpose of this declaration is to explain Paramount’s reasons for acquiring Warner Bros., to explain our plans for operating the merged company, and to describe how Paramount expects its acquisition of Warner Bros. to expand consumer choice, increase television and film production, and foster streaming service competition. I make this declaration based on my own personal knowledge and experience.

I. My Professional Background and Role at Paramount

7. I have served as the Co-Chair of Paramount Pictures and the Chair of Paramount Television since August 2025.

8. I began my career in the film and television industry more than 30 years ago, working my way up through increasingly senior roles at several film production companies. I served as a producer or executive producer on a wide array of films, ranging from animated family films (e.g., *Happy Feet*) to romantic dramas (e.g., *Nights in Rodanthe*) to action thrillers (e.g., *I Am Legend*).

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9. In 2010, I joined Skydance Media, LLC (“Skydance”) as President of Production, where I oversaw development and production of movies including *Mission: Impossible – Ghost Protocol* and *World War Z*.

10. In 2013, I was promoted to Chief Creative Officer of Skydance and helped found Skydance Television, expanding Skydance’s business into both movies and television programming.

11. In 2024, Skydance agreed to merge with Paramount Global, the parent company of Paramount Pictures at the time. In August 2025, after obtaining regulatory approvals, Skydance completed its merger with Paramount Global, and the new Paramount Skydance Corporation was formed. In conjunction with the merger, I was named Co-Chair of Paramount Pictures with Josh Greenstein and Chair of Paramount Television. In my current role, I oversee production, distribution, marketing, and strategic planning for Paramount Pictures and Paramount Television.

II. Paramount’s Business and Ongoing Investments

12. Founded in 1912, Paramount Pictures is the longest operating film studio in Hollywood.

13. Prior to Skydance’s acquisition, Paramount Global’s business was much larger and broader in scope than Skydance’s business. Pre-merger, Skydance’s business was limited to the production of movies and television shows. Paramount Global’s business likewise involved production of movies and television shows, but it also included movie distribution, streaming platforms, and broadcast and cable linear television networks, including news programming. Skydance did not distribute its own movies and did not have any streaming platform or linear television networks.

14. Prior to Skydance’s acquisition, Paramount Global’s film studio, Paramount Pictures, was running at a significant financial loss; in 2025, none of its eight films was profitable. However, we saw the potential that—with significant investment—we could turn it around and better utilize our studios, talented workforce, and other assets to make Paramount Pictures profitable.

15. Since I began co-leading Paramount Pictures in August 2025, we have invested in building franchises and increasing content spending, including spending on larger-budget films that require years of development. For example, we have almost doubled theatrical film releases, from 8 in 2025 to 15 in 2026.

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III. Paramount's Decision to Buy Warner Bros.

16. In September 2025, Paramount and Warner Bros. began merger talks. Diligence began, and Paramount invested a significant amount of work reviewing Warner Bros.' financials and developing a potential five-year plan for the combined company.

17. At the same time, Warner Bros. was considering offers from competing bidders other than Paramount. The bidding process was highly competitive with Netflix emerging as the primary alternative bidder for Warner Bros.

18. Paramount and Netflix engaged in multiple rounds of competitive bidding—spanning from September 2025 to February 2026, with the offer price rising from \$19 per share to \$31 per share—reflecting the substantial financial commitment and competitive pressure involved in securing the deal.

19. Paramount's final \$31-per-share bid also included a commitment to pay the breakup fee Warner Bros. owes Netflix, the other leading bidder, effectively bringing the total financial commitment to approximately \$32 per share.

20. Beyond their price competition, Paramount and Netflix also competed to win over Warner Bros.' board and shareholders based on their vision for Warner Bros.' future. This process was very public. During the bidding campaign, Paramount's CEO, David Ellison, repeatedly laid out Paramount's vision for investing in Warner Bros.' expansion and success in public commitments, media interviews, and representations to shareholders.

21. Ultimately, Warner Bros. selected Paramount as the winning bidder, and the two companies entered into the Merger Agreement.

22. Paramount CEO David Ellison has committed to keeping both Warner Bros.' film studios and Paramount Pictures as separate brands after the merger and to continue producing films from each. Both are well-established studios with distinct brands and pipelines that the merged company intends to continue operating. A true and correct copy of a March 5, 2026, interview with Paramount CEO David Ellison making these commitments is attached as Exhibit 1.

23. Paramount has committed repeatedly and publicly that, post-merger, it intends to release at least 30 films per year in theaters with the goal of splitting releases roughly evenly between Paramount studios and Warner Bros. studios. Paramount has further committed to maintaining traditional theatrical

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1 windows, by keeping new releases in theaters for at least 45 days before making them available on paid
 2 video-on-demand or streaming platforms. As examples of Paramount making these commitments in
 3 public documents, attached are true and correct copies of a Joint Press Release dated February 27, 2026
 4 (Exhibit 2); an official transcript of an Investor Presentation dated March 2, 2026, that was filed with the
 5 SEC (Exhibit 3), and a Letter to Shareholders dated May 4, 2026, that was also filed with the SEC
 6 (Exhibit 4).

7 24. I have been heavily involved in planning for operation of Paramount's movie business
 8 post-merger and confirm that these public commitments are fully aligned with our operating plans.

9 **IV. Purpose & Benefits of the Merger**

10 25. The primary driver of the merger is the need to achieve the scale—in terms of content,
 11 subscriber base, revenue, and technology infrastructure—to allow Paramount's streaming platform to
 12 compete more effectively with leading streaming platforms such as Netflix, Amazon Prime Video, and
 13 Disney+. Today, the streaming services of both Paramount and Warner Bros. lack that scale, in terms of
 14 subscriber base, revenues, and content, which puts them at a competitive disadvantage and reduces their
 15 ability to invest in growing their services. Combining Paramount+ and HBO Max would place
 16 Paramount closer to competitive parity with these larger platforms and enable it to greatly expand the
 17 content that it can make available to consumers through a single platform with one subscription fee.

18 26. It will also deliver viewers a more compelling offering, with an exceptional intellectual
 19 property portfolio for a better value. The content libraries of Paramount and Warner Bros. complement
 20 each other. For example, HBO Max currently offers more "prestige" content than Paramount+, meaning
 21 critically acclaimed or award-winning content, such as *Succession* and *The Pitt*. At the same time,
 22 Paramount+ currently offers more family and children's content than HBO Max, such as *PAW Patrol*
 23 and *Sponge Bob SquarePants*. Bringing these complementary libraries onto a single streaming platform
 24 will offer consumers a diverse and compelling range of content for a single subscription fee.

25 27. Given the overlapping and complementary nature of Warner Bros.' and Paramount's
 26 businesses, Paramount estimates that a combination will generate more than \$6 billion in cost synergies
 27 and help the combined company to increase its content production for both film and television.
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1 28. Post-merger, Paramount intends both to expand its streaming service and to continue
2 investing in movies for theatrical exhibition. Part of the strategy of the merger is to invest in theatrical
3 releases and later add them to a combined streaming service to generate buzz. We have found that films
4 released first in theaters perform significantly better once they go to streaming services compared to
5 films released first to streaming, regardless of whether the theatrically released movie was successful at
6 the box office. This is in part because theatrical release functions as a large-scale marketing mechanism.

7 29. Paramount currently plans to increase investment in content following the merger,
8 including in theatrical films and television. Paramount's commitment to a minimum of 30 theatrical
9 releases per year is a key part of this strategy. Already, since the Skydance deal, Paramount has increased
10 its theatrical releases. Specifically, Paramount Pictures plans to release 15 theatrical films in 2026—
11 nearly double 2025. Paramount has no plans to reduce the number of Paramount and Warner Bros.
12 theatrical releases. In fact, Paramount plans to continue growing the combined Paramount and Warner
13 Bros. release slate post-merger with the intention to have the most film releases of any producer in the
14 United States.

15 30. As with its films, the company has no post-merger plans to reduce the number of
16 television series it produces. Paramount Television Studios has approximately 30 shows in different
17 levels of production right now with the goal of producing 40 shows by 2030. When combined with
18 Warner Bros.' television studios, that output will increase to around 170 shows, and the combined firm
19 will invest in increasing that number even further. Such increased content will also support the
20 competitiveness of the combined firm's streaming service and provide consumers with the benefit of
21 increased variety and choice.

22 31. Increased content production feeding into the combined streaming platform will do
23 nothing but help the streaming service become more competitive and benefit customers. The combined
24 company will have the ability to provide one company's streaming service access to the libraries, original
25 content, and news from the other, creating more compelling products.

26 32. Paramount expects that offering more content and a better product will create a virtuous
27 cycle that benefits consumers and helps make Paramount a stronger competitor. Paramount's subscriber
28 base will grow as more consumers, drawn by a better product that includes more content, sign up and

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1 fewer leave. That, in turn, will allow Paramount to access a broader audience, invest in even more
2 content, and spread the cost of that content across a larger subscriber base. And as the Paramount
3 subscriber base grows further, the virtuous cycle of increased content production, a better consumer
4 experience, and the strengthening of Paramount's business would continue.

5 33. In an era when traditional, linear television networks are declining in popularity and
6 profitability, the merger will provide the merged firm with the cash flow, cost-efficiencies, and
7 distribution pipeline necessary to support its combined slate of networks, including CBS, CNN, TBS,
8 and the Discovery Channel. Paramount's CEO David Ellison discussed these plans in investor calls and
9 interviews, including in Exhibits 1 and 3. These networks have strong brands, and the merged firm plans
10 to bolster them for a streaming and digital world. For example, the merged firm intends to include
11 programming from across its network portfolio on the combined streaming service, increasing user
12 convenience and consumer access to network programming.

13 34. The merged firm's complementary and unified portfolio of cable and free-to-air (i.e.,
14 broadcast) networks will offer advertisers more compelling and impactful opportunities for cross-
15 channel activations and sales.

16 35. I also understand that Paramount has publicly stated that, after the merger, CNN will
17 remain editorially independent. These statements were publicly affirmed by Paramount's CEO David
18 Ellison, as reflected in Exhibit 1.

19 **V. Consequences If the Merger Is Delayed**

20 36. A delay in closing would also hinder both studios' ability to execute their planned
21 production and distribution strategies for future content. And if the delay is long enough, it could scuttle
22 the merger.

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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on June 3, 2026.

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4 /s/ Dana Goldberg
5 Dana Goldberg
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EXHIBIT 1

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

SCHEDULE 14A
PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934
(Amendment No.)

Filed by the Registrant ☐ Filed by a party other than the Registrant ☒

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, for Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))
- ☐ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☒ Soliciting Material under §240.14a-12

Warner Bros. Discovery, Inc.
(Name of Registrant as Specified In Its Charter)

Paramount Skydance Corporation
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check all boxes that apply):

- ☒ No fee required
- ☐ Fee paid previously with preliminary materials
- ☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11

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Filed by Paramount Skydance Corporation
Pursuant to Rule 14a-12 under the
Securities and Exchange Act of 1934, as amended
Subject Company: Warner Bros. Discovery, Inc.
Commission File No.: 001-34177
Date: March 5, 2026

The following is a transcript of an interview of David Ellison, chief executive officer of Paramount Skydance Corporation, on CNBC conducted on March 5, 2026.

CNBC: David Ellison Interview Transcript
5 March 2026

David Faber:

Last week, Paramount Skydance emerging victorious after Netflix declined to raise its deal or its offer for the company. The decision clears the way for Paramount to acquire Warner Brothers in a deal valued at \$31 a share in cash. It caps off one of the most closely watched and fiercely contested takeover fights the media industry has seen in many years.

Joining us now in a CNBC exclusive is Paramount Skydance Chairman and CEO David Ellison. He's in Los Angeles with Julia Boorstin. Julia, take it away.

Julia Boorstin:

Thanks so much. And David, thanks so much for having us here on the Paramount lot to talk about this historic merger.

You are going to be paying 63% more for Warner Brothers Discovery than you first reportedly offered back in September. Tell us, what is your response to concerns that maybe now you're overpaying?

David Ellison:

So first, I just want to — let's zoom out. Like, we are incredibly excited to be here today. You know, I believe this deal is basically — it's pro-competitive, it's pro-consumer, it's good for the overall creative economy. And, you know, we really believe in the value of what we're going to be able to create here.

If you go to 10,000ft, let's talk about what's required to really be able to win today. And the first thing is you have to be able to win in content. By uniting the iconic libraries of Paramount and the iconic libraries of Warner Brothers, we now have a library of 15,000 films, everything from Harry Potter, the DC Universe, Mission Impossible, Top Gun, The Godfather, under one roof. That puts us in an incredible position to really be able to win in the content space.

You know, it immediately gets us to scale in streaming. When you put Paramount Plus and HBO Max together, you get to over 200 million basically gross subscribers. That'll come down a little bit basically with the overlap, but it puts you in the position to be able to compete with the leaders in the industry.

And we've also repeatedly said that we really need to become one of the most technologically capable media companies. We're using technology to transform every single aspect of this business, and we're going to rationalize the cost.

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And at the end of the day, we're owner operators. We're the largest shareholder in Paramount. We're going to be the largest shareholder in the combined company. And we could not be more excited about the future and our ability to really create value for all our shareholders.

Julia Boorstin:

So it sounds like what you're saying, it was worth paying up and increasing your offer because acquiring that scale and securing that kind of scale in Hollywood right now is so essential.

But at the same time, what comes with that is a lot of debt. And post closure, the company will have \$79 billion in debt, which has raised a lot of concerns, including from the likes of Fitch, which downgraded Paramount to junk status. How do you address the constraints you're going to now face when you're a non-investment grade borrower?

David Ellison:

So I think, you know, obviously, yes, we have the debt, and let's actually contextualize that. So you also have to look at the cash flows.

The company that's going to generate over \$10 billion in cash flow, \$69 billion of revenue and \$18 billion of EBITDA in a synergized basis this year. We will be 4.3 times levered at close for the \$6 billion in synergies.

I think if you look at our track record and the ability to really execute on the synergies for the deal — when we sign the deal for Paramount, we announced \$2 billion in synergies. When we actually closed, we were at \$3 billion in synergies. We'll execute on over 2.5 billion by the end of this year.

So we have the ability to basically manage that and deliver on the \$6 billion. I want to be clear, it's not the 16 that some people have reported. It'll be \$6 billion in synergies.

And with that cash flow, that includes us actually spending more on content than any of our peers. So basically, we're going to be able to use basically that capital deployed toward content, deploy toward technology to be able to grow and scale the business.

And we also have the cash flow to be able to manage the debt and ensure that we're investment grade three years after closing.

Julia Boorstin:

So that's that balance that you're talking about here — the balancing the content investment with also managing leverage is something that investors have talked a lot about as your key challenge going forward. Because if you're going to be able to invest what it's going to take to compete on the content level, to make the 30 movies a year that you're talking about, how are you going to do that simultaneously while also managing leverage?

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David Ellison:

So, so, so it's what we said. We — you actually have the ability to be able to do both.

And I think if you look at where the Warner Discovery merger basically really kind of got into trouble, is that linear declined faster than people anticipated. They actually overdelivered on their cost saves, but linear was declining faster.

I think that linear decline curve is now incredibly well understood, and we've taken a very, very conservative view to that in our models to ensure that we never get into a position where that's not manageable.

And given the \$69 billion in revenue, the \$10 billion plus in cash flow, we feel confident in our ability to be able to manage the debt — again, will be at investment grade basically within three years — and also have all of the capital that we need to invest in content, to grow our creative offering, to make 30 movies a year, to compete in streaming, and also to invest heavily in technology.

Julia Boorstin:

And in terms of that \$6 billion in synergies, there's a lot of concern here in Hollywood, and there's been a lot of talk about how many layoffs might be part of that. Can you give us a sense of how much you're planning to eliminate jobs at a time when you can rely on technology to replace a lot of functions?

David Ellison:

So, look, we will absolutely have to rationalize the overall corporate overhead of the company. But that's not the primary driver of the synergies in the deal.

Just when you look at it, we're going to bring HBO Max and Paramount Plus together. That will rationalize the tech stacks. There's incredible savings there as well as in our cloud rationalization.

We're going to rationalize the real estate footprint of both of these companies. We're not going to sell either lot. Those are iconic, and we are going to absolutely hold on to those.

And look, another example that was not talked about is really procurement. When we originally signed the deal basically to acquire Paramount, it was estimated at 50 to 100 million in procurement savings. The reality is it's well in excess of five times that.

So there are several buckets in this business to be able to operate it more efficiently, to achieve those savings, and still ensure that we can invest in growth and always compete.

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David Faber:

Thank you Julia, David you know its David Faber back here in New York. You know, back to the linear cable networks and the comments you just made in terms of having a plan in place that assumes continued declines — I'm just curious, I mean, you guys spent a lot of time shooting it obviously, the overall value of the potentially spun off entity for the Netflix deal — but you own a lot of cable networks. I mean, you really are confident that the projections you have for what are these continued declines in linear cable and entertainment assets in particular is sufficient to deal with anything that comes your way?

David Ellison:

So, David, the short answer is yes, we do. And look, I also think you have to contextualize that statement. We had a tremendous amount of questions on spinning off the linear assets during the deal with \$17 billion of debt, given the decline of cable, I also think as we've talked about, you really have to separate broadcast and cable. CBS is an incredibly reach asset and is an incredibly healthy business. We have eight of the top ten shows on broadcast. We just had the best year we've ever had in the history of the NFL in terms of viewership, you know with Why Marshall's this past weekend, and Tracker and expanding the Taylor Sheridan universe. And when you put all of these portfolios together, we absolutely believe that we can bend the decline, basically, of cable. We can rationalize the cost, and we can actually keep those brands healthier for longer. In addition to that, there are several iconic brands both at Paramount and Warner Brothers that we will transition to streaming and we see really significant value there.

David Faber:

You mentioned the NFL, such an important provider of content for the CBS network a lot of reports have them re-opening negotiations for the next contract and of course the expectation is the number is going to go up substantially for your company and many others who broadcast the games. What are your expectations there in terms of what your going to pay for the NFL and how that figures again into some of the questions Julia is asking about your overall leverage and the financial health of the company?

David Ellison:

No David absolutely, so we have a phenomenal relationship with the NFL. We anticipate that continuing for the foreseeable future. Genuinely, they are one of our most important partners. And we plan for them to stay one of our most important partners having just delivered a historic season in our partnership with them. And you know ongoing negotiations — we're not really in a position where we can comment. I promise we will share something as soon as we have something to say.

David Faber:

But you do expect you will be able to withstand what might be as much as a 15% increase in the overall cost of the NFL?

David Ellison:

Again on specifics for an ongoing negotiation I really cannot comment on that but what I can tell you is that we do plan to continue our relationship, and I do believe we have planned accordingly there.

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David Faber:

I want to ask about the regulatory front for the deal itself. Of course, something I have focused a lot on and something you guys focused a lot on when it came to your competitor, Netflix. You guys are all good in the U.S. but the California state AG I'm told may pose a problem, not because they could make a case David that would necessarily win in court but they could potentially delay your deal, file a lawsuit, maybe even get a temporary restraining order that could push you another 6-8 months further out. Particularly given the potential for job losses in California. How do you view that? How do you view the threat from the California state AG and dealing with it?

David Ellison:

Yeah, no, absolutely. David but so first, let's just actually contextualize where we are today, which is our HSR waiting period has expired in the United States, which means if we were cleared everywhere else in the world, we could close in the U.S. tomorrow.

We've received regulatory approvals in basically Germany and Slovenia. We've been engaging since our tender with regulatory bodies around the world. We have done that across the EU and LATAM. We've met with all the Democratic State AGs, we met with the all Republican state AGs. And we will continue to basically collaborate with regulators throughout this process. In in terms of basically, you know, whether or not they can slow us down.

As I said, we could technically close tomorrow, but also at the end of the day, we're all governed by the law. And the reality of this is, there is nothing in this transaction that trips anything that would create cause for concern.

And again, if you look at what we've done historically from a job creation standpoint, you know, since we've been at Paramount, we've greenlit 11 movies. We've doubled the output of the film slate. When we first got here, you know we're on the iconic Paramount lot, this studio had eight movies on the release calendar for this year. We're going to release 16 movies this year, and we greenlit 11 films since we've been here.

Cindy Holland is — has basically increased and greenlit 11 more original series to the P Plus slate. We've added, as we talked about on our earnings call, over a billion and a half dollars basically to the P Plus content budget. And that creates jobs.

And I think when you really look at the alternative, which was this company was going to be sold — it was going to be sold to Netflix or it was going to be sold to us — our deal is pro-competitive and good for the creator and good for good for creators. Basically, the creative ecosystem now has more places to sell and more scale AI buyers, and consumers now have more choice.

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David Faber:

Yeah, no, I understand the competitive argument, and it's one I'll be curious to see how they — the state AG feels.

You know, on that front though, in terms of job losses, David, a lot of concern. Certainly when you put CNN and CBS — well, I don't want to say put them together — but I wonder, is that kind of part of the plan in terms of news gathering? And what do you tell employees of CNN at this point, as they concern — are concerned about their own future at that network?

David Ellison:

So so what I can tell you is we feel incredibly fortunate. CNN is an incredible brand with an incredible team, and we absolutely believe in the independence that needs to be maintained, obviously, for those incredible journalists, and we want to support that going forward.

CNN and CBS News are brands that we also really want to be a part of transitioning to streaming, so that consumers have the choice — if they want to watch our incredible news brands on broadcast, they can do that. If they want to watch on cable, they can do that. But we also want to create a world where if they want to watch on streaming, they can do that, and where we can really meet consumers where they are.

We're going to invest in the news business, and we think this is — this transaction will be a positive for both CBS News and CNN.

Julia Boorstin:

You said a number of times — oh, sorry.

David Faber:

Sorry. Go ahead. No, Julie, go ahead. I'm sorry.

Julia Boorstin:

You just said a number of times that this is good for consumers, and you've also said that you're going to be merging Paramount Plus and HBO. There are a lot of questions about what that looks like and how much more you might be charging for this combined service. Can you give us any insight into what this is actually going to look like from a consumer standpoint?

David Ellison:

No, absolutely. So I think — look, let's look at what we're offering versus what the alternative was, right? Because I think you have to actually compare what the two deals were on the table.

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One was Netflix has 325 million subscribers that if they had basically acquired WBD, would have been twice the size of the nearest competitor. With us, when you put basically HBO Max and Paramount Plus together, you know, once you dedupe for the overlap, you're a little bit under 200 million subscribers.

To contextualize, Disney's 195 million subscribers, Amazon's 200. That creates a healthier ecosystem that gives consumers more choice in terms of what they want to pay for.

It's going to be a significantly beneficial content offering that they're going to get. You're going to get Yellowstone, you know, basically, and Game of Thrones on the same service. I think that's going to be pretty powerful.

And again, for the creator economy, which I was a part of — I mean, look, I spent 15 years of my life selling to this ecosystem and having another scale AI buyer as a place that where we want to grow. And our only way to obviously grow and to get to first place in streaming is to invest more in content that's going to be good for the creator economy. It's going to be good for Hollywood.

Julia Boorstin:

But that didn't answer my question. Are you going to combine these two services and then raise the price of what people were paying for HBO, or what's the plan there?

David Ellison:

So we're absolutely going to put the services together. You know, we don't have anything to comment on pricing at —

Julia Boorstin:

— this point.

And then the other question is you mentioned technology a number of times. How big a role do you see AI playing in helping you bring down these costs as you look to manage that leverage?

David Ellison:

So look, AI is here and it's going to be transformative across all aspects of the business. The way that we really look at artificial intelligence is really as a tool for artists. I do not believe that AI is a replacement for human creativity. I really view it as a force multiplier for basically filmmakers and the creative communities to be able to realize their visions more fully, and think it's going to be an incredibly powerful tool for this industry.

David Faber:

David, me again. You know, unfortunately, the world we live in has a political overlay on almost everything going on in the corporate world, certainly when it comes to news organizations. And there is certainly a perception and or a fear perhaps that once you take control of CNN, and given the changes you've made at CBS, that you will be more beholden to the Trump administration. Can you address that, that potential fear, at least on the part of many?

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David Ellison:

Yeah. No, no, David. So so look, I've said this since the, since the beginning, which is, you know, for when it really comes to editorial independence will absolutely be maintained. It's maintained at CBS, it'll be maintained at CNN.

And really, who we want to talk to is the 70% of Americans and really around the world that identify as center left and center right. And we want to be in the truth business. We want to be in the trust business. And that's not going to change.

David Faber:

And finally, David, for me at least — I mean, your father, Larry Ellison, your partners at RedBird, many others — I mean, your guys are putting up \$47 billion in equity, and you're buying that at \$16.02 a Paramount share, so above where the stock is right now. You know, what can you tell our viewers in terms of your expectations for how this stock is going to perform, given all the challenges obviously Julie and I have just laid out for you?

David Ellison:

Yeah. So, David, just to level set, obviously the price was basically set by the Paramount independent directors that obviously worked with third parties completely independent of us to basically determine and set the price, you know.

And we're the largest shareholder in Paramount. We're going to be the largest shareholder in the combined company. And we're really dedicated to creating long term value for these businesses.

And candidly, we couldn't be more optimistic about what we're going to be able to build here with these incredible companies.

Julia Boorstin:

Just finally wrapping up with a question about the legacy assets, because the big difference between your offer and Netflix's offer was that you were also buying the legacy linear assets, whereas Netflix was only interested in studio and streaming. We've seen Versant's stock — CNBC's parent company stock — drop after it went public. Does that raise questions for you about the long term value of these legacy assets, given the conversation about the difference between your offer and Netflix's offer?

David Ellison:

So I don't think you can really look at the — so again, a couple of pieces.

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One, there's a tremendous amount of cash flow that's obviously generated from those businesses, which we think is very advantageous. We can prolong the life of that linear business given the synergies and given the combined portfolio.

But really, when you look at the strength of the of the combined studios and streaming portfolio, this really puts us in a position to where we immediately get to scale in streaming. We have a creative content library that allows us to compete with the most scaled players in the business and really build the media company of the future, and we couldn't be more excited about what's ahead.

Julia Boorstin:

Well, fascinating new chapter for Hollywood, and we hope to continue having these conversations on our air. David Ellison, thank you so much for joining us here today.

David Ellison:

Thank you for having me.

Julia Boorstin:

Guys, back over to you.

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Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed acquisition of Warner Bros. Discovery, Inc. (“WBD”) by Paramount Skydance Corporation (“Paramount”). In connection with the proposed transaction, WBD intends to file relevant materials with the Securities and Exchange Commission (the “SEC”), including WBD’s proxy statement in preliminary and definitive form. INVESTORS AND STOCKHOLDERS OF WBD ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING WBD’S PROXY STATEMENT (WHEN IT IS AVAILABLE), BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. Investors and stockholders of WBD are or will be able to obtain these documents (when they are available) free of charge from the SEC’s website at www.sec.gov, or free of charge from WBD under the “SEC Filings” section of WBD’s website at ir.wbd.com.

Participants in the Solicitation

Paramount and WBD and certain of their respective directors and executive officers, under SEC rules, may be deemed to be “participants” in the solicitation of proxies from security holders of WBD in connection with the proposed transaction. Information about the directors and executive officers of Paramount is set forth in its Current Reports on Form 8-K filed with the SEC on August 7, 2025, September 16, 2025 and January 14, 2026 and in its Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on February 25, 2026. Information about WBD’s directors and executive officers is available in its definitive proxy statement filed with the SEC on April 23, 2025, under the heading “Proposal 1: Election of Directors,” and in its Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on February 27, 2026, under the heading “Executive Officers of Warner Bros. Discovery, Inc.” To the extent holdings of WBD’s securities by its directors or executive officers has changed since the amounts set forth in such 2025 proxy statement, such changes have been or will be reflected on Initial Statements of Beneficial Ownership of Securities on Form 3 or Statements of Changes of Beneficial Ownership of Securities on Form 4 filed with the SEC. Investors and stockholders of Paramount or WBD are or will be able to obtain these documents free of charge from the SEC’s website at www.sec.gov, from Paramount on Paramount’s website at <https://ir.paramount.com/sec-filings/paramount>, from WBD on WBD’s website at ir.wbd.com or on request from Paramount or WBD, as applicable. Additional information concerning the interests of WBD’s participants in the solicitation, which may, in some cases, be different than those of WBD’s stockholders generally, will be set forth in WBD’s proxy statement relating to the proposed transaction when it becomes available.

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Cautionary Note Concerning Forward-Looking Statements

This communication contains “forward-looking statements” regarding the potential acquisition of WBD. The reader is cautioned not to rely on these forward-looking statements. These statements are based on current expectations of future events. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the expectations and projections of Paramount or WBD. Risks and uncertainties include, but are not limited to: the risk that the closing conditions for the acquisition will not be satisfied, including the risk that clearances under applicable antitrust or regulatory laws will not be obtained; uncertainty as to the percentage of WBD stockholders that will vote to approve the proposed transaction at the applicable WBD stockholder meeting; the possibility that the transaction will not be completed in the expected timeframe or at all; potential adverse effects to the businesses of Paramount or WBD during the pendency of the transaction, such as employee departures or distraction of management from business operations; the risk of stockholder litigation relating to the transaction, including resulting expense or delay; the potential that the expected benefits and opportunities of the acquisition, if completed, may not be realized or may take longer to realize than expected; risks related to Paramount’s streaming business; the adverse impact on Paramount’s advertising revenues as a result of changes in consumer behavior, advertising market conditions and deficiencies in audience measurement; risks related to operating in highly competitive and dynamic industries; the unpredictable nature of consumer behavior, as well as evolving technologies and distribution models; risks related to Paramount’s decisions to invest in new businesses, products, services and technologies, and the evolution of Paramount’s business strategy; the potential for loss of carriage or other reduction in, or the impact of negotiations for, the distribution of Paramount’s content; damage to Paramount’s reputation or brands; losses due to asset impairment charges for goodwill, content and long-lived assets, including finite-lived intangible assets; liabilities related to discontinued operations and former businesses; increasing scrutiny of, and evolving expectations for, sustainability initiatives; evolving business continuity, cybersecurity, privacy and data protection and similar risks; challenges in protecting and maintaining Paramount’s intellectual property rights; domestic and global political, economic and regulatory factors affecting Paramount’s businesses generally; the inability to hire or retain key employees or secure creative talent; disruptions to Paramount’s operations as a result of labor disputes; risks and costs associated with the integration of, and Paramount’s ability to integrate, the businesses of Paramount Global and Skydance Media, LLC successfully and to achieve anticipated synergies; litigation relating to the transactions contemplated by the transaction agreement entered into on July 7, 2024, between Paramount Global and Skydance Media, LLC, potentially resulting in substantial costs; volatility in the price of Paramount’s Class B common stock; the effect Paramount’s dual-class capital structure and the concentrated ownership may have on the price of its Class B common stock or business; risks related to a private sale of a controlling interest in Paramount, including that Paramount’s stockholders may not realize any change of control premium on shares of Paramount’s Class B common stock and that Paramount may become subject to the control of a presently unknown third party; risks associated with Paramount’s status as a “controlled company” under Nasdaq rules, including its exemption from certain corporate governance requirements; risks associated with the lack of voting rights of Paramount’s Class B common stock; risks that anti-takeover provisions in Paramount’s amended and restated certificate of incorporation (“Charter”) and amended and restated bylaws, and under Delaware law, could deter, delay, or prevent a change of control; risks that exclusive forum provisions in Paramount’s Charter could limit a stockholder’s choice of forum for certain claims and discourage lawsuits against Paramount’s directors and officers; risks that corporate opportunity provisions in Paramount’s Charter could permit certain persons to pursue competitive opportunities that might otherwise be available to Paramount; and risks associated with Paramount’s holding company structure, including its dependence on distributions from its subsidiaries to meet tax obligations and other cash requirements; A further list and description of these risks, uncertainties and other factors and the general risks associated with the respective businesses of Paramount and WBD can be found in Paramount’s Annual Report on Form 10-K for the fiscal year ended December 31, 2025, filed with the SEC on February 25, 2026, including in the sections captioned “Cautionary Note Concerning Forward-Looking Statements” and “Item 1A. Risk Factors,” and Paramount’s subsequent filings with the SEC, and WBD’s Annual Report on Form 10-K for the fiscal year ended December 31, 2025, filed with the SEC on February 27, 2026, including in the section captioned “Item 1A. Risk Factors,” and WBD’s subsequent filings with the SEC. Copies of these filings, as well as subsequent filings, are available online at www.sec.gov, ir.wbd.com or on request from Paramount or WBD. Neither Paramount nor WBD undertakes to update any forward-looking statement as a result of new information or future events or developments, except as required by law.

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

SCHEDULE TO/A

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 27)

Warner Bros. Discovery, Inc.
(Name of Subject Company (Issuer))

Prince Sub Inc.
(Offeror)
a direct wholly owned subsidiary of

Paramount Skydance Corporation
(Parent of Offeror)
(Names of Filing Persons (identifying status as offeror, issuer or other person))

Series A Common Stock, par value \$0.01 per share
(Title of Class of Securities)

934423104
(CUSIP Number of Class of Securities)

Makan Delrahim
Chief Legal Officer
Paramount Skydance Corporation
1515 Broadway
New York, New York 10036
(212) 258-6000
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

With a copy to:
Copies to:

Faiza J. Saeed
Andrew J. Pitts
C. Daniel Haaren
Daniel J. Cerqueira
Claudia J. Ricciardi
Cravath, Swaine & Moore LLP
Two Manhattan West
375 Ninth Avenue
New York, New York 10001
(212) 474-1000

Ian Nussbaum
Max Schleusener
Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
(212) 906-1200

☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☒ third-party tender offer subject to Rule 14d-1.
- ☐ issuer tender offer subject to Rule 13e-4.
- ☐ going-private transaction subject to Rule 13e-3.
- ☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ☐

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

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- ☐ Rule 13e-4(h) (Cross-Border Issuer Tender Offer) Case 4:26-cv-00003-AMC Document 94-1 Filed 06/09/26 Page 3 of 13
- ☐ Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)
-
-
-

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This Amendment No. 27 to Schedule TO (together with any exhibits and annexes attached hereto, and as it may be amended or supplemented from time to time, this “**Amendment**”) is filed by (i) Prince Sub Inc., a Delaware corporation (the “**Purchaser**”) and a direct wholly owned subsidiary of Paramount Skydance Corporation, a Delaware corporation (“**Paramount**”), and (ii) Paramount, and amends and supplements the Tender Offer Statement on Schedule TO filed with the U.S. Securities and Exchange Commission (the “**SEC**”) on December 8, 2025 (together with any amendments and supplements thereto, the “**Schedule TO**”) by the Purchaser and Paramount. This Schedule TO relates to the offer by the Purchaser to purchase all of the outstanding shares of Series A Common Stock, par value \$0.01 per share (the “**Shares**”), of Warner Bros. Discovery, Inc., a Delaware corporation (“**Warner Bros.**”), at \$30.00 per share, net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 8, 2025 (as it may be amended or supplemented from time to time, the “**Offer to Purchase**”), a copy of which is attached as Exhibit (a)(1)(A) to the Schedule TO filed with the SEC on December 8, 2025, and in the related Letter of Transmittal (as it may be amended or supplemented from time to time, the “**Letter of Transmittal**,” and together with the Offer to Purchase, the “**Offer**”), a copy of which is attached as Exhibit (a)(1)(B) to the Schedule TO filed with the SEC on December 8, 2025.

Except as otherwise set forth in this Amendment, the information in Schedule TO remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

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Items 1 through 9 and 11

The Offer to Purchase and Items 1 through 9 and Item 11 of the Schedule TO, to the extent such Items 1 through 9 and Item 11 incorporate by reference the information contained in the Offer to Purchase, are hereby amended and supplemented by adding the following paragraphs thereto:

On February 27, 2026, Paramount and the Purchaser entered into an agreement and plan of merger with Warner Bros. (the “**Merger Agreement**”), which Merger Agreement did not provide for a tender offer. Pursuant to the terms of the Offer, we reserved the right to terminate the Offer if we entered into a merger agreement with Warner Bros. and such merger agreement did not provide for a tender offer. We are terminating the Offer concurrently with the execution of the Merger Agreement. As a result of the termination of the Offer, no Shares were accepted for payment or paid for pursuant to the Offer. The Purchaser has instructed the Depositary to promptly return all Shares tendered and not withdrawn to the tendering stockholders.

A copy of the press release announcing the signing of the Merger Agreement and the termination of the Offer is attached hereto as Exhibit (a)(5)(AO) and is incorporated herein by reference.

Item 12. Exhibits

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit.

(a)(5)(AO) [Joint Press Release of Paramount Skydance Corporation, dated February 27, 2026](#)

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SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 27, 2026

PARAMOUNT SKYDANCE CORPORATION

By: /s/ Stephanie Kyoko McKinnon

Name: Stephanie Kyoko McKinnon

Title: General Counsel

PRINCE SUB INC.

By: /s/ Stephanie Kyoko McKinnon

Name: Stephanie Kyoko McKinnon

Title: General Counsel

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EXHIBIT INDEX

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(a)(5)(A) Joint Press Release of Paramount Skydance Corporation, dated February 27, 2026

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Exhibit (a)(5)(AO)



PARAMOUNT TO ACQUIRE WARNER BROS. DISCOVERY TO FORM NEXT-GENERATION GLOBAL MEDIA AND ENTERTAINMENT COMPANY

- The newly merged company will be well positioned to compete in the rapidly evolving entertainment industry where storytelling combined with world class technology expertise will be an important driver of value creation across the ecosystem and for shareholders
- Investing in the world-class studios of Paramount and WBD, focusing on attracting and retaining the industry's leading creative talent while expanding the supply of high-quality content for both the combined company's platforms and third-party distribution platforms
- Driving long-term growth by investing in and expanding our DTC business, powered by our combined world-class storytelling to reach more audiences and compete effectively with leading streaming services
- Committed to producing a minimum of 30 theatrical films annually, delivering exceptional entertainment to audiences and driving long-term job growth across the film and creative industries
- Paramount issuing \$47 billion of new Class B shares at \$16.02 per share, supported by a fully committed investment from the Ellison Family and RedBird Capital Partners
- Transaction values WBD at enterprise value of \$110 billion, representing a multiple of 7.5x on fully synergized 2026 EBITDA

Los Angeles and New York, February 27, 2026 – Paramount Skydance Corporation (NASDAQ: PSKY) ("Paramount") and Warner Bros. Discovery, Inc. (NASDAQ: WBD) ("WBD") today announced they have entered into a definitive merger agreement under which Paramount will acquire WBD, forming a premier global media and entertainment company focused on expanding consumer choice and empowering creative talent worldwide.

Under the terms of the agreement, Paramount will pay \$31.00 per share in cash for all outstanding shares of WBD. The transaction has been unanimously approved by the Boards of Directors of both companies and is expected to close in Q3 2026, subject to customary closing conditions, including regulatory clearances and approval by WBD shareholders, with a vote expected in the early spring of 2026. In the event the transaction has not closed by September 30, 2026, WBD shareholders will receive a \$0.25 per share "ticking fee" for each quarter (measured daily) until closing.

The merger unlocks innovative and compelling storytelling opportunities across the combined company's best-in-class film and television studios, streaming and linear platforms. Together, Paramount and WBD will deliver greater choice for consumers through its leading streaming platforms with an exceptional intellectual property portfolio that has produced popular franchises such as *Game of Thrones*, *Mission Impossible*, *Harry Potter*, *Top Gun*, *the DC Universe* and *SpongeBob SquarePants*.

David Ellison, Chairman and CEO of Paramount, a Skydance Corporation, said: *"From the very beginning, our pursuit of Warner Bros. Discovery has been guided by a clear purpose: to honor the legacy of two iconic companies while accelerating our vision of building a next-generation media and entertainment company. By bringing together these world-class studios, our complementary streaming platforms, and the extraordinary talent behind them, we will create even greater value for audiences, partners and shareholders — and we couldn't be more excited for what's ahead."*

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David Zaslav, President and CEO of Warner Bros. Discovery said: *"I'm very pleased with the outcome we achieved for WBD shareholders and the entertainment industry. Our guiding principle throughout this process has been to secure a transaction that maximizes the value of our iconic assets and our century-old studio while delivering as much certainty as possible for our investors. We look forward to working with Paramount to complete this historic transaction."*

Strategic and Financial Benefits of a Paramount-Warner Bros. Discovery Merger

- **Hollywood Champion:** We will invest in expanding the creative engines at the core of both WBD and Paramount. We will maintain both studios while prioritizing the attraction and retention of world-class creative talent, strengthening our ability to deliver a broad pipeline of high-quality content, including 15 theatrical feature films per year per studio, for our combined platforms and third-party distribution partners.
 - **Establishes a Global Streaming Competitor:** By uniting the strengths of Paramount and WBD, we will create a premier direct-to-consumer platform with enhanced reach, engagement, and monetization capabilities – positioning the combined company to increase competition while accelerating subscriber growth, deepening engagement, and driving significant long-term profitability.
 - **Pro-Competition:** The combination of Paramount+, HBO Max and Pluto creates a highly competitive DTC business that expands both consumer choice and opportunities for creative talent and labor. The deal will deliver compelling value for both content suppliers and consumers – establishing another strong, credible competitor in today's streaming marketplace.
 - **Transaction Supports a Competitive Theatrical and Content Distribution Ecosystem:**
 - o Every film will receive a full theatrical release, with a minimum 45-day window globally before becoming available on paid video-on-demand (VOD), with the intention of 60-90 days or more to maximize the audience for our most successful releases.
 - o Both studios will continue to support a vibrant third-party ecosystem by licensing their films and shows across their own and third-party platforms, while remaining active buyers of content from third-party studios and independent producers.
 - o Following its theatrical run, each film will transition to the current industry standard home video window, preserving paid video-on-demand prior to availability on subscription streaming services.
 - o Paramount will continue to adhere to specific windowing regimes in geographies it operates in, including in France where Paramount maintains its windowing commitments.
 - **A Compelling Portfolio of IP and Content:** The combined company will own a film library of more than 15,000 titles and thousands of hours of television programming. It will be home to many of the world's most iconic and enduring franchises, including *Harry Potter*, *Mission Impossible*, *Lord of the Rings*, *Game of Thrones*, the *DC Universe*, *Teenage Mutant Ninja Turtles*, *Transformers*, *Star Trek* and *SpongeBob SquarePants*.
 - **Broad Sports Rights Portfolio:** The merged company will hold one of the industry's most compelling and competitive portfolios of sports rights, including: the NFL, Olympics, UFC, PGA Tour, NHL, Big Ten and Big 12 Football, NCAA College Basketball, and Champions League, with the ability to distribute these rights collectively across all of our platforms, thereby giving sports fans easier access to more of the content they want in one place.
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- **Stronger Linear Networks:** A complementary portfolio of cable networks spanning entertainment, sports and news will significantly improve cash flow, unlock efficiencies, and strengthen our ability to manage linear market pressures. It also creates a more compelling, unified platform for advertisers through integrated cross-channel sales and activation opportunities.
- **Diverse International Portfolio:** A presence in over 200 countries and territories, including cable and free-to-air networks, that will provide more opportunities for world class storytelling – including local production – to be seen globally and allow us to continue to serve local audiences around the world with the best stories across TV, film, sports, and news.
- **Technology to Create Stronger Infrastructure Backbone and Improved User Interface:** By streamlining the technological underpinning of every aspect of the combined company's businesses, we will improve the user experience, generate financial and operating efficiencies and eliminate redundancies.
- **Well-Positioned to Invest in Growth:** The pro forma balance sheet and cash flow will enable continued investment in growth initiatives, as demonstrated by the marquee deals announced by Paramount since the close of the Skydance merger, including: Trey Parker and Matt Stone of *South Park*, the UFC, the Duffer Brothers and Activision, among others. The combined company's resources and backing of Paramount's committed investors will support increased investment in content generation, reinvigorating the media industry and enhancing competition to the benefit of talent and labor.

Transaction Highlights

Paramount will acquire 100% of WBD for \$31 per share in cash, plus the "ticking fee", valuing WBD at \$81 billion in equity value and \$110 billion in enterprise value. Paramount expects that the acquisition will be expected to yield over \$6 billion in synergies, which are driven by a combination of: technology integration (such as migrating the combined company to a single enterprise resource planning system and consolidating streaming technology stacks), corporate-wide efficiencies, including procurement savings, optimizing the combined real estate footprint, and otherwise streamlining operational efficiencies.

On a fully synergized basis, this values WBD at 7.5x 2026 EBITDA. At closing, we expect to have a net debt-to-EBITDA of 4.3x on a synergized basis, with a clear path to investment grade credit metrics within three years of closing.

The transaction is funded by \$47 billion in equity, fully backed by the Ellison Family and RedBird Capital Partners. At closing, the equity may include other strategic and financial partners. Under the terms of the equity commitments, new shares of Class B Paramount stock will be issued at a price of \$16.02 per share. The terms of this equity investment were decided by a Special Committee of the Board of Directors of Paramount comprised of independent directors with independent legal and financial advisors. In addition to the new cash equity investment, the transaction is backed by \$54 billion of debt commitments from Bank of America, Citigroup, and Apollo, which includes \$15 billion to backstop WBD's existing bridge facility and \$39 billion of incremental new debt. The \$54 billion excludes \$3.5 billion of bridge financing from these institutions to backstop our existing \$3.5 billion revolving credit facility.

In addition, existing Paramount stockholders will have the opportunity to participate in a rights offering of up to \$3.25 billion of Class B Paramount stock alongside the new equity investment, which is expected to occur nearer the closing date, at a price of \$16.02 per share.

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The proposed transaction between Paramount and WBD is not subject to any financing conditions.

In connection with the entry into the merger agreement, Paramount has terminated its all-cash tender offer to acquire all outstanding shares of WBD.

Centerview Partners LLC and RedBird Advisors are acting as lead financial advisors to Paramount, and Bank of America Securities, Citi, M. Klein & Company and LionTree Advisors are also acting as financial advisors. Cravath, Swaine & Moore LLP and Latham & Watkins LLP are acting as legal counsel to Paramount. Latham & Watkins LLP is also acting as legal counsel to the investor consortium, including the Ellison Family.

Allen & Company, J.P. Morgan and Evercore are serving as financial advisors to WBD and Wachtell Lipton, Rosen & Katz and Debevoise & Plimpton LLP are serving as legal counsel.

Barclays Capital are acting as financial advisors to the Special Committee of the Board of Directors of Paramount and Cleary, Gottlieb, Steen & Hamilton LLP are serving as legal counsel.

Conference Call and Webcast

Paramount will conduct a conference call and webcast on Monday, March 2 at 8:30am ET to discuss its merger agreement with WBD. The webcast link and dial-in information will be made available on Paramount's Investor Relations homepage at ir.paramount.com prior to the call. An audio replay of the call will be available in the Events and Webcasts section of Paramount's Investors homepage.

About Paramount, a Skydance Corporation

Paramount, a Skydance Corporation is a leading, next-generation global media and entertainment company, comprised of three business segments: Studios, Direct-to-Consumer, and TV Media. Paramount's portfolio unites legendary brands, including Paramount Pictures, Paramount Television, CBS – America's most-watched broadcast network, CBS News, CBS Sports, Nickelodeon, MTV, BET, Comedy Central, Showtime, Paramount+, Paramount TV, and Skydance's Animation, Film, Television, Interactive/Games, and Sports divisions. For more information, visit paramount.com.

About Warner Bros. Discovery

Warner Bros. Discovery is a leading global media and entertainment company that creates and distributes the world's most differentiated and complete portfolio of branded content across television, film, streaming and gaming. Warner Bros. Discovery inspires, informs and entertains audiences worldwide through its iconic brands and products including: Discovery Channel, HBO Max, discovery+, CNN, DC, TNT Sports, Eurosport, HBO, HGTV, Food Network, OWN, Investigation Discovery, TLC, Magnolia Network, TNT, TBS, truTV, Travel Channel, Animal Planet, Science Channel, Warner Bros. Motion Picture Group, Warner Bros. Television Group, Warner Bros. Pictures Animation, Warner Bros. Games, New Line Cinema, Cartoon Network, Adult Swim, Turner Classic Movies, Discovery en Español, Hogar de HGTV and others. For more information, please visit www.wbd.com.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed acquisition of Warner Bros. Discovery, Inc. ("**WBD**") by Paramount Skydance Corporation ("**Paramount**"). In connection with the proposed transaction, WBD intends to file relevant materials with the Securities and Exchange Commission (the "**SEC**"), including WBD's proxy statement in preliminary and definitive form. INVESTORS AND STOCKHOLDERS OF WBD ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING WBD'S PROXY STATEMENT (WHEN IT IS AVAILABLE), BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. Investors and stockholders of WBD are or will be able to obtain these documents (when they are available) free of charge from the SEC's website at www.sec.gov, or free of charge from WBD under the "SEC Filings" section of WBD's website at <https://ir.wbd.com>.

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Participants in the Solicitation

Paramount and WBD and certain of their respective directors and executive officers, under SEC rules, may be deemed to be “participants” in the solicitation of proxies from security holders of WBD in connection with the proposed transaction. Information about the directors and executive officers of Paramount is set forth in its Current Reports on Form 8-K filed with the SEC on August 7, 2025, September 16, 2025 and January 14, 2026 and in its Annual Report on Form 10-K filed with the SEC on February 25, 2026. Information about WBD’s directors and executive officers is available in its Annual Report on Form 10-K for the year ended December 31, 2024, under the heading “Executive Officers of Warner Bros. Discovery, Inc.,” and its definitive proxy statement filed with the SEC on April 23, 2025, under the heading “Proposal 1: Election of Directors.” To the extent holdings of WBD’s securities by its directors or executive officers has changed since the amounts set forth in such 2025 proxy statement, such changes have been or will be reflected on Initial Statements of Beneficial Ownership of Securities on Form 3 or Statements of Changes of Beneficial Ownership of Securities on Form 4 filed with the SEC. Investors and stockholders of Paramount or WBD are or will be able to obtain these documents free of charge from the SEC’s website at www.sec.gov, from Paramount on Paramount’s website at <https://ir.paramount.com/sec-filings/paramount>, from WBD on WBD’s website at <https://ir.wbd.com> or on request from Paramount or WBD, as applicable. Additional information concerning the interests of WBD’s participants in the solicitation, which may, in some cases, be different than those of WBD’s stockholders generally, will be set forth in WBD’s proxy statement relating to the proposed transaction when it becomes available.

Cautionary Note Concerning Forward-Looking Statements

This communication contains “forward-looking statements” regarding the potential acquisition of WBD. The reader is cautioned not to rely on these forward-looking statements. These statements are based on current expectations of future events. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the expectations and projections of Paramount or WBD. Risks and uncertainties include, but are not limited to: the risk that the closing conditions for the acquisition will not be satisfied, including the risk that clearances under the Hart-Scott-Rodino Antitrust Improvements Act or other applicable antitrust laws will not be obtained; uncertainty as to the percentage of WBD stockholders that will vote to approve the proposed transaction at the applicable WBD stockholder meeting; the possibility that the transaction will not be completed in the expected timeframe or at all; potential adverse effects to the businesses of Paramount or WBD during the pendency of the transaction, such as employee departures or distraction of management from business operations; the risk of stockholder litigation relating to the transaction, including resulting expense or delay; the potential that the expected benefits and opportunities of the acquisition, if completed, may not be realized or may take longer to realize than expected; risks related to Paramount’s streaming business; the adverse impact on Paramount’s advertising revenues as a result of changes in consumer behavior, advertising market conditions and deficiencies in audience measurement; risks related to operating in highly competitive and dynamic industries; the unpredictable nature of consumer behavior, as well as evolving technologies and distribution models; risks related to Paramount’s decisions to invest in new businesses, products, services and technologies, and the evolution of Paramount’s business strategy; the potential for loss of carriage or other reduction in, or the impact of negotiations for, the distribution of Paramount’s content; damage to Paramount’s reputation or brands; losses due to asset impairment charges for goodwill, content and long-lived assets, including finite-lived intangible assets; liabilities related to discontinued operations and former businesses; increasing scrutiny of, and evolving expectations for, sustainability initiatives; evolving business continuity, cybersecurity, privacy and data protection and similar risks; challenges in protecting and maintaining Paramount’s intellectual property rights; domestic and global political, economic and regulatory factors affecting Paramount’s businesses generally; the inability to hire or retain key employees or secure creative talent; disruptions to Paramount’s operations as a result of labor disputes; risks and costs associated with the integration of, and Paramount’s ability to integrate, the businesses of Paramount Global and Skydance Media, LLC successfully and to achieve anticipated synergies; litigation relating to the transactions contemplated by the transaction agreement entered into on July 7, 2024, between Paramount Global and Skydance Media, LLC, potentially resulting in substantial costs; volatility in the price of Paramount’s Class B common stock; the effect Paramount’s dual-class capital structure and the concentrated ownership may have on the price of its Class B common stock or business; risks related to a private sale of a controlling interest in Paramount, including that Paramount’s stockholders may not realize any change of control premium on shares of Paramount’s Class B common stock and that Paramount may become subject to the control of a presently unknown third party; risks associated with Paramount’s status as a “controlled company” under Nasdaq rules, including its exemption from certain corporate governance requirements; risks associated with the lack of voting rights of Paramount’s Class B common stock; risks that anti-takeover provisions in Paramount’s amended and restated certificate of incorporation (“Charter”) and amended and restated bylaws, and under Delaware law, could deter, delay, or prevent a change of control; risks that exclusive forum provisions in Paramount’s Charter could limit a stockholder’s choice of forum for certain claims and discourage lawsuits against Paramount’s directors and officers; risks that corporate opportunity provisions in Paramount’s Charter could permit certain persons to pursue competitive opportunities that might otherwise be available to Paramount; and risks associated with Paramount’s holding company structure, including its dependence on distributions from its subsidiaries to meet tax obligations and other cash requirements. A further list and description of these risks, uncertainties and other factors and the general risks associated with the respective businesses of Paramount and WBD can be found in Paramount’s Annual Report on Form 10-K for the fiscal year ended December 31, 2025, filed with the SEC on February 25, 2026, including in the sections captioned “Cautionary Note Concerning Forward-Looking Statements” and “Item 1A. Risk Factors,” and Paramount’s subsequent filings with the SEC, and WBD’s Annual Report on Form 10-K for the fiscal year ended December 31, 2024, filed with the SEC on February 27, 2025, including in the section captioned “Item 1A. Risk Factors” and in WBD’s most recently filed Quarterly Report on Form 10-Q and WBD’s subsequent filings with the SEC. Copies of these filings, as well as subsequent filings, are available online at www.sec.gov, <https://ir.paramount.com/sec-filings/paramount>, <https://ir.wbd.com> or on request from Paramount or WBD. Neither Paramount nor WBD undertakes to update any forward-looking statement as a result of new information or future events or developments, except as required by law.

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EXHIBIT 3

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

SCHEDULE 14A

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934
(Amendment No.)

Filed by the Registrant ☐ Filed by a party other than the Registrant ☒

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, for Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))
- ☐ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☒ Soliciting Material under §240.14a-12

Warner Bros. Discovery, Inc.

(Name of Registrant as Specified In Its Charter)

Paramount Skydance Corporation

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check all boxes that apply):

- ☒ No fee required
- ☐ Fee paid previously with preliminary materials
- ☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11

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Filed by Paramount Skydance Corporation
Pursuant to Rule 14a-12 under the
Securities and Exchange Act of 1934, as amended
Subject Company: Warner Bros. Discovery, Inc.
Commission File No.: 001-34177
Date: March 2, 2026

The following is a transcript of an investor presentation from Paramount Skydance Corporation presented on March 2, 2026



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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Call Participants

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Former Partner
Redbird Capital Partners
Management LLC

David Ellison
Chairman & CEO
Paramount Skydance Corporation

Dennis K. Cinelli
Chief Financial Officer
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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Presentation

Operator

Good morning. My name is Claire, and I'll be the conference operator for today. At this time, I would like to welcome everyone to the call to discuss Paramount's acquisition of Warner Bros. Discovery. [Operator Instructions]

I would now like to turn the call over to Kevin Creighton, Paramount's EVP of Corporate Finance and Investor Relations. You may now begin your call.

Kevin Creighton

EVP of Corporate Finance & Investor Relations

Good morning, and thank you all for joining us. I know it's special early for those of you on the West Coast. Today, we'll be discussing Paramount's agreement to acquire Warner Bros. Discovery. I'm Kevin Creighton, EVP of Corporate Finance, Investor Relations.

With me today is our Chairman and Chief Executive Officer, David Ellison, our Chief Strategy and Operating Officer, Andy Gordon; and our Chief Financial Officer, Dennis Cinelli.

As a reminder, we will be making forward-looking statements today. The forward-looking statements include statements concerning a merger agreement between Paramount and Warner Bros. Discovery, including with respect to the expected timing of the transaction's completion and the effects thereof. All forward-looking statements involve known and unknown risks, uncertainties and other factors that are difficult to predict and which may cause Paramount's actual results, performance or achievements to be different from any future results, performance or achievements expressed or implied by these statements.

The slides we'll present will be posted to our website after the call.

With that, I'll turn it over to David.

David Ellison

Chairman & CEO

Hello, everyone. Thanks for joining us this morning.

Before we begin, I did want to acknowledge the events ongoing in the Middle East. We are hopeful for a swift path to peace and our thoughts are with the people in the region as well as with our brave servicemen and women in harm's way and their families.

We're here today to announce our definitive agreement to acquire 100% of Warner Bros. Discovery. We're pleased we were able to reach this resolution with the WBD Board and management team and believe this will be a transformational combination for the industry, pro-Hollywood, pro-consumer, pro-competition.

As you know, the terms of the agreement are \$31 per share in cash, valuing Warner Brothers Discovery at approximately \$81 billion of equity value and \$110 billion of enterprise value. This transaction marks a defining moment for both companies, and we are incredibly excited about what it means for Paramount, Warner Bros. Discovery and for the broader industry going forward.

By uniting our iconic studios, complementary streaming platforms with a global footprint, our cable and linear networks and our world-class IP, we have the opportunity to help shape the future and build a next-generation media and entertainment company. This has been our goal since day 1. This is not about consolidation. It's about reinventing the business. We want to expand our reach and enhance our ability to create the world's most compelling stories and experiences. And we're incredibly excited about this transaction, and it will accelerate that ambition.

With this in mind and to better understand the opportunities ahead, we will now walk you through the transaction and its key strategic and financial components.

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Let me start by saying, as a producer and lifelong fan of film and television, I firmly believe that visual storytelling is one of the most vital art forms that we have, and we saw this as an extraordinary opportunity to bring together these 2 legendary companies with a combined 200-plus years of storytelling between them. It isn't just about the legacy of these storied studios. It's about building the next chapter of what stories can be and who they can reach.

Ultimately, this combination will enable us to better compete in today's rapidly evolving entertainment marketplace where storytelling, combined with world-class technological expertise is essential in driving value creation for consumers, creatives and shareholders.

This transaction will deliver benefits across 3 key pillars. First, the combined company will expand the creative capabilities of both Paramount and Warner Bros. Discovery, producing a consistent pipeline of high-quality content across its platforms and third-party distributors. Our aim is to build on the rich storytelling legacy of both studios to become the premier destination for the industry's leading creative voices and help realize their visions. Second, by bringing Paramount and Warner Bros. Discovery together and uniting our direct-to-consumer businesses, we have an opportunity to reach more audiences and compete effectively with the leading streaming services. And finally, with a presence in over 200 countries and territories worldwide with our portfolio of cable and free-to-air networks, including CBS, CNN, TBS, TNT, Food Network, HGTV, MTV, Cartoon Network, Adult Swim and Discovery Channel, we will provide more opportunities for global distribution and local production.

Our combined company will be home to many of the greatest, most recognizable and beloved franchises in the world, from Harry Potter to Top Gun, Star Trek to Looney Tunes, Game of Thrones to Yellowstone. This represents tremendous opportunity, and we fully intend to invest in the creative engines of both studios, making them the most sought-after destination for the industry's leading creative talent.

As we have said consistently, we are committed to delivering a broad pipeline of high-quality storytelling, including 15 theatrical films per year per studio for a total of at least 30 films annually. We've already demonstrated our ability to increase output with 15-plus films currently dated for 2026, up from 8 releases in 2025 when Paramount combined with Skydance. At the same time, Warner Bros. Pictures delivered a powerhouse slate last year with Superman, Minecraft and Sinners, propelling the studio past \$4 billion in box office. We've also echoed our commitment to a minimum 45-day window globally before films become available on PVOD. And we will continue to adhere to specific window in regimes in geographies we operate in worldwide.

HBO is a crown jewel in this business, having brought to life some of the most powerful stories told over generations. And under our ownership, they will continue to have the resources and independence to do what it does best. At the same time, we believe in licensing our content to other platforms and producing third-party content in our television studios, and we are committed to growing our studios and the popular shows they create.

DTC growth will be essential to the success of the combined company to enhance competition and deliver viewers a truly compelling offering we will combine the streaming portfolios of the 2 companies into one stronger platform over the coming years. Across the 2 platforms, there are over 200 million DTC subscribers today in more than 100 countries and territories worldwide, positioning us to compete effectively with the leading streaming services in today's marketplace. Our offering is powered by a complementary portfolio of fan favorite series and franchises, premium sports and trusted news brands. We are confident that by coupling these offerings, along with significant investment in technology and innovation, we can provide consumers significant value in a compelling and engaging platform.

Additionally, we will continue partnering with third-party producers around the world, investing in the most compelling creative voices and empowering them to bring their distinctive, high-quality stories to life. By supporting productions within local markets, we not only strengthened regional creative ecosystems, but also deliver authentic, culturally-resonant storytelling that captivates audiences and excites our subscribers worldwide.

By combining our linear businesses, we will expect to boost cash flow, drive efficiencies and help manage market pressures. The unified platform will offer advertisers more compelling and impactful

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opportunities, including in marquee U.S. and international sports leagues and events like the NFL, UFC and internationally, the home of the Olympics.

Our linear portfolio is well diversified with a global footprint. And ultimately, we believe that these assets together will create more value for the ecosystem and for shareholders. And as we mentioned previously for Paramount, we believe that many of our linear channels have incredible brands that can be reinvigorated for a streaming and digital world.

Bottom line, this combination is pro-competition, pro-consumer and pro-creative community. We want to give audiences and consumers more of what they want and we want to enable the industry's leading creative talent to do their best work and have it shared with the broadest possible audience globally. This transaction will ultimately create a stronger Hollywood and global production ecosystem, one that expands consumer choice and unlocks opportunities for creative talent. It will deliver exceptional storytelling, powered by a broad portfolio of IP and bring those stories to audiences in more innovative and engaging ways through the advances in technology. And we're confident that at the same time, it will generate meaningful long-term value for shareholders.

I will now turn it over to Andy to walk through an overview of the transaction.

Andrew M. Gordon
Former Partner

Thank you, David. As discussed at the top of the call, Paramount will acquire 100% of Warner Bros. Discovery for \$31 per share in cash, valuing the company at \$81 billion in equity value and \$110 billion in enterprise value. The merger has been unanimously approved by the Boards of Directors of both companies and its completion is subject to customary closing conditions, including regulatory clearances and approval by the Warner Bros. Discovery shareholders, with the vote expected in the spring of 2026.

The transaction is funded by \$47 billion in a new equity investment fully backed by the Ellison Family and RedBird Capital Partners. The new equity will be priced at \$16.02 per share. I'll dive deeper into that in a moment.

The transaction is also backed by \$54 billion in debt commitments from the Bank of America, Citigroup and Apollo. This includes \$39 billion of new debt and then another \$15 billion to refinance Warner Bros. Discovery's existing bridge facility. The \$54 billion excludes our \$3.5 billion credit facility, which is also being bridged by the same banks. We expect the pro forma company to have approximately \$79 billion at closing of net debt, which we'll also dive into in a few minutes.

We have already funded the \$2.8 billion termination fee as of last Friday, payable to Netflix under Warner Bros. Discovery's prior merger agreement. On the closing timeline, we expect to close in the third quarter of 2026. In the event this is delayed, Warner Bros. Discovery shareholders will receive \$0.25 per share ticking fee for each quarter until closing, starting after September 30, 2026.

We have already made significant progress in securing regulatory clearances globally prior to the signing of our merger agreement. In the United States, the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act has expired, and there is no statutory impediments to close in the United States. We initiated prenotification discussions with the European Commission already. And as an example of our progress, Germany and Slovenia have already given their approval to proceed. We look forward to working with the remaining regulators across the world over the coming months.

As I mentioned on the prior slide, the Ellison Family and RedBird Capital Partners will purchase new shares of Class B Paramount stock issued at a price of \$16.02 per share. The terms of this equity investment were decided by a special committee of Paramount's Board comprised of independent directors who are represented by independent legal and financial advisers. As part of our capital raise, existing Paramount shareholders will have the opportunity to participate in a rights offering of Class B Paramount stock alongside an incremental to the \$47 billion of new equity investment at the same price and on the same terms. The rights offering is expected to occur near to the closing date and more details will be forthcoming.

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Before we get into the transaction valuation and our outlook for the business, I want to take a minute to give some context on our synergy target. As we've said previously, we expect to realize \$6 billion plus in synergies within 3 years of closing. At Paramount, we're well on our way to delivering on our transformation, and we are using a similar plan here, though, obviously, on a larger scale.

It's important to note that the majority of our synergy target comes from nonlabor sources. Among the efficiencies we have identified, none of which we expect to include a reduction in production capacity, include consolidating our streaming technology stacks and cloud providers, including P+ and HBO Max, realizing global efficiencies in procurement and business services, optimizing the combined real estate footprint and the broader corporate overhead, driving efficiencies in marketing, optimizing spending on agencies and tooling and also migrating the combined company to a single enterprise resource planning, otherwise known as ERP system and combining other IT systems across the company. Again, these are just a few examples of where we believe we will find meaningful efficiencies as we unite these storage companies, working together as a team to achieve these results.

Finally, before we move on, I want to note that while we expect significant efficiencies and for that \$6 billion to ultimately fall to the bottom line, it's important to note that we are positioning the business for investment in growth in addition to reducing debt over the near term.

Okay. So we'll touch briefly on the transaction valuation and leverage outlook. The transaction values Warner Bros. Discovery at 7.5x 2026 EBITDA on a fully synergized basis. On the leverage side, we expect to have a net debt-to-EBITDA of 4.3x on a synergized basis at close, inclusive of \$79 billion of net debt. Based on our pro forma plan, we have a clear path to quickly achieving an approximate 3x leverage ratio within 3 years of closing, which will position us well with a healthy balance sheet and investment-grade credit metrics.

Touching on the sources and uses in the transaction and pro forma capitalization, a few notes. Our capital structure ensures we will hold a minimum of \$5 billion in cash on our balance sheet at deal completion and accounts for all the commitments we have made to Warner Bros. Discovery as part of our merger agreement, including the \$2.8 billion transaction termination fee already paid to Netflix, refinancing Warner Bros. Discovery's \$15 billion bridge loan and rolling over \$14 billion in additional Warner Bros. Discovery net debt.

Now let me turn this over to Dennis, who will touch on our pro forma financials and outlook.

Dennis K. Cinelli
Chief Financial Officer

Thanks, Andy. We will quickly touch on the pro forma financials.

Amid a fast-evolving entertainment landscape this unification will put us in a much stronger financial footing to capitalize on the growth opportunities ahead. Across both companies, we expect \$69 billion in estimated 2026 pro forma revenue, \$18 billion in estimated 2026 EBITDA, which is inclusive of 100% of our expected \$6 billion plus of synergies. This gives us a strong base to drive growth and profitability as we reinvent the business for the future.

I will now touch briefly on our medium-term financial targets. Given the strategic levers and operating plans David and Andy spoke to, we feel confident in the path towards these financial targets. Of course, as things progress, we'll give more details on our outlook. But for now, we wanted to give some visibility into how we're thinking about a few of our key metrics, specifically revenue, margins and cash conversion.

On the revenue side, we expect to see mid-single-digit CAGR for the total company revenue, driven by the growth in our direct-to-consumer and Studio businesses. As for linear, we are in the business today, and we have taken a conservative approach to the ongoing linear declines over the coming years. As for margins, while we won't give explicit guidance, we do think the company will be a mid-20% margin company by 2030. That reflects disciplined management of linear businesses relative to the market trends, continued investment in and growth of our Studios businesses, and the meaningful scaling of streaming alongside increasing profitability. Our synergies will impact our profitability and not simply mask revenue declines.

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And finally, as we've said many times, as owner operators of this business, we are very focused on free cash flow conversion. And our expectation is that we'll see over \$10 billion in free cash flow, with approximately 50% free cash flow conversion by 2030. And continue to close the gap from there.

Now let me hand it back to David for some closing thoughts.

David Ellison
Chairman & CEO

Thanks, Dennis. The combination of these 2 iconic companies and their world-class teams represents a unique and thrilling moment for the global media and entertainment industry.

We're bringing together 2 of the most respected and storied names in Hollywood. And in doing so, we have the opportunity to tell even more great stories and share them with a broader global audience, while at the same time, creating long-term value for our shareholders, and we couldn't be more excited for all that's ahead.

And with that, we're excited to get into your questions.

Kevin Creighton
EVP of Corporate Finance & Investor Relations

Thanks, David. Okay, operator, we'll now go ahead and open up the line for questions.

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Question and Answer

Operator

[Operator Instructions] Our first question comes from John Hodulik from UBS.

John Christopher Hodulik

UBS Investment Bank, Research Division

Can we just follow up on the comments you guys made on DTC talking about coupling the services. Any color on whether you're not -- you expect to eventually combine those 2 services into 1 service and over what timeframe? And then similarly, you talked about the technology harmonization. What are the steps or the timing on sort of getting the entire sort of DTC business on 1 IT platform.

David Ellison

Chairman & CEO

Yes. No, thank you so much for the question. As we said, we do plan to put the 2 services together, which today gives us a little over 200 million direct-to-consumer subscribers. We think that really positions us to compete with the leaders in the space. At Paramount, by middle of this year, we'll have competed -- sorry, completed the consolidation of our 3 services under one unified stack. And you can see us taking a similar approach to basically this platform going forward. And we think the combined offering, given the amount of content and what we can do from the tech side, really will put us in a position to be able to compete with the most scaled players in DTC.

Kevin Creighton

EVP of Corporate Finance & Investor Relations

Great. Thank you. Operator, next question.

Operator

Our next question comes from Michael Morris from Guggenheim.

Michael C. Morris

Guggenheim Securities, LLC, Research Division

Wanted to ask you about the legacy network portfolio that you will now control. It's certainly a robust collection of those networks. And so -- and it's pretty significant portion of your combined economics, especially on the revenue side. Can you talk a bit about the plan there going forward? How do those look in terms of operations? Are there strategic things that you plan to do to maximize the value?

David Ellison

Chairman & CEO

Yes. No, absolutely. So as we said, I think by putting basically the combined linear businesses together, it gives us an incredible footprint across both content and sports. There's -- it also gives us the operational efficiencies we believe, to keep those businesses healthier for significantly longer than they would be on a stand-alone basis, which will be good for jobs, will be good for free cash flow.

And we also, as the -- and the approach we've taken in Paramount, there are incredible brands across the combined linear portfolio that we really do believe in being able to transition to a digital future and really, we can then meet people where they are, right, where if you want to have the choice to access it on the linear platform, you can do that. If you want to access those brands in the streaming ecosystem, you can do that and believe that the combination of that will ultimately keep the portfolio healthier and prolong the life for longer than they would as stand-alone businesses.

Andy, anything you want to add on that?

Andrew M. Gordon

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025*Former Partner*

Michael, on the question of strategic actions contemplated. We, like, at Paramount, believe in the assets we're buying, and there's no plans to divest or spin off a package of cable assets at this time. And in particular, we actually think given the brands that Warner Bros. is bringing to Paramount, we have a lot of opportunities to think about all the different aspects of what they can do, both on the linear side and the digital side that David already talked about. So that's our plan right now.

Kevin Creighton

EVP of Corporate Finance & Investor Relations

Thank you, Mike. Appreciate it. Operator, next question, please.

Operator

Our next question comes from Robert Fishman from [Towers].

Robert S. Fishman

MoffettNathanson LLC

I want to know, how does Warner Bros. and HBO IP help accelerate your growth that you wouldn't be able to have achieved on your own, with your own franchises and IP that we started to discuss last week on your earnings call. And as part of the increased bid since where you started the process, I'm just curious how much value do you ascribe to the Warner Bros. and HBO libraries?

David Ellison

Chairman & CEO

Yes. No. So look, we think that basically the combination of these 2 companies really puts us in a position to be able to compete with all the leading players in the space. By bringing these 2 companies together, we have 15,000 basically films and thousands of television episodes. It's an iconic portfolio of franchises from Harry Potter, Lord of the Rings, the DC Universe, Game of Thrones, Mission Impossible, Top Gun, Transformers, SpongeBob, Star Trek, I think is incredibly powerful.

The combined DTC platforms is basically 200 million subscribers at close. To contextualize, it's roughly the size of Disney rights, obviously, competitive with Amazon, competitive with Netflix. So we really do think that, that really positions us to be one of the leading competitors in the DTC space and really accelerates our growth there and achieving scale in DTC. We've talked about it since the beginning of the new Paramount Skydance as one of our primary goals for the business.

I think when you look at the sports portfolio, we'll have the NFL, Olympics, UFC, PGA Tour, all of March Madness, Champions League. It's an incredibly robust basically platform. And we think the combination of that will position us really well for competition. So we do think that there is a significant value in putting these 2 businesses together.

From a value standpoint, our bid was at \$30 a share basically December 4 of last year, we have been consistent, and we think we have been offering greater value, certainty and speed to close we only increased our bid from a value perspective by \$1 between basically the December 4 date and the deal that we're very grateful the Board ultimately ended up accepting. And again, our viewpoint is really on building long-term shareholder value, and we believe that this transaction positions us well to do exactly that.

Kevin Creighton

EVP of Corporate Finance & Investor Relations

Great. Thanks, Robert. Operator, next question, please.

Operator

Our next question comes from Rich Greenfield from LightShed Partners.

Richard Scott Greenfield

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025*LightShed Partners, LLC*

You made a comment about not having interest in selling off a portfolio of cable networks or not doing, I guess, [of] Versant. But I guess as you look across the combined portfolios, are there any assets that you sort of look at and go those are noncore to the company that could be used to reduce leverage.

And then just a big picture question. As you did this huge deal with UFC, I think you've already had 2 fights or 2 fight nights play out. I'm curious whether your contracts contemplated having Warner Bros. Can you use that content across HBO, TNT Sports? What type of flexibility do you have? And maybe this is just a good opportunity, should we assume that even if you combine the services, Paramount+ and HBO Max, will there still be a premium version of HBO that still keeps sort of a premium level status?

David Ellison
Chairman & CEO

Rich, it's a great question. And so for the first part, no, very simply, we have no divestitures planned at this time. So just take that one, that's our answer there.

In regards to the UFC, what I would say is we did future-proof the deal, so we do have the flexibility. We have the ability with the UFC to ensure that by bringing the streaming services together, it can be available across both platforms. We have basically flexibility to be able to put those on -- some of the fights on both our broadcast network as we're doing in one of the upcoming fights. We also have flexibility to have some of those events on TNT. So I think we do create the -- we have the flexibility in that deal to really maximize value and also really maximize reach for our incredible partners at TKO.

And look, while we won't get into any personnel conversations, I hope understandably, Casey and his team do an absolutely remarkable job at HBO. And as we said, we do plan for that to be able to operate with independence so that HBO can candidly do what it does incredibly well. And our viewpoint is HBO should stay HBO. And they built a phenomenal brand. They are a leader in the space, and we just want them to continue doing more of it. But by bringing the platforms together all of our content will be able to reach even a broader audience than we can do stand-alone.

Richard Scott Greenfield
LightShed Partners, LLC

David, what's your favorite HBO show of all time?

David Ellison
Chairman & CEO

I mean, I say, it's hard not to say Game of Thrones.

Richard Scott Greenfield
LightShed Partners, LLC

I'll throw in Sopranos.

David Ellison
Chairman & CEO

Yes, that's good too. There's a lot, Rich. It's a long list.

Richard Scott Greenfield
LightShed Partners, LLC

I just wanted to know your favorite. That's all.

Kevin Creighton
EVP of Corporate Finance & Investor Relations

Operator, next question, please?

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Operator

Our next question comes from Peter Supino from [Paramount].

Peter Lawler Supino
Wolfe Research, LLC

It would be exciting to be at Paramount right now. This is Peter Supino from Wolfe Research. There's a lot [of hammering] in the film and TV business about the share of broader consumer attention paid to film and television as a category. So my question is how important is engagement growth to your team as a metric of success. And if it's important, how do you plan to factor that into managing the company and communicating with financial markets about it?

David Ellison
Chairman & CEO

Yes. So I think you have to break that question up into a couple of pieces, right? I mean when you look at basically the theatrical space, which is something we deeply, deeply believe in, large franchises and big pieces of intellectual property are launched in theaters period. I'll say I personally learned this lesson, both of these films I'm incredibly proud of -- in 2022, we basically -- we had the largest theatrical box office film. We were the first or second with Top Gun: Maverick, which became a cultural phenomenon, grossed \$1.5 billion at the box office. And really, I think, is something that resonated culturally that year.

At the same time, we released The Adam Project that summer on Netflix, which at the time of its release was the most successful film in Netflix in the time, previewed incredibly well with audiences but really did have a different cultural resonance, basically, perspective in terms of how films obviously resonate on streaming versus what they do theatrically. It's why we said from day 1 when we acquired Paramount that we weren't going to be in the business of making movies directly for streaming. We really believe that movie should be seen in theaters. And we still believe that's one of the most significant places that you can really create long-term resident intellectual property.

Television is a completely different business in that regard. You can obviously pierce the zeitgeist and put huge hits up on the direct-to-consumer platform. But when it comes to the DTC business, engagement is absolutely key to obviously success there. So you have to look at what drives engagement. It's really more unbelievable content that the audience wants to engage in. By combining these incredible, obviously, studios and platforms, we're delivering the audience more of what they want from a content perspective. And then it's also significantly improving the basically tech product to obviously keep people engaged with that platform for longer.

So engagement is a key metric that we're going to look at, and we are going to continue to invest in both our -- the incredible content offering that this company will create and produce as well as in a tech product that can really compete with the best that's coming out of Silicon Valley and the industry leaders in the space.

Andrew M. Gordon
Former Partner

Yes. I would just add on sort of what we might -- may or may not disclose. I think it's too early to sort of have that conversation. I do think that you'll see the results over the course of the next several years, sort of embody what David just talked about relative to engagement and reduction in churn, which you'll see in the increase in revenues from DTC and the expansion margin over time.

Kevin Creighton
EVP of Corporate Finance & Investor Relations

All right. Thanks for the question, Peter. Operator, we'll go to the next question, please.

Operator

Our next question comes from Rick Prentiss from Raymond James.

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

Brent Matthew Pentter*Raymond James & Associates, Inc., Research Division*

This is Brent Pentter on for Rick Prentiss. I just want to hit on timing, what precedents are out there transactions maybe of this size and scope that gives you the confidence that this deal can close in Q3 '26? And then relatedly, we have negotiations coming up with writers, actors, directors, any impact on the timing of the deal related -- do those negotiations taking place at the same time or vice versa, could there be any effect on those discussions with the guilds that this deal might have?

David Ellison*Chairman & CEO*

So look, in terms of basically our confidence in closing the timeline, we are absolutely confident that we can meet basically timing that we've outlined. To summarize, as we've said, the HSR waiting period has expired. Obviously, domestically, which means that there is no reason if we had cleared globally why we couldn't close in the U.S. today legally.

We've been engaging with regulators around the world. And the combination does not come close to hitting any of the metrics that would be problematic from that standpoint. We will work incredibly collaboratively with regulators to ensure that we get a quick path to closing and are confident in our ability to achieve that goal. And in regards to the union negotiations with our ongoing, we do view those as obviously separate from the speed of the transaction closing. But with that said, we're not going to comment on ongoing negotiations.

Operator

Our next question comes from David Joyce from Seaport Research Partners.

David Carl Joyce*Seaport Research Partners*

I was wondering about the array of sports rights in the portfolio on a pro forma basis. Have any of the regulatory bodies around the world expressed any concern about that sort of concentration?

David Ellison*Chairman & CEO*

What I would say is there has been none of that expressed to us at this time. And I think if you look at peers like ESPN and others, you won't see anything that's obviously further consolidated or out of line with other industry leaders in the space.

Andrew M. Gordon*Former Partner*

I would just add on that. There are a number of sports rights that are actually not exclusive to our combined networks that also are distributed across other platforms globally.

Kevin Creighton*EVP of Corporate Finance & Investor Relations*

Thank you, David. Appreciate the question this morning. Operator, next question, please.

Operator

Our next question comes from Craig Huber from Huber Research Partners.

Craig Anthony Huber*Huber Research Partners, LLC*

I thought it was interesting. You said you have no intention here of cutting your production content spend. Maybe you could touch on that a little bit. And also talk about AI, if you would, a little bit, how that comes

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

into being here with the 2 combined companies here from a cost efficiency standpoint, but also maybe how to help the top line as well.

David Ellison
Chairman & CEO

Yes. No, absolutely. As we said, we have no intention to pull back on production. We obviously intend to make 30 movies a year, basically 15 films from Paramount, 15 films from Warner Bros. Additionally, when you look at the overall landscape, when you put these 2 services together, we'll be at 200 million subscribers, the market leader at Netflix is 325 million subscribers based on their last earnings call. So we obviously -- we have all of the economic incentives to make sure that we grow this business and are going to invest in content to basically achieve those goals.

So from that standpoint, that's really how we're going to operate. In regards to artificial intelligence, I talked about this a little bit on the last earnings call, I do believe that it's going to be a transformative technology in the space. But first and foremost, we are a content company. We are a storytelling company, and we really do look at AI as a tool for artists and really want to develop it basically through that lens.

Do I -- I also am somebody who has tremendous optimism about the creative unlock in terms of what it can do in the hands of some of the greatest and emerging filmmakers in the world. But from that standpoint, everything we look at will really be as a tool for the artist never as a replacement for storytellers, never as a replacement for filmmakers really in support of their visions and what they look to achieve.

Dennis, anything you want to add on that?

Dennis K. Cinelli
Chief Financial Officer

Yes. I would just say, I mean, we talked about our medium-term goals. And so when you think about our overall investment that David has outlined, I think that's contemplated, right? We expect to see content grow, help our grow our DTC business, help us grow the Studios business. And then when you put that growth plus realizing the synergies we talked about together, that's where we get to the \$10 [billion] plus annually in free cash flow by 2030. And so we really think about growing this business and invest in this business, as David and Andy outlined.

David Ellison
Chairman & CEO

And last thing I'll add to that, just one of the areas you will see us invest in this space is really in the engineering talent. As we talked about on our last earnings call, we do plan to 10x the head count in terms of how much we invest into that space. which we do think will position us well for really being able to be a driver in this category. But again, really in support of the creative community that we're very fortunate to work with every day.

Bryan D. Kraft
Deutsche Bank AG, Research Division

Right. Thank you, Craig, for the question. Thank you all for joining us this morning. We'll go ahead and wrap it here. But if you have any additional questions, please feel free to reach out to me or Logan, and we'll try and get back to you.

Operator

Thank you. This now concludes today's call. Thank you all for joining. You may now disconnect your lines.

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PARAMOUNT SKYDANCE CORPORATION M&A CALL - PRELIMINARY COPY MAR 02, 2025

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Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed acquisition of Warner Bros. Discovery, Inc. (“WBD”) by Paramount Skydance Corporation (“Paramount”). In connection with the proposed transaction, WBD intends to file relevant materials with the Securities and Exchange Commission (the “SEC”), including WBD’s proxy statement in preliminary and definitive form. INVESTORS AND STOCKHOLDERS OF WBD ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING WBD’S PROXY STATEMENT (WHEN IT IS AVAILABLE), BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. Investors and stockholders of WBD are or will be able to obtain these documents (when they are available) free of charge from the SEC’s website at www.sec.gov, or free of charge from WBD under the “SEC Filings” section of WBD’s website at <https://ir.wbd.com>

Participants in the Solicitation

Paramount and WBD and certain of their respective directors and executive officers, under SEC rules, may be deemed to be “participants” in the solicitation of proxies from security holders of WBD in connection with the proposed transaction. Information about the directors and executive officers of Paramount is set forth in its Current Reports on Form 8-K filed with the SEC on August 7, 2025, September 16, 2025 and January 14, 2026 and in its Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on February 25, 2026. Information about WBD’s directors and executive officers is available in its definitive proxy statement filed with the SEC on April 23, 2025, under the heading “Proposal 1: Election of Directors,” and in its Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on February 27, 2026, under the heading “Executive Officers of Warner Bros. Discovery, Inc.” To the extent holdings of WBD’s securities by its directors or executive officers has changed since the amounts set forth in such 2025 proxy statement, such changes have been or will be reflected on Initial Statements of Beneficial Ownership of Securities on Form 3 or Statements of Changes of Beneficial Ownership of Securities on Form 4 filed with the SEC. Investors and stockholders of Paramount or WBD are or will be able to obtain these documents free of charge from the SEC’s website at www.sec.gov, from Paramount on Paramount’s website at <https://ir.paramount.com/sec-filings/paramount>, from WBD on WBD’s website at <https://ir.wbd.com> or on request from Paramount or WBD, as applicable. Additional information concerning the interests of WBD’s participants in the solicitation, which may, in some cases, be different than those of WBD’s stockholders generally, will be set forth in WBD’s proxy statement relating to the proposed transaction when it becomes available.

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Cautionary Note Concerning Forward-Looking Statements

This communication contains “forward-looking statements” regarding the potential acquisition of WBD. The reader is cautioned not to rely on these forward-looking statements. These statements are based on current expectations of future events. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the expectations and projections of Paramount or WBD. Risks and uncertainties include, but are not limited to: the risk that the closing conditions for the acquisition will not be satisfied, including the risk that clearances under applicable antitrust or regulatory laws will not be obtained; uncertainty as to the percentage of WBD stockholders that will vote to approve the proposed transaction at the applicable WBD stockholder meeting; the possibility that the transaction will not be completed in the expected timeframe or at all; potential adverse effects to the businesses of Paramount or WBD during the pendency of the transaction, such as employee departures or distraction of management from business operations; the risk of stockholder litigation relating to the transaction, including resulting expense or delay; the potential that the expected benefits and opportunities of the acquisition, if completed, may not be realized or may take longer to realize than expected; risks related to Paramount’s streaming business; the adverse impact on Paramount’s advertising revenues as a result of changes in consumer behavior, advertising market conditions and deficiencies in audience measurement; risks related to operating in highly competitive and dynamic industries; the unpredictable nature of consumer behavior, as well as evolving technologies and distribution models; risks related to Paramount’s decisions to invest in new businesses, products, services and technologies, and the evolution of Paramount’s business strategy; the potential for loss of carriage or other reduction in, or the impact of negotiations for, the distribution of Paramount’s content; damage to Paramount’s reputation or brands; losses due to asset impairment charges for goodwill, content and long-lived assets, including finite-lived intangible assets; liabilities related to discontinued operations and former businesses; increasing scrutiny of, and evolving expectations for, sustainability initiatives; evolving business continuity, cybersecurity, privacy and data protection and similar risks; challenges in protecting and maintaining Paramount’s intellectual property rights; domestic and global political, economic and regulatory factors affecting Paramount’s businesses generally; the inability to hire or retain key employees or secure creative talent; disruptions to Paramount’s operations as a result of labor disputes; risks and costs associated with the integration of, and Paramount’s ability to integrate, the businesses of Paramount Global and Skydance Media, LLC successfully and to achieve anticipated synergies; litigation relating to the transactions contemplated by the transaction agreement entered into on July 7, 2024, between Paramount Global and Skydance Media, LLC, potentially resulting in substantial costs; volatility in the price of Paramount’s Class B common stock; the effect Paramount’s dual-class capital structure and the concentrated ownership may have on the price of its Class B common stock or business; risks related to a private sale of a controlling interest in Paramount, including that Paramount’s stockholders may not realize any change of control premium on shares of Paramount’s Class B common stock and that Paramount may become subject to the control of a presently unknown third party; risks associated with Paramount’s status as a “controlled company” under Nasdaq rules, including its exemption from certain corporate governance requirements; risks associated with the lack of voting rights of Paramount’s Class B common stock; risks that anti-takeover provisions in Paramount’s amended and restated certificate of incorporation (“Charter”) and amended and restated bylaws, and under Delaware law, could deter, delay, or prevent a change of control; risks that exclusive forum provisions in Paramount’s Charter could limit a stockholder’s choice of forum for certain claims and discourage lawsuits against Paramount’s directors and officers; risks that corporate opportunity provisions in Paramount’s Charter could permit certain persons to pursue competitive opportunities that might otherwise be available to Paramount; and risks associated with Paramount’s holding company structure, including its dependence on distributions from its subsidiaries to meet tax obligations and other cash requirements; A further list and description of these risks, uncertainties and other factors and the general risks associated with the respective businesses of Paramount and WBD can be found in Paramount’s Annual Report on Form 10-K for the fiscal year ended December 31, 2025, filed with the SEC on February 25, 2026, including in the sections captioned “Cautionary Note Concerning Forward-Looking Statements” and “Item 1A. Risk Factors,” and Paramount’s subsequent filings with the SEC, and WBD’s Annual Report on Form 10-K for the fiscal year ended December 31, 2025, filed with the SEC on February 27, 2026, including in the section captioned “Item 1A. Risk Factors,” and WBD’s subsequent filings with the SEC. Copies of these filings, as well as subsequent filings, are available online at www.sec.gov, ir.wbd.com or on request from Paramount or WBD. Neither Paramount nor WBD undertakes to update any forward-looking statement as a result of new information or future events or developments, except as required by law.

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EXHIBIT 4

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **May 4, 2026**

Paramount Skydance Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-42791
(Commission File Number)

99-3917985
(IRS Employer Identification
Number)

1515 Broadway
New York, New York
(Address of principal executive offices)

10036
(Zip Code)

Registrant's telephone number, including area code: **(212) 258-6000**

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class B Common Stock, \$0.001 par value	PSKY	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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Item 2.02 Results of Operations and Financial Condition.

On May 4, 2026, Paramount Skydance Corporation issued a Shareholder Letter announcing its financial results for the first quarter ended March 31, 2026. A copy of the Shareholder Letter is furnished herewith as Exhibit 99 and is incorporated by reference herein in its entirety.

The information furnished pursuant to this Item 2.02, including Exhibit 99, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities under that Section and shall not be deemed to be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Exchange Act.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

**Exhibit
Number****Description of Exhibit**

99

[Shareholder Letter, dated May 4, 2026.](#)

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Cover Page Interactive Data File (embedded within the Inline XBRL document).

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PARAMOUNT SKYDANCE CORPORATION

By: /s/ Makan Delrahim

Name: Makan Delrahim

Title: Chief Legal Officer

Date: May 4, 2026

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Exhibit 99



May 4, 2026

Summary Points:

- Q1 revenue of \$7.3 billion grew 2% year-over-year, with profitability exceeding our estimates for the quarter; we are reaffirming our full-year outlook of \$30 billion in revenue and \$3.8 billion in adj. EBITDA¹.
- DTC revenue¹ grew 11% year-over-year to \$2.4 billion, led by 17% growth at Paramount+, which added 0.7 million subscribers (+1.9 million, excluding the exit of international hard bundle subscribers); DTC adj. EBITDA improved to \$251 million (10% margin); we continue to expect accelerating DTC revenue and profit in 2026.
- Our content slate is delivering: *Landman* is now Paramount+'s most-watched series ever; *The Madison* is Taylor Sheridan's strongest and most female-skewing series debut to date with 12.5 million global viewers in its first month; *Marshals* has reached over 18.5 million global viewers; and *Scream 7* is the highest-grossing installment in the franchise's 30-year history.
- CBS holds 13 of the top 20 primetime series, including all four of the top new series, *Marshals*, *Sheriff Country*, *CIA* and *Boston Blue*—an achievement no broadcast network has delivered since the early 1990s.
- We are converging our streaming tech stack—on track for a mid-year launch—to deliver a more personalized, unified experience and enable continuous improvement across discovery and monetization.
- We remain on track to deliver \$3 billion-plus in efficiencies through 2027, with more than \$2.5 billion in run-rate efficiencies expected by the end of 2026; TV Media adj. EBITDA¹ grew 11% to \$1.1 billion (29% margin) in Q1 as cost discipline more than offset revenue headwinds.
- We have made significant progress toward closing our acquisition of Warner Bros. Discovery by end of Q3'26, including the syndication of a portion of the new equity to strategic investors, securing \$10 billion in debt financing, syndicating the remaining \$49 billion in bridge financing to 18 global financial institutions, advancing regulatory approvals, and the April 23 approval by WBD shareholders.

¹ Non-GAAP measures are detailed in the Supplemental Disclosures at the end of this letter.

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Fellow shareholders,

It's been a busy and productive start to the year with momentum across our Direct-to-Consumer, Studios, and TV Media segments driving strong Q1 results. We are pleased with the trajectory of our business as we continue to invest in key areas of growth, drive greater efficiency across the enterprise and position the company for long-term success. From day one, we set a clear objective: to transform Paramount by investing in high-quality storytelling and technology, while pursuing opportunities that will define the next era of entertainment. And we are making meaningful progress—driving strong financial results while simultaneously managing an industry-shifting transaction.

Across our three segments, Direct-to-Consumer, Studios, and TV Media, the picture is one of deliberate execution—investing in growth where the opportunity is largest and managing for margin where structural headwinds persist.

Direct-to-Consumer

On the direct-to-consumer side, we've had a strong start to the year, led by the second season finale of *Landman* and the debut of *The Madison* and *Marshals*. *Landman* is now the most-watched series in Paramount+ history, while *The Madison* delivered Taylor Sheridan's strongest and most female-skewing series debut to date on streaming, with 12.5 million viewers globally in its first month on the service. Both hit series have been renewed for subsequent seasons. *Marshals* has also been a standout—premiering on CBS and launching on Paramount+ the next day, it has now reached over 18.5 million viewers globally to date, including nearly 5 million internationally. Our local originals are also gaining meaningful traction: *Italia Shore* Season 3 (Italy) and *Canada Shore* (Canada), both of which are now the platform's top-performing reality series of all time in their respective countries.

Since August, our Direct-to-Consumer team has greenlit more than 20 new and returning series across scripted, unscripted and animation—broadening both the depth of our slate and the audiences we reach. We've also made meaningful progress on platform consolidation, including the successful transition of BET+ content onto Paramount+ ahead of the full service integration expected in early summer. This next step expands the reach of the stories we champion, the creators we support and the culture we represent, bringing more than 1,000 hours of iconic series, films and originals to audiences in one unified experience.

In sports, Q1 included joint CBS simulcasts of three NFL playoff games, UFC, UEFA Champions League, Europa League, and Conference League matches, and college basketball. In total, Paramount+ subscribers have access to ~14,000 hours of sports content this year.

We are especially encouraged by the strong momentum with our exclusive offering of UFC. We continue to refine how we deliver a premium experience to consumers, including airing portions of two UFC events on CBS. To date, over 10 million households have watched more than 100 million hours of UFC programming on our service—delivering viewership more than 15x the average pay-per-view event over the past two years. Notably, new UFC subscribers are 15 years younger than the average Paramount+ viewer—and they're engaging with the service beyond just UFC, taking full advantage of our broader offering of films and series like *South Park*.

In January, we implemented price increases across our Essential and Premium tiers in the U.S., Canada, Australia and Latin America—the first such adjustment since August 2024. The results so far are in-line



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with our expectations, allowing us to continue reinvesting in the business. Through the quarter, subscribers increased by 0.7 million, with strong underlying growth partially offset by exiting over 1 million hard bundle subscribers.

To further accelerate our DTC business, we are modernizing our consumer-facing technology to create more dynamic, personalized, and connected experiences. The convergence of our streaming tech stack —on track for launch mid-year—will enable continuous optimization across discovery, personalization, and monetization. Across our streaming products, we are already seeing early momentum through new features like enhanced mobile experiences and short-form video clips, designed to deepen engagement and increase frequency.

As part of this evolution, this summer, Pluto TV will experience its most significant update in a decade, built on the Paramount+ platform, marking a major step forward in personalization and user experience and reinforcing our position as a player across both free and premium streaming. We're also expanding registration and first-party identity on Pluto to provide a better user experience and ad signal. In the U.S., 65% of Pluto viewing minutes now come from registered users—up nearly 60% year-over-year—and we expect that share to continue rising as we evolve the product experience. We will also continue to drive VOD viewership on the platform—which we believe presents a better overall consumer experience and is more valuable for advertisers given the intent associated with VOD—with VOD TV hours per user up 60% following recent updates.

To further support Pluto TV, we are sharpening our content strategy, building a virtuous cycle in which great programming attracts more viewers, and a better product experience keeps them engaged longer. This approach is already showing results, with strong performance from recently added fan-favorite titles. We see particular strength in nostalgia-driven programming, which is resonating with existing fans while introducing these franchises to a new generation.

Studios

On the theatrical side, we continue to expand our roster of talent, both in front of and behind the camera, to bring more compelling stories to audiences worldwide. In less than nine months, we have nearly doubled our slate, growing from eight films in 2025 to 15 in 2026 and are busy ramping our slate for profitable growth in 2027, 2028 and beyond. One early highlight is *Scream 7*, co-produced with Spyglass Media Group, which was the highest-grossing installment in the iconic franchise's 30-year history, surpassing \$200 million globally.

Our upcoming film slate includes a broad mix of franchise offerings, originals, animated titles, horror, dramas, R-rated comedies and more. On May 8, *Billie Eilish—Hit Me Hard and Soft: The Tour (Live in 3D)*, directed by James Cameron and Billie Eilish, debuts in theaters, followed over Memorial Day weekend by the supernatural thriller *Passenger*, and two weeks later, *Scary Movie*, part of our first-look deal with Miramax. Then on June 26, *jackass: best and last*, the fifth and final installment in the franchise, arrives in theaters, with additional film releases to follow throughout the year. At the same time, our creative team is hard at work reinvigorating key franchises while investing in original storytelling.

We are equally focused on ensuring these stories reach a broad, global audience. Last month at CinemaCon, the annual gathering for theatrical exhibition, we gave theater owners our commitment to



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release a minimum of 30 films annually across Paramount and Warner Bros., with every film receiving a full theatrical release and a minimum 45-day window, effective immediately.

This commitment not only supports a healthy entertainment industry and protects the theatrical experience for consumers, but will support our long-term growth, an important pipeline for engagement and monetization across our platform including licensing and streaming.

At the same time, Paramount Television Studios (PTVS) and CBS Studios continue to be sought-after partners across the industry. In addition to the slate produced for Paramount+, we continue to deliver for third parties.

PTVS had several notable milestones this period, including a limited series order for *The Corrections* at Netflix and a third-season renewal of *Cross* for Prime Video. Meanwhile, we are also producing a 2026 slate of new series that includes *Ride or Die*, the *Reacher* spinoff *Neagley* for Prime Video; *12 12 12*, *Brothers* and *Neuromancer* for Apple TV; and *Hollywood Arts* for Netflix. In addition, we have new seasons of established series such as *Reacher*, *XO*, *Kitty*, *Foundation*, and *Emily in Paris*.

CBS Studios—including BET Studios and Nickelodeon Animation Studios—complements this with a portfolio of more than 60 active series across broadcast and streaming, spanning major franchises, new entries, and a broad mix of premium, daytime and family programming.

Alongside selling our content, we will continue to invest in acquiring films and series from third-party producers around the world, supporting top creative talent and distinctive storytelling, including local market productions that resonate with audiences and drive global subscriber engagement.

TV Media

Our broadcast and linear television business remains a powerful engine of reach, relevance and cash flow. CBS currently has 13 of the top 20 primetime series, including the #1 news program *60 Minutes*, as well as all four of the top new series, *Marshals*, *Sheriff Country*, *CIA* and *Boston Blue*—an achievement no broadcast network has delivered since the early 1990s. We also expect CBS to continue its streak as the #1 in daytime for its 40th consecutive season.

Beyond its broadcast leadership, CBS continues to be a major driver for Paramount+, with CBS titles accounting for 10 of the top 20 series in time spent on the service during the broadcast season. New CBS series are breaking through immediately on streaming, with first-year shows *Marshals*, *Sheriff Country* and *CIA* generating roughly 40% of their audience from Paramount+.

Looking ahead, CBS enters the 2026-27 season with a schedule that is creatively strong and financially disciplined and built for long-term value—anchored by a strong slate of 19 returning series, continued franchise expansion that includes *NCIS: New York*, and new original concepts like *Einstein*, *Cupertino* and *Eternally Yours*.

Our Sports business also continues to perform strongly, delivering robust viewership across the PGA TOUR—highlighted by CBS' most-watched final round of the Masters in over a decade—and the NCAA Division I Men's Basketball Tournament, where CBS Sports, along with TNT Sports, generated the second-most watched March Madness since 1994.



Building on this momentum, we recently announced a new long-term partnership with the WNBA and CBS Sports that will significantly expand our women's sports offering. Under this agreement, CBS Sports will broadcast up to 20 regular-season games annually across the CBS Television Network and Paramount+, starting this season—the most WNBA games carried on broadcast television by any network. We're committed to investing in premium live sports, and this positions us to capture the growing audience and cultural momentum surrounding women's basketball.

Driving Efficiency and Optimizing Investment Enterprise-wide

Our transformation program is ahead of schedule. Against our third North Star priority—driving enterprise-wide efficiency with a focus on long-term free cash flow—we have more than \$2.5 billion in run-rate efficiencies on track for realization by year-end and expect to deliver at least \$3 billion in efficiencies through 2027.

As we've previously shared, one of our four major transformation workstreams is to make technology a core competency of the company. We are transforming Paramount into a tech-enabled media company by unifying our platforms, data, and workflows across the business. This shift is already breaking down silos, increasing discipline, and enabling us to move faster with greater precision. From the rollout of our agentic data warehouse, which is simplifying how teams access and act on data, to the rapid scaling of AI-powered development tools, we are building durable internal capabilities that enhance both speed and quality. Today, nearly 80% of our engineering organization has adopted code-assist technologies, driving meaningful gains in productivity and product quality within the same development cycles, significantly reducing failure rates, and cutting approval times by more than half.

The examples above are just a snapshot of the progress underway, alongside newer initiatives designed to drive engagement and unlock future monetization opportunities. These include expanding into new content formats and interactive features on Paramount+, such as the launch of clips on the Paramount+ mobile app with plans to add gaming, live stats and polling. We'll also enhance content discovery on Pluto TV through automated carousels, Content Spotlight units, curated collections, and Top 10 experiences. Together, these efforts demonstrate steady, disciplined progress toward a more innovative, efficient and technology-driven Paramount.

One of our core areas of focus has been strengthening our advertising business. We have moved quickly to restructure our go-to-market approach, rebuild our team, and invest in the capabilities required to compete in an increasingly digital, performance-driven environment. We consolidated our national sales organization into a single, client-centric structure under unified leadership, formally launched Paramount Media Labs—connecting our IP with brand marketers through more integrated and immersive experiences, and added new talent from leading digital platforms including Amazon, The Trade Desk, Google, Hulu, and Roku, reflecting a deliberate effort to deepen and broaden our expertise.

At the same time, we are accelerating investment in ad technology, including Precision+, our AI-powered targeting and optimization product, and we are making continued progress in ad serving, CRM unification, and yield management. These efforts are beginning to translate into results: Paramount+ advertising revenue remains strong, digital monetization is improving sequentially across the portfolio, and our programmatic demand pipeline heading into Q2 is encouraging.

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Additionally, at the beginning of Q2 we brought our first divisions in the company live onto Oracle Fusion, and we plan to have the entire organization on one, unified ERP system by early next year.

Q1 Results and Q2 and 2026 Outlook

A summary and discussion of Q1 results and our Q2 and 2026 outlook are below. As we have previously noted, we are reporting our Q1'26 results under a new segment structure—including our reorganization across DTC, Studios, and TV Media and segment expense allocations. Recast financials for prior periods are reflected in the table below and also available on our IR website and were previously disclosed via an 8-K filing. Additionally, we present periods before (“predecessor”) and after (“successor”) the close of the Skydance Transactions in accordance with the financial reporting requirements for our transaction, further described in the Financial Statement Presentation section in the back of the letter. Additional supplemental information is also available on our IR website.



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In millions, except per share amounts	Predecessor ⁽¹⁾			Successor			Outlook	
	Q1'25	Q2'25	7/1/25 - 8/6/25	8/7/25 - 9/30/25	Q4'25	Q1'26	Q2'26	2026
Direct-to-Consumer	\$ 2,151	\$ 2,264	\$ 923	\$ 1,344	\$ 2,309	\$ 2,398		
Y/Y Growth (%)						11 %		
Studios	1,159	1,135	462	738	2,060	1,283		
Y/Y Growth (%)						11 %		
TV Media	3,884	3,454	1,198	2,042	3,799	3,666		
Y/Y Growth (%)						(6)%		
Eliminations	(2)	(4)	(2)	(3)	(20)	—		
Total Revenue	\$ 7,192	\$ 6,849	\$ 2,581	\$ 4,121	\$ 8,148	\$ 7,347	\$6,750 - \$6,950	\$ 30,000
Y/Y Growth (%)	(6)%	1 %			2 %	2 %	(1%) - 1%	4%
Operating Income (Loss)	\$ 550	\$ 399	\$ 80	\$ 244	\$ (339)	\$ 616		
Operating Margin (%)	7.6 %	5.8 %	3.1 %	5.9 %	(4.2)%	8.4 %		
Net Earnings (Loss)	\$ 152	\$ 57	\$ (244)	\$ (13)	\$ (573)	\$ 168		
Diluted EPS ⁽²⁾	\$.22	\$.08	\$ (.36)	\$ (.01)	\$ (.52)	\$.15		
Adjusted EBITDA ⁽³⁾	\$ 732	\$ 863	\$ 313	\$ 684	\$ 674	\$ 1,161	\$900 - \$1,000	\$ 3,800
Y/Y Growth (%)	(29)% (6)%	(6)%			42 %	59 %	4% - 16%	16%
Adj. EBITDA Margin (%)	10.2 %	12.6 %	12.1 %	16.6 %	8.3 %	15.8 %	13.9%	12.7%
Net Cash Provided by (Used For) Operating Activities	\$ 180	\$ 159	\$ (175)	\$ 268	\$ 217	\$ 185		
Free Cash Flow ⁽³⁾	\$ 123	\$ 114	\$ (207)	\$ 222	\$ 101	\$ 96		
Shares Outstanding ⁽⁴⁾	678	680	675	1,098	1,104	1,118		
Paramount+ Revenue	\$ 1,686	\$ 1,771	\$ 709	\$ 1,060	\$ 1,837	\$ 1,974		
Y/Y Growth (%)	16 % 23 %	23 %			17 %	17 %		
Paramount+ Subscribers	77.8	76.8		77.9	78.9	79.6		
Y/Y Growth (%)	11 %	14 %			4 %	2 %		

Note: (1) As a result of the new accounting basis established upon the closing of the Skydance Transactions, the GAAP basis for our segment information for the predecessor period is based on our previous segments. To provide information consistent with how management reviews results, the 2025 revenues by segment in each of the predecessor periods presented above reflect amounts recast under the new segment presentation and therefore constitute a non-GAAP presentation. Reconciliations from the historical segment presentation to the new segment presentation are provided in Supplemental Disclosures Regarding Non-GAAP Financial Measures. (2) Diluted EPS from continuing operations attributable to Paramount or Paramount Skydance; (3) See Supplemental Disclosures Regarding Non-GAAP Financial Measures (4) Weighted average number of diluted shares outstanding

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Q1'26

In Q1, total revenue of \$7.3 billion increased 2% versus revenue of \$7.2 billion in Q1'25 for the predecessor company, led by growth in DTC and Studios revenues, partially offset by a continued decline in TV Media. Operating income was \$616 million (8% margin) including \$103 million of transaction-related costs. Adj. EBITDA was \$1.2 billion, a 16% margin, and increased 59% year-over-year with outperformance driven by disciplined expense management while we continue to invest for growth across the business. The below discussion by segment includes comparisons to 2025 recast under the new segment presentation².

Direct-to-Consumer

- DTC revenue increased 11% year-over-year to \$2.4 billion, led by Paramount+ revenue growth of 17% year-over-year. Paramount+ revenue growth reflected 14% ARPU³ growth and 2% subscriber growth. Our underlying subscriber base grew by nearly 2 million, partially offset by the exit of over 1 million international hard bundle subscribers in Q1, in-line with our plan. This impacted reported net adds but improved the quality and economics of our subscriber base.
- DTC adj. EBITDA was \$251 million (10% margin) and improved compared to -\$4 million in Q1'25, reflecting continued subscription and advertising growth, and including a content expense benefit from reductions in content assets resulting from the change in accounting basis resulting from the Skydance transaction, partially offset by continued content investment.

Studios

- Studios revenue increased 11% year-over-year to \$1.3 billion, including strong theatrical performance from *Scream 7* and the consolidation of Skydance licensing revenues into Paramount Television Studios.
- Studios adj. EBITDA was \$164 million (13% margin), up significantly year-over-year from \$82 million in Q1'25, driven by licensing deals in the quarter.

TV Media

- TV Media revenue declined 6% year-over-year to \$3.7 billion. Both advertising and affiliate revenue declined 6% year-over-year. Advertising revenue trends included a two percentage point impact from international exits, partially offset by a one percentage point benefit from political advertising in the quarter. Affiliate trends were consistent with continued pay TV subscriber erosion.
- TV Media adj. EBITDA was \$1.1 billion, a 29% margin vs a 24% margin for Q1 2025, demonstrating disciplined expense management to more than offset revenue declines.

² See Supplemental Disclosures Regarding Non-GAAP Financial Measures.

³ We calculate average revenue per subscriber ("ARPU") as total Paramount+ revenues during the applicable period divided by the average of Paramount+ subscribers at the beginning and end of the period, further divided by the number of months in the period.

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Q2'26

As previously noted in our Q4 letter, we expected total company revenue to be relatively more weighted to the second half of the year, though we now expect profitability will skew slightly towards the first half of the year. In Q2'26, we expect total revenue of \$6.75 billion to \$6.95 billion or -1% to 1% growth year-over-year versus Q2'25 for the predecessor company, led by DTC revenue growth and, to a lesser degree, an increase in Studios revenue, offset by declines in TV Media. The Q2 revenue growth outlook reflects a difficult comparison to theatrical revenue in Q2'25 with the release of *Mission: Impossible—The Final Reckoning* as well as decelerating ad revenue including lapping the NCAA Final Four and Championship games in Q2'25. We continue to expect healthy underlying subscriber growth for Paramount+, but similar to Q1, we expect Paramount+ quarter-over-quarter subscribers will be flattish due to the strategic exit of approximately 2 million international hard bundle subscribers.

We expect adj. EBITDA of \$0.9 billion to \$1.0 billion, or a 13.9% margin at the midpoint, with approximately \$75 million of stock-based compensation in the quarter. We expect continued year-over-year improvement in total DTC margin and total profitability in Q2. We anticipate transformation costs of several hundred million in Q2, which will impact our reported free cash flow.

2026

For 2026, we continue to expect total revenue of \$30 billion, or 4% growth year-over-year, inclusive of predecessor and successor periods. Our expectations by segment are largely consistent with those we outlined in our Q4'25 letter. We forecast adj. EBITDA of \$3.8 billion, or a 12.7% margin. We will balance near-term profitability with reinvestment as we make progress against our \$3 billion-plus efficiencies. We continue to expect free cash flow conversion of approximately 5% before roughly \$800 million of transformation costs, as previously noted. 2026 is an important year of investment—in business transformation, and in content and technology, which we expect will contribute to our growth in 2027 and beyond. Across segments:

- For DTC, we continue to expect accelerating revenue growth⁴ across subscription and advertising revenue excluding the impact of Showtime declines. Underlying subscriber growth will be healthy and accelerating year-over-year, though total paid subscribers will only be modestly higher compared to 2025 due to strategic hard bundle exits. We continue to expect to grow our DTC profit in 2026 relative to 2025.
- We expect growth in our new Studios segment driven by accelerating licensing and other revenues, including a full-year impact of legacy Skydance revenue, as well as higher licensing across Paramount Television Studios and CBS Studios. While we saw better-than-expected theatrical performance from *Scream 7*, we continue to expect significantly lower theatrical revenue year-over-year due to lower average box office revenue per film across more releases in 2026 as we build into our 2027+ slates. We expect Studio segment profitability will increase in 2026 versus 2025.
- In TV Media, we expect continued headwinds to affiliate revenue due to pay TV subscriber declines with some moderation in linear advertising declines versus 2025, including expected political spending in 2026. We expect to have stable-to-improving margins in TV Media.

⁴ Excluding Paramount+ with Showtime, our premium cable channel, which was previously reported under the TV Media segment.

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Capital Structure & Capital Allocation

We ended the quarter with \$1.9 billion in cash and cash equivalents and \$15.5 billion in gross debt. Our debt went up in the quarter as we drew \$2.15 billion on our revolving credit facility to pay the \$2.8 billion termination fee WBD owed to Netflix upon entering into our merger agreement. This amount will be repaid by us from proceeds we will receive from the private placement we entered into in connection with the WBD transaction. This increase in our debt was offset partially as we repaid \$347 million of debt maturing early in Q1 with cash on hand. We have \$86 million in debt maturing for the remainder of 2026.

Acquiring Warner Bros. Discovery

On February 27, we announced our definitive merger agreement under which Paramount will acquire WBD, which will accelerate our ambition of building a next-generation media and entertainment company.

We're making great progress on our plan to close the transaction by the end of Q3'26 with a number of important milestones. In April, we announced that a group of select strategic investors were assigned a portion of the \$47 billion equity investment. This syndication does not relieve the original equity investors of their contractual commitments made to the company. As detailed in the 8-K, the PIPE subscription price was updated from a fixed \$16.02 per share to a market-referenced price at close—floored at \$12.00 and capped at \$16.02. Additionally, we replaced the previously planned rights offering with a dividend of one 10-year warrant per Class B share, exercisable at the syndication price and expected to trade separately on Nasdaq, which we believe is a greater value to our shareholders than the prior rights offering structure.

Subsequently, we also announced that we successfully secured long-term financing commitments consisting of \$5 billion in term loans and a \$5 billion revolving credit facility, secured against the assets of the combined company at close. We successfully syndicated the remaining \$49 billion of bridge financing to 18 global financial institutions to fund the transaction, which we intend to replace with additional secured debt across the investment grade and high yield markets prior to closing the transaction. Existing Paramount notes will remain in place as unsecured obligations following close.

Most recently, on April 23, WBD shareholders voted to approve the merger agreement, another critical step in our path towards closing. We look forward to closing the transaction in the coming months and sharing future updates as we work to create a company that serves the creative community and consumers.

Closing

The first quarter demonstrated what this company is capable of when strategy, content, and execution align. The WBD transaction, on track for a Q3 close, will amplify that potential significantly and unite two world-class teams. We are building something lasting—and we are just getting started.

Sincerely,

David Ellison
Chairman & CEO
Paramount, a Skydance Corporation



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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

PAMELA FAUST, LEN MARAZZO, LISA
McCARTHY, DEBORAH RUBINSOHN, and
GARY TALEWSKY

Plaintiffs,

vs.

PARAMOUNT SKYDANCE CORPORATION
(formerly Paramount Global), and SKYDANCE
MEDIA, LLC,

Defendants.

Case No. 4:26-cv-03790-AMO

**DEFENDANTS PARAMOUNT SKYDANCE
CORPORATION AND SKYDANCE MEDIA,
LLC'S OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: July 16, 2026
Jt. Stip. Pending, requesting
hearing on July 2, 2026
Time: 2:00 PM
Judge: Hon. Araceli Martínez-Olguín
Courtroom: TBD

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INTRODUCTION

This case concerns the future of the entertainment industry and a misguided attempt by Plaintiffs to politicize antitrust law. The entertainment industry stands at a crossroads. Year after year, traditional movie studios and theaters have suffered as viewers' habits have shifted toward streaming video. Creative workers of all stripes—from writers and actors to stagehands and technical experts—have been impacted. The merger of Paramount and Warner Bros. Discovery presents an opportunity to revitalize Hollywood and the industry at large by creating greater competition that benefits consumers, theaters, and workers alike. The rationale for the transaction is driven by the fundamental truth that *content is king*. To compete most effectively against leading streaming platforms like Netflix and Disney+, the merging parties require greater scale and investment in high-quality, compelling content that will drive moviegoers to theaters and attract viewers to cable television and streaming services.

Today, Paramount and Warner Bros. are sub-scale streaming competitors confronting three much larger rivals: Netflix, Disney+, and Amazon Prime Video. Combining the two companies' libraries will offer consumers a more attractive alternative and generate real competition with the three largest streaming platforms. Competing against highly scaled streaming platforms also requires significant investment in new and exciting content. Indeed, following the merger of Paramount and Skydance, the combined company has nearly *doubled* its theatrical film output, and Paramount has committed to releasing 30 feature films in theaters annually following the Warner Bros. transaction. Paramount's strategy also makes good sense: releasing feature films in theaters generates audience excitement for the films' subsequent move to streaming, driving subscribers and streaming viewership.

Once complete, the transaction will fuel greater competition by offering a stronger, better scaled rival to Netflix, Disney, and Amazon, and consumers and workers will benefit from the expanded investment and output that it will unlock. Plaintiffs, however, seek a preliminary injunction to block this industry-transforming merger from closing. As set forth in this opposition, Plaintiffs' motion is an empty shell, unsupported by any facts or expert testimony and does not come close to satisfying their heavy burden to obtain the extraordinary remedy of a preliminary injunction. It would be unprecedented to enjoin a merger on such a barren record.

In a futile effort to compensate for their lack of evidence, Plaintiffs lob baseless political attacks

1 against the merger. This clumsy attempt to politicize antitrust litigation, untethered to any established
 2 antitrust principles or law, has no place in this courthouse and must be rejected. The injunction Plaintiffs
 3 seek would also cause great harm: delaying or blocking the merger would harm competition rather than
 4 help it, and it would impose significant economic costs on Paramount. Netflix and other scaled tech
 5 platforms stand to benefit from a weaker Paramount and Warner Bros., but consumers, theater owners and
 6 talent will suffer. Whatever upside Plaintiffs might see in such an outcome, it is not a procompetitive one.
 7 For the reasons that follow, the Court should deny Plaintiffs' motion.

8 **THE RECORD PRESENTED**

9 **A. THE MERGER TRANSACTION**

10 In August 2025, Skydance Media merged with Paramount Global, bringing together two
 11 complementary entertainment industry businesses to form Paramount Skydance Corporation
 12 ("Paramount"). Compl. ¶¶ 48, 58. Before that merger, Paramount Global operated various entertainment
 13 businesses, including producing and distributing movies and television programming, *see id.* ¶ 122,
 14 offering streaming services such as Paramount+, *id.* ¶ 28, operating the broadcast network CBS, *id.* ¶ 50,
 15 and offering a portfolio of cable television channels. Skydance Media's pre-merger business, on the other
 16 hand, focused on producing movies and television and did not compete with Paramount Global in
 17 streaming services, television networks, or news. *See id.* ¶¶ 18–19. Pre-merger, Paramount Global's film
 18 studio, Paramount Pictures, was operating at a significant loss; in 2025, none of its eight films was
 19 profitable. Goldberg Decl. ¶ 14.

20 On February 27, 2026, Paramount signed an agreement to acquire Warner Bros. Discovery
 21 ("Warner Bros."). *See* Compl. ¶¶ 66–67, 69–73; Ex. 5, (Merger Agreement). Warner Bros. produces and
 22 distributes movies and television shows, owns several cable television networks (*e.g.*, HBO, CNN, TNT,
 23 TBS), and sells two different subscription streaming services (HBO Max and discovery+). Compl. ¶ 20.
 24 Warner Bros. does not have a broadcast network like CBS. On April 23, 2026, Warner Bros. stockholders
 25 approved Paramount's acquisition of Warner Bros., subject to customary regulatory clearances. *Id.* ¶ 73.

B. PLAINTIFFS SUBMIT NO EVIDENCE TO SUPPORT THEIR PRELIMINARY INJUNCTION MOTION

Plaintiffs are five individual consumers of entertainment content. On April 30, 2026, they filed the Complaint, and, three weeks later, filed the pending Motion for a Preliminary Injunction. But Plaintiffs did not submit any evidence in support of their Motion. They did not make any expert submissions, did not submit any fact declarations, and did not submit a single document, not even the merger agreement. Plaintiffs' Motion relies solely on the unverified allegations in their Complaint and unsupported proclamations in their brief by Plaintiffs' counsel.

C. THE TRANSACTION WILL GENERATE SIGNIFICANT PROCOMPETITIVE BENEFITS

The merger will benefit consumers and other industry stakeholders in many ways. The combined entity will expand consumer choice, increase television and film production, and foster streaming service competition. Goldberg Decl. ¶¶ 25, 28–32. These benefits are made possible in part by the significant costs savings that the combined entity will be able to achieve. Gordon Decl. ¶¶ 6, 16. Specifically, the merger is estimated to save over \$6 billion in costs. Gordon Decl. ¶ 5; Goldberg Decl. ¶ 27. The sources of these savings include consolidating the different technology infrastructure underlying different streaming platforms, consolidating back-office enterprise technology, consolidating office real estate, and implementing more efficient marketing. Gordon Decl. ¶¶ 7–12. These savings will help Paramount increase its content production. *Id.* ¶¶ 16, 19. Indeed, Paramount has committed to increase its investment in content generation and to release a minimum of 30 films in theaters per year. Goldberg Decl. ¶¶ 23, 29; *see also* Ex. 2 (Press Release); Ex. 3 (Investor Presentation); Ex. 4 (Shareholder Letter). Paramount will use its merger savings to invest in the content and technology that audiences care about, which will enable the merged firm's studios, streaming services, and television networks to compete more effectively and offer greater opportunities to actors, writers, directors and other members of the talent community. Gordon Decl. ¶¶ 6, 11–12, 16; Goldberg Decl. ¶¶ 25–32.

1. Post-Merger Paramount Plans to Increase Its Investment in Theatrical Releases

Paramount has a history of increasing theatrical releases and expects to continue to do so post-

merger. Following the Skydance-Paramount transaction, Paramount nearly doubled its theatrical releases in 2026 compared to 2025. Goldberg Decl. ¶¶ 15, 29. With the Warner Bros. merger, Paramount has committed to continued theatrical releases. Indeed, theatrical releases are a key part of its post-merger strategy to invest in theatrical releases and later add the films to a combined streaming service to generate buzz to build demand and subscribers. *Id.* ¶¶ 28, 31. Paramount has repeatedly and publicly committed to release a minimum of 30 theatrical films per year. *Id.* ¶¶ 23, 29; *see also* Ex. 2 (Press Release); Ex. 3 (Investor Presentation); Ex. 4 (Shareholder Letter). To support the production of these films, Paramount will separately maintain Warner Bros. and Paramount film studios, along with each of their creative teams and lots. Goldberg Decl. ¶ 22; *see also* Ex. 2 (Press Release). Each of those films will have a minimum 45-day window in movie theaters before becoming available on any other platform. Goldberg Decl. ¶ 23. With the addition of Warner Bros., Paramount plans, post-merger, to continue growing the combined film release slate with the intention to be the producer with the most theatrical film releases in the United States. *Id.* ¶¶ 29, 31.

2. The Merger Will Give Paramount the Scale and Content It Needs to Put Greater Competitive Pressure on Its Much Larger Streaming Rivals

The merger will combine the content in Paramount's Paramount+ and Warner Bros.' HBO Max to create a single, far more competitive library of streaming content. Goldberg Decl. ¶¶ 25–26, 31; Gordon Decl. ¶ 17; *see also* Compl. ¶¶ 18–20 (listing each entity's portfolio of film, entertainment, streaming, and related media assets); Ex. 2 (Press Release) (announcing intent to create a combined global streaming competitor). The combined streaming service will allow the combined company to offer consumers a broad range of complementary content—from prestige dramas to popular children's programming—on a single platform, without consumers having to pay for another streaming service, making it a more compelling product. Goldberg Decl. ¶ 25–26. A streaming product with more content will attract and retain more subscribers, generating more revenue that Paramount can invest back into more content for the streaming service to keep growing the amount of content that it will offer. *Id.* ¶¶ 31–32. The cost savings created by the merger are also expected to help Paramount improve its streaming technology and user interface, improving performance and consumers' user experience. Gordon Decl. ¶¶ 8, 16.

The merger, and the investment in the combined streaming service the merger will generate, will

enable Paramount to better compete against its much larger streaming rivals Netflix, Amazon Prime Video, and Disney+. Goldberg Decl. ¶ 25; Gordon Decl. ¶¶ 17–19. Today, the streaming services of both Paramount and Warner Bros. lack that scale, in terms of subscriber base, revenues, and content, which puts them at a competitive disadvantage and reduces their ability to invest in growing their services. Goldberg Decl. ¶ 25.

3. The Merger Will Create a More Resilient and More Sustainable Business Model for Television Networks

In an era when traditional, linear television networks are declining in popularity and profitability, the merger will provide the merged firm with the cash flow, cost-efficiencies, and technology-forward distribution pipeline necessary to support its combined slate of networks, including CBS, CNN, TBS, and the Discovery Channel. Goldberg Decl. ¶ 33. These networks have strong brands, and the merged firm plans to bolster them for a streaming and digital world. *Id.* For example, post-merger, Paramount intends to include programming from across its network portfolio on the combined streaming service, increasing user convenience and consumer access to network programming. *Id.*; *see also id.* ¶ 32. And the merged firm’s complementary and unified portfolio of cable and free-to-air (*i.e.*, broadcast) networks will offer advertisers greater opportunities for cross-channel activations and sales. *Id.* ¶ 34. All the while, contrary to Plaintiffs’ unsupported claims, CNN will remain editorially independent. *Id.* ¶ 35.

D. PARAMOUNT WILL SUFFER SIGNIFICANT HARM IF THE MERGER IS DELAYED

Diligence for the merger began in September 2025. Goldberg Decl. ¶ 16. Paramount invested a significant amount of time and effort in assessing a potential five-year plan for the combined company before making its first formal acquisition offer. *Id.* The bidding process—spanning from September 2025 to February 2026, with the offer price rising from \$19 to \$31 per share—reflects the financial commitment and competitive pressure involved in securing the deal. *Id.* ¶ 18. Paramount’s final \$31-per-share bid also included a commitment to pay the breakup fee Warner Bros. owes Netflix, the other leading bidder, effectively bringing the total financial commitment to approximately \$32 per share. *Id.* ¶ 19; Ex. 5 (Merger Agreement) § 6.17, Annex A. Paramount decided that this price was worth paying because of the significant anticipated synergies of the merged company, but any delay in closing will delay the

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1 realization of these synergies. Gordon Decl. ¶¶ 20–21.

2 Further, if the merger has not closed by September 30, 2026, Paramount must pay Warner Bros.
3 shareholders an additional \$0.25 per share per quarter (measured daily) until closing. *Id.* ¶ 22; Ex. 5
4 (Merger Agreement) Annex A. This would cost Paramount approximately \$6.9 million each day the
5 closing is delayed past September 30. Gordon Decl. ¶ 22. Any delay in closing would also result in
6 continued carrying costs on committed financing, potential expiration or renegotiation of financing
7 commitments, and ongoing uncertainty in the capital markets in which Paramount will need to raise funds.
8 *Id.* ¶ 23.

9 LEGAL STANDARD

10 “A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted
11 unless the movant, *by a clear showing*, carries the burden of persuasion.” *Roe v. Critchfield*, 137 F.4th
12 912, 921–22 (9th Cir. 2025). Plaintiffs must make a “clear showing” that (1) they are likely to succeed
13 on the merits, (2) they are likely to suffer irreparable harm without injunctive relief, (3) the balance of
14 equities tip in their favor, and (4) an injunction is in the public interest. *Id.* at 922 (citing *Winter v. Nat.*
15 *Res. Def. Council*, 555 U.S. 7, 20 (2008)). “Likelihood of success on the merits ‘is the most important’
16 *Winter* factor and ‘is a threshold inquiry.’” *Id.* Alternatively, Plaintiffs must establish “*serious questions*
17 *going to the merits*” and that the balance of equities “*sharply*” favor Plaintiffs, along with showing that
18 they will suffer irreparable harm and that the injunction is in the public interest. *Bennett v. Isagenix Int’l*
19 *LLC*, 118 F. 4th 1120, 1126 (9th Cir. 2024). “At an irreducible minimum, though, the moving party must
20 demonstrate a fair chance of success on the merits, or questions serious enough to require litigation.”
21 *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105–06 (9th Cir. 2012) (cleaned up). Plaintiffs do not come close
22 to satisfying any of these standards, as they offer no evidentiary support whatsoever for the
23 “extraordinary” remedy they seek.

24 ARGUMENT

25 **I. PLAINTIFFS DO NOT HAVE ARTICLE III OR ANTITRUST STANDING**

26 **A. PLAINTIFFS HAVE NOT CLEARLY SHOWN THE CONCRETE,** 27 **PARTICULARIZED, AND IMMINENT INJURY NECESSARY TO ESTABLISH** 28 **ARTICLE III STANDING**

Plaintiffs fail to establish standing under Article III, which “is required to establish a justiciable

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case or controversy within the jurisdiction of the federal courts,” *Gerlanger v. Amazon.com Inc.*, 526 F.3d 1253, 1256 (9th Cir. 2008). Article III standing has three elements: (1) injury-in-fact, (2) traceability, *i.e.*, “a causal connection between the injury and the conduct complained of,” and (3) redressability, *i.e.*, a likelihood “that the injury will be ‘redressed by a favorable decision.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). At the preliminary injunction stage, Plaintiffs bear the burden of making “a ‘clear showing’ that [they are] likely to establish each element of standing.” *Am. Encore v. Fontes*, 152 F.4th 1097, 1110 (9th Cir. 2025). In antitrust cases, plaintiffs must demonstrate standing in each alleged market. *See In re Apple iPhone Antitrust Litig.*, 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013).

Here, Plaintiffs do not make any showing, let alone a “clear showing” of standing to challenge the proposed Paramount-Warner Bros. merger. They have submitted no evidence to support their claimed standing and instead rely only on the unverified allegations in their Complaint. *See* Mot. at 11–12. This complete failure of proof, by itself, requires denying Plaintiffs’ motion. But even if the Court accepted Plaintiffs’ unverified allegations as evidence, they would still fall short because they do not suggest any concrete, particularized injury likely to flow imminently from the merger. Instead, Plaintiffs make only generic, conclusory assertions of increased prices, reduced output, and reduced consumer choice without linking any of these assertions to concrete, individual injuries to Plaintiffs. *See, e.g.*, Compl. ¶¶ 1, 25, 27, 40. Such allegations cannot satisfy the “clear showing” requirement as a matter of law. *See, e.g., Roe v. City & Cnty. of S.F.*, 2026 WL 898262, at *3 (N.D. Cal. Mar. 30, 2026) (“generalized contentions” of harm are insufficient to demonstrate standing).

Plaintiffs’ assertion that three of them “paid increased subscription charges” for Paramount+ beginning in January 2026, *see* Mot. at 11, does not cure their lack of standing because that price increase occurred prior to the merger and thus is not “fairly traceable” to it. *See Lujan*, 504 U.S. at 560. A single historical price increase prior to the challenged merger is no showing, let alone a “clear showing,” that the merger is likely to cause future price increases that would harm any of the Plaintiffs. *See, e.g., Fontes*, 152 F.4th at 1112 (single “isolated case” of historical harm “cannot by itself support standing for injunctive relief”); *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 926 (N.D. Cal. 2012) (“a single incident is insufficient to establish a likelihood of future injury”). Plaintiffs Faust’s and McCarthy’s allegations that the 2026 price increase has “deterred” them from subscribing to Paramount+ is likewise

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insufficient to establish Article III standing. *See Sanner v. Bd. of Trade of Chi.*, 62 F.3d 918, 923–24 (7th Cir. 1995) (farmers “refraining from selling soybeans” based on “depressed price” of soybeans lacked Article III standing to assert antitrust claims).

Plaintiffs have also failed to present any evidence to make a clear showing that any alleged future injuries they will suffer are “certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). Instead, they posit only “conjectural allegations of potential injuries,” *Fontes*, 152 F.4th at 1113, detached from commercial realities and economic principles, to argue that the merger will usher in a parade of horrors, which in turn lack any connection to the Plaintiffs. *See, e.g.*, Compl. ¶¶ 27, 40. For example, in the “Theater Distribution” market, Plaintiffs speculate about “fewer theatrical titles, less genre and budget variety, and fewer meaningful alternatives at local theaters,” Compl. ¶ 114, but they offer no evidence showing an imminent prospect of such harm taking place in a manner that will be “personal and individual” to any of the Plaintiffs. *Kumar v. Koester*, 131 F.4th 746, 751 (9th Cir. 2025).

Similarly, the Complaint’s allegations that the merger will lead to a loss of “viewpoint diversity,” “credibility,” “editorial independence,” or similar abstract concepts, Compl. ¶¶ 27, 43, 81, 130, are without any factual support. And, in any event, such an alleged intangible injury cannot provide a basis for Article III standing because it does not have “a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). Plaintiffs’ “ideological discomfort” with Paramount’s editorial viewpoint “does not implicate any legally protected interest.” *Brown v. Nat’l Football League, Inc.*, -- F. Supp. 3d --, 2026 WL 279599, at *7 (S.D.N.Y. Feb. 3, 2026); *see also Murthy v. Missouri*, 603 U.S. 43, 75 (2024).

Finally, in their Motion, Plaintiffs assert for the first time (and without evidence), that the merger will result in a “loss of creativity by reason of the potential job losses by writers, directors, actors, support personnel and studios.” Mot. at 11. Not only did Plaintiffs fail to allege this in their Complaint or provide any evidence to support it in the Motion, but any lost “creativity” stemming from alleged “job losses” would not confer standing on Plaintiffs in any event because none of them claim to be employed in any of these jobs that they could lose. *See Demartini v. Microsoft Corp.*, 662 F. Supp. 3d 1055, 1061 (N.D. Cal. 2023) (“Plaintiffs do not contend the alleged anticompetitive effects in the labor market will damage them . . . thus, they do not have standing to pursue such claim.”).

B. PLAINTIFFS’ HAVE NOT CLEARLY SHOWN ANTITRUST INJURY

Plaintiffs further fail to make the required clear showing of antitrust injury to support their claims in any of the three markets alleged. Antitrust injury is “threatened loss or damage of the type the antitrust laws were designed to prevent and that flows from that which makes defendants’ acts unlawful.” *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 113 (1986). A private plaintiff “must allege” such an injury “in order to seek injunctive relief” under the Clayton Act. *Id.*

Moreover, because antitrust injury bears upon the “likelihood of success on the merits of [their] Section 7 claim,” *AlliedSignal, Inc. v. B.F. Goodrich Co.*, 183 F.3d 568, 574 (7th Cir. 1999), a plaintiff must make an evidentiary showing of antitrust injury to warrant a preliminary injunction in a Section 7 case. *See, e.g., Phototron Corp. v. Eastman Kodak Co.*, 842 F.2d 95, 98 (5th Cir. 1988) (a “substantial likelihood of suffering an antitrust injury,” supported by “more than mere pleading,” is required to warrant preliminary injunction); *Christian Schmidt Brewing Co. v. G. Heileman Brewing Co.*, 753 F.2d 1354, 1357–58 (6th Cir. 1985) (plaintiff must make “sufficient showing of potential or threatened antitrust injury” that is “supported . . . with affidavits”). Because Plaintiffs have not submitted any affidavits, expert reports, or other evidence of any antitrust injury claimed to have been suffered by Plaintiffs in any of the alleged markets, Plaintiffs have not made the required clear showing of such an injury.

1. Alleged Losses of “Viewpoint Diversity” and “Editorial Independence” in the Alleged National TV News Market Are Not Cognizable Antitrust Injuries

In addition to the lack of evidence for Plaintiffs’ claims of injury from a purported loss of viewpoint diversity or editorial independence, such an abstract political injury would not provide Plaintiffs with antitrust standing to challenge the merger because they are not “the type [of injury] the antitrust laws were designed to prevent.” *Cargill*, 479 U.S. at 113. Antitrust laws “exclusively confine their scope to matters of economic consequence.” *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1195 (N.D. Cal. 2000). Thus, a loss of “viewpoint diversity” or similar political injury would be insufficient as a matter of law to establish antitrust standing. *See Berlyn, Inc. v. Gazette Newspapers, Inc.*, 157 F. Supp. 2d 609, 619 (D. Md. 2001) (“stilled independent editorial voices” and reduced “diverse viewpoints” are not cognizable antitrust injuries). Indeed, it would violate the First Amendment for a court to enjoin a merger on the basis of how an acquiring party is likely to “exercise . . . editorial control over its content” because that

conduct is protected by the First Amendment. *McDermott v. Ampersand Pub., LLC*, 593 F.3d 950, 959 (9th Cir. 2010); accord *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Simply put, Plaintiffs’ allegations of “political” harm in the National TV News Market—in addition to being factually unsupported—are not the type of injuries that can support a Clayton Act claim. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 914 (1982) (political boycotts do not violate the antitrust laws); *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961) (petitioning the legislature is a protected activity under the First Amendment, not an antitrust violation).

2. Plaintiffs Cannot Show Antitrust Injury in the Alleged Theatrical Distribution Market

Moreover, Plaintiffs fail to clearly show a cognizable antitrust injury in the alleged “Theatrical Distribution” market because they are not “participant[s] in” that market, *Malheur Forest Fairness Coal. v. Iron Triangle, LLC*, 164 F.4th 710, 733 (9th Cir. 2026), meaning they are neither “consumer[s] of [Paramount’s] goods or services” in that market nor “a competitor of [Paramount] in” that market. *Somers v. Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013). Plaintiffs allege that this market involves competition among “major studio-distributors” to sell their content to “exhibitors,” *i.e.*, movie theaters, Compl. ¶ 109, but Plaintiffs are neither exhibitors purchasing movie content nor studios seeking to produce and distribute movies. Rather, they are “moviegoers.” Compl. ¶¶ 41–42. Because “Theatrical Distribution” and theatrical exhibition “are distinct,” as Plaintiffs acknowledge, *see* Compl. ¶ 110, “Plaintiffs have not alleged antitrust injury,” as any injuries Plaintiffs claim to have suffered as “moviegoers” would occur in a market different from the one in which the merger allegedly restrained competition. *Hogan v. Amazon.com, Inc.*, 2025 WL 869202, at *1 (9th Cir. Mar. 20, 2025); accord *Freeland v. Nippon Steel Corp.*, -- F. Supp. 3d --, 2026 WL 747417, at *3 (N.D. Cal. Mar. 17, 2026) (following *Hogan* and dismissing similar claims).

II. PLAINTIFFS FAIL TO MAKE ANY SHOWING, LET ALONE A CLEAR SHOWING, THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS

To make a clear showing of a likelihood of success on the merits of their merger challenge under Section 7 of the Clayton Act, Plaintiffs have the burden to “establish a prima facie case that a merger is anticompetitive.” *St. Alphonsus Med. Ctr. - Nampa, Inc. v. St. Luke’s Health Sys.*, 778 F.3d 775, 783,

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785–86, 788 (9th Cir. 2015). To satisfy this burden, Plaintiffs must come forward with actual evidence—expert testimony, data, declarations, or documents—that there is a “reasonable probability” that the merger will “substantially” lessen competition. *See FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1083–85 (N.D. Cal. 2023), *aff’d*, 136 F.4th 954 (9th Cir. 2025); *Fry v. Capital One Fin. Corp.*, 2025 WL 1397163, at *2–3, 6 (N.D. Cal. May 14, 2025) (it is “well established” that “plaintiff’s prediction of a merger’s future impact on competition . . . ha[s] to be reasonably probable, rather than merely possible”). “[R]ely[ing] solely on conclusory allegations in [an] unverified complaint,” as Plaintiffs do here, is “plainly insufficient to carry Plaintiffs’ burden to establish a likelihood of success on the merits or raise serious questions going to the merits of their Section 7 claim.” *Fry*, 2025 WL 1397163, at *3; *accord Shaterian v. Wells Fargo Bank, Nat’l Ass’n*, 2011 WL 2314151, at *4 (N.D. Cal. June 10, 2011) (“[P]laintiff may not support a motion for a preliminary injunction by merely pointing to his complaint and the facts alleged therein.”).

Like Plaintiffs’ failure to show standing, their failure to substantiate their merits assertions is fatal to their Motion at the outset because likelihood of success on the merits “is a threshold inquiry,” such that “[i]n the absence of serious questions going to the merits,” the court need not consider the other [preliminary injunction] factors.” *Roe*, 137 F.4th at 922. Given that Plaintiffs and their counsel have previously had their merger challenges rejected for just this reason, there is no plausible excuse for their, once again, failing to present any evidence to try to establish a *prima facie* case. *Fry*, 2025 WL 1397163, at *2 (“[T]he Court finds that Plaintiffs’ request [for a preliminary injunction] is cursory, unsupported by any record evidence, and falls far short of meeting the standard for a preliminary injunction.”).

Plaintiffs cannot avoid this result by recycling their baseless assertion—previously rejected by numerous courts in this District—that Plaintiffs have an “exceptionally low” burden, Mot. at 13, to prove their Section 7 claim. *See, e.g., Fry*, 2025 WL 1397163, at *2 (Plaintiffs’ counsel “mischaracterize[s]” and “substantially understate[s]” applicable standard in arguing for a low burden); *Demartini.*, 662 F. Supp. 3d at 1063–644 (rejecting similar assertion by Plaintiffs’ counsel as “ignor[ing] their pleading burden and Supreme Court law”). While Plaintiffs’ counsel may long for an era when merger challenges were easier to sustain, that is not the law today. *See Fry*, 2025 WL 1397163, at *2–3 (criticizing “Plaintiffs’ lax framing” of the likelihood of success on the merits standard).

Because Plaintiffs have not submitted a single piece of evidence to support their *prima facie* case, the Court should end its analysis there and deny the motion for a complete failure of proof. But, even if the Court were to credit the unverified allegations in the Complaint—which would be improper on a motion for a preliminary injunction—it would still reach the conclusion that Plaintiffs have not come close to meeting their burden to clearly show they are likely to succeed in proving a *prima facie* case.

A. PLAINTIFFS MAKE NO CLEAR SHOWING OF ANY COGNIZABLE ANTITRUST MARKET

“A threshold step in any antitrust case is to accurately define the relevant market, which refers to ‘the area of effective competition.’” *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020). “Failing to define a relevant market alone is fatal to an antitrust claim.” *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 957 (9th Cir. 2023). On a motion for preliminary injunction, the plaintiff bears the “burden of proving” the existence of a “well-defined” antitrust market. *California v. Sutter Health Sys.*, 84 F. Supp. 2d 1057, 1081 (N.D. Cal. 2000). To do so, Plaintiffs must show that the market “encompass[es] . . . all economic substitutes,” the boundaries of which are “determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.” *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1045 (9th Cir. 2008). Cross-elasticity of demand is an economic concept that is “[t]he principle most fundamental to product market definition.” *Coronavirus Rep.*, 85 F.4th at 955.¹ A market also cannot be “artificial” or “contorted to meet [plaintiffs’] needs.” *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121 (9th Cir. 2018).

Here, Plaintiffs have not submitted any expert testimony or facts in support of their alleged market. That failure of proof “alone is fatal to [Plaintiffs’] antitrust claim.” *Coronavirus Rep.*, 85 F.4th at 957. But even if the Court considered Plaintiffs’ allegations as if they were supported by evidence, all three of Plaintiffs’ alleged markets would still fail as a matter of law because they do not “encompass . . . all economic substitutes,” *Newcal*, 513 F.3d at 1045, and are not defined “such that there is cross-elasticity of demand” for the products they contain, *Gorlick Distribut. Ctr., LLC v. Car Sound Exhaust Sys., Inc.*, 723 F.3d 1019, 1025 (9th Cir. 2013). Instead, while Plaintiffs formulaically invoke the concept of

¹ Cross-elasticity of demand exists when “an increase in the price of one product leads to an increase in demand for another,” and when that is so, “both products should be included in the relevant product market.” *Olin Corp. v. FTC*, 986 F.2d 1295, 1298 (9th Cir. 1993).

“reasonable interchangeability,” *see* Mot. at 17–18, they do not point to any facts that show how this principle supports their market definitions. The principle of cross-elasticity of demand focuses on whether some products could “deprive” other products “of significant levels of business,” *Newcal*, 513 F.3d at 1045, if those other products increased price materially. *See also St. Alphonsus*, 778 F.3d at 784 (explaining “hypothetical monopolist” test). Plaintiffs do not allege, let alone demonstrate through evidence, any facts to show that any one of the three alleged markets satisfies the cross elasticity of demand test. *Newcal*, 513 F.3d at 1045; *Gorlick*, 723 F.3d at 1025.

1. No Evidence of a National Television News Programming Market

Plaintiffs’ “National TV News” market has at least two specific deficiencies that make Plaintiffs’ Section 7 claim in that market unlikely to succeed. *First*, Plaintiffs exclude various news products from the alleged market because they lack “continuous live coverage,” Compl. ¶ 101, yet they include broadcast news (*e.g.*, CBS News) in the market, even though it too does not offer “continuous live coverage.” *Second*, Plaintiffs fail to establish any facts that would explain why other forms of news media are not reasonable substitutes, with cross-elasticity of demand, for “national television news programming.” *See Newcal*, 513 F.3d at 1045. Specifically, Plaintiffs do not address why major national news outlets and their constantly updated websites and apps that include video content (*e.g.*, *New York Times*, *Washington Post*, *Wall Street Journal*, *USA Today*), wire services (*e.g.*, AP, Reuters), or other online news publications (*e.g.*, Axios, The Atlantic), are not reasonably interchangeable with the attributes that the Motion claims define the “National TV News” market (*i.e.*, “national live infrastructure, institutional reputation, carriage relationships, or independent network-level newsroom capacity”). *See* Mot. at 18.

2. No Evidence of a Theatrical Distribution Market

Plaintiffs’ “Theatrical Distribution” market has at least two specific deficiencies that make Plaintiffs’ Section 7 claim in that market unlikely to succeed. *First*, the Complaint allegations upon which Plaintiffs’ Motion relies conflates three distinct stages of the movie supply chain—production, distribution, and exhibition—and leaves unclear which of these functions is alleged to be in or outside the relevant market. *See* Mot. at 21 (citing Compl. ¶¶ 109, 111). *Second*, insofar as Plaintiffs allege a market for *producing* movies *distributed in theaters*, *see id.* (calling this market “theatrical film production”), Plaintiffs present no facts explaining why films produced for theatrical release are not reasonably

interchangeable with films produced for release through other forms of distribution, such as subscription streaming services or streaming video on-demand—especially since, in many cases, the same films may be distributed through both channels. Plaintiffs’ “arbitrary” decision, unsupported by evidence, to ignore or marginalize major movie production companies that indisputably compete with Paramount and Warner Bros., such as Netflix, Amazon, and Apple, is fatal to this alleged market. *See FTC v. Tempur Sealy Int’l, Inc.*, 768 F. Supp. 3d 787, 816–18 (S.D. Tex. 2025). Plaintiffs do not claim, let alone proffer evidence, that *producing* a feature film for theatrical release is meaningfully distinct from producing a film for release through other forms of distribution, and that omission makes this market untenable.

3. No Evidence of a Premium Video Distribution Market

Plaintiffs’ “Premium Video Distribution” market suffers from at least two specific deficiencies that make their Section 7 claim in that market unlikely to succeed. *First*, the contours of this market are not “sufficiently concise and meaningful . . . to constitute a relevant product market.” *Carter Hawley Hale Stores, Inc. v. Limited, Inc.*, 587 F. Supp. 246, 250–54 (C.D. Cal. 1984). Plaintiffs’ description of the market leaves open-ended which forms of distribution it does and does not include. For example, Plaintiffs allege the market includes “subscription streaming services, cable television, and *related offerings*,” without identifying what products would be included within the category of “related offerings.” Mot. at 17 (citing Compl. ¶ 86) (emphasis added). That ambiguity makes it impossible to determine if the alleged market “encompass[es] . . . all economic substitutes.” *Newcal*, 513 F.3d at 1045. *Second*, Plaintiffs fail to meaningfully define “premium” video content and instead rely on a conclusory, unsupported statement that “short-form user-generated content, social-media video, and casual internet entertainment” are not reasonable substitutes. *See* Mot. at 17–19. The modifiers used by Plaintiffs to define this market are hopelessly opaque and incapable of identifying when a particular type of video content is being excluded or included. *See id.* (“professionally produced,” “high-budget,” “prestige”). These vague adjectives are both over and under inclusive because Plaintiffs do not show that all content on subscription streaming services and cable television is “high-budget,” “prestige,” etc., and they do not attempt to show that major video distributors like YouTube, which have been gerrymandered out of the relevant market, compete vigorously to distribute “premium” content. This arbitrary approach to defining a relevant market makes Plaintiffs unlikely to succeed on the merits. *See, e.g., Tundra v. Faire Wholesale, Inc.*, 2024 WL

589097, at *1 (N.D. Cal. Feb. 13, 2024) (Martínez-Olguín, J.) (markets modified by undefined adjectives are insufficient to state a Section 7 claim); *hiQ Labs, Inc. v. LinkedIn Corp.*, 485 F. Supp. 3d 1137, 1148 (N.D. Cal. 2020) (granting motion to dismiss where “parameters” of alleged market were “vague”).

B. PLAINTIFFS FAIL TO MAKE A CLEAR SHOWING OF A LIKELY AND SUBSTANTIAL LESSENING OF COMPETITION

Section 7 prohibits only those acquisitions whose effect “may be substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. § 18. Plaintiffs seek to lower the bar for establishing a *prima facie* case by misstating the Section 7 standard, arguing that a mere showing of a nontrivial acquisition of a significant rival is sufficient to prove anticompetitive harm. Mot. at 14. It is not. “Merely alleging the elimination of a rival does not plausibly support an inference of an appreciable danger of anticompetitive effects in a relevant market.” *Demartini*, 662 F. Supp. 3d at 1065; *see also Fry*, 2025 WL 1397163, at *4 (“the elimination of a rival” is not enough to show anticompetitive effects); *Malaney v. UAL Corp.*, 2010 WL 3790296, at *7 (N.D. Cal. Sept. 27, 2010) (“proposed approach that any non-trivial acquisition of a significant rival is per se violative of the Clayton Act is wrong”).

Because Plaintiffs have submitted no expert testimony, economic data, declarations, or other evidence to support their claim of a likely substantial lessening of competition in any of their alleged markets, it is impossible for them to meet their burden on this issue. *See, e.g., Fry*, 2025 WL 1397163, at *3 (plaintiffs must “provide some evidentiary support going to the merits of their *prima facie* burden under Section 7, as opposed to [relying] solely on conclusory allegations pled in their unverified complaint”); *Gonzalez v. Arizona*, 485 F.3d 1041, 1050 (9th Cir. 2007) (plaintiffs failed to demonstrate a likelihood of success on the merits because there was “no evidence in the record . . . to support [their] conclusion”). Indeed, Paramount is aware of no case in which any court has ever found that a plaintiff has met his burden of establishing a *prima facie* Section 7 case where the plaintiff chose not to submit any expert testimony or other evidence in support of his claim.

Premium Video Distribution Market. Plaintiffs do not even allege, let alone substantiate, any market shares in their proposed Premium Video Distribution market. Although “market share statistics alone are ‘not conclusive indicators of anticompetitive effects,’” *Fry*, 2026 WL 751422, at *5, it is well established that to make a *prima facie* showing under Section 7, a plaintiff must establish *some* economic

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facts about the affected markets—market shares, market concentration, or other market characteristics—that demonstrate “the merger will probably lead to anticompetitive effects.” *St. Alphonsus*, 778 F.3d at 785; *id.* at 783 (describing plaintiff’s burden as “establishment of a prima facie case on statistical evidence”); *United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017) (*prima facie* case requires “showing that the transaction will lead to undue concentration”); *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480, 492 (5th Cir. 1984) (Section 7 plaintiff “may make a prima facie showing . . . in one of two ways,” *i.e.*, “market share and market concentration statistics” or “other characteristics of the market”); *California v. Sutter Health Sys.*, 130 F. Supp. 2d 1109, 1118 (N.D. Cal. 2001) (requiring “an initial statistical showing that the transaction will lead to undue concentration in the market”).

Plaintiffs fail to even allege in their Complaint any economic facts to support the likelihood of anticompetitive effects in a “Premium Video Distribution” market. They do not provide any way of measuring market concentration, such as the Herfindahl-Hirschman Index (or, “HHI”). Instead, they only make unverified allegations about data for limited components of the alleged market—subscriber counts and total company revenues, without any measure of the *total* market size—that do not provide any meaningful information about how the merger might affect competition within the alleged market. Mot. at 19. This is insufficient to even state a claim—much less prove likelihood of success on the merits—because “market shares must be measured in a proper relevant product and geographic market; alleging market shares in some other market is inadequate.” *FTC v. Lab. Corp. of Am.*, 2011 WL 3100372, at *19 (C.D. Cal. Feb. 22, 2011); *see also Demartini*, 2023 WL 4239653, at *4 (rejecting market share allegations not tethered to the alleged market).

The Complaint also contains an unverified allegation about a single Paramount+ price increase five months after the Skydance-Paramount merger closed, which Plaintiffs rely on to speculate that a price increase will be caused by the Paramount-Warner Bros. merger at some point in the future. Mot. at 19. But Plaintiffs provide no factual allegations or evidence—just speculation—to contend that the merger could lead to an increase in streaming prices. This is clearly insufficient. *See Fry*, 2025 WL 1397163, at *5 (rejecting conclusory allegations that merged firm will have incentive to collude).

National Television News Market. Similarly, the unverified Complaint does not allege any market shares or market concentration to support the likelihood of substantial lessening of competition in a

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1 National TV News market, in which CNN and CBS News are claimed to be competitors. Mot. at 19–20.
 2 Instead, the Complaint makes speculative assertions about “consolidation” and references unverified data
 3 about the overall operations of businesses that are far broader than news programming, but such
 4 information bears no relation to the market Plaintiffs try to allege. Because Plaintiffs’ unverified data
 5 allegations do not align with their alleged market definition (for example, the data referenced includes
 6 companies that are outside the boundaries of the alleged market, such as The New York Times Company,
 7 *id.* ¶¶ 105–08), they cannot possibly satisfy their burden to establish a likely reduction of competition in
 8 such a market. *See Lab. Corp.*, 2011 WL 3100372, at *19 (misaligned market shares are “inadequate.”).

9 Equally barren of any support, even looking at unverified allegations, is Plaintiffs’ claim that the
 10 merger will likely lead to a reduction in “viewpoint diversity.” Putting aside that such a reduction, if it
 11 occurred, would be a purely ideological complaint that could not support an antitrust claim, *see supra* §
 12 I.A, Plaintiffs do not allege or prove anything about the existing level of “viewpoint diversity” in a
 13 National TV News Market or how “viewpoint diversity” could even be appropriately measured in an
 14 antitrust case. Plaintiffs’ alleged National TV News market would include news services, in addition to
 15 CNN and CBS News, as diverse as MS NOW (formerly MSNBC), Fox News, NewsMax, ABC News,
 16 and NBC News, but Plaintiffs make no showing of how the merger would substantially reduce viewpoint
 17 diversity in such a market, especially given the commitment from Paramount that CNN will maintain its
 18 own independent editorial judgment about the news coverage it presents. Goldberg Decl. ¶ 35; Ex. 1,
 19 (Ellison Interview Transcript).

20 ***Theatrical Film Production Market.*** Likewise, even considering Plaintiffs’ unverified Complaint
 21 allegations, the record contains no facts that would enable the Court to determine market shares or market
 22 concentration in a “Theatrical Film Production” market. The data that the Complaint references in this
 23 regard does not correspond to Plaintiffs’ proposed market definition because it includes Canada, even
 24 though the claimed market is limited to the United States. Mot. at 21. Further, even if the Court were to
 25 consider the cited data that includes Canada, Paramount’s alleged post-merger market share in such a
 26 market would only be 23.6%, which falls below the threshold that would be required to support even a
 27 *plausible* inference (much less a *clear* showing) that Plaintiffs are likely to succeed in proving competitive
 28 harm from the merger in this market. *See United States v. Oracle Corp.*, 331 F. Supp. 2d 1098, 1123

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(N.D. Cal. 2004) (“A presumption of anticompetitive effects from a combined share of 35% in a differentiated products market is unwarranted.”); *Fry*, 2026 WL 751422, at *6 (“some courts hold that a plaintiff can satisfy their prima facie burden by showing that the merger will yield a combined market share of over 30%” and dismissing merger challenge with alleged combined 16.2% market share); *New York v. Kraft Gen. Foods, Inc.*, 926 F. Supp. 321, 362–63, 366 (S.D.N.Y. 1995) (similar for combined post-acquisition market share below 35%). Nor are there any allegations in the Complaint that any increase in concentration in the Theatrical Distribution Market resulting from the merger, such as a change in HHI, would support a presumption of a lessening of competition. *See* U.S. Dep’t of Justice & FTC, Merger Guidelines § 2.1 (2023).

* * *

In sum, the absence of any economic facts or data—or even allegations about such facts or data—to support Plaintiffs’ *prima facie* case precludes any possibility of preliminary injunctive relief. *See, e.g., FTC v. Meta Platforms Inc.*, 654 F. Supp. 3d 892, 911, 926–27, 934–35 (N.D. Cal. 2023) (denying preliminary injunction where plaintiff failed to present non-speculative evidence establishing a “reasonable probability” of anticompetitive effects, and rejecting theories based on conclusory and “impermissibly speculative” assertions); *Microsoft*, 681 F. Supp. 3d at 1095–97 (denying preliminary injunction where theories of harm lacked sufficient evidence).

In modern antitrust law “the economic concept of competition, rather than any desire to preserve rivals as such, [became] the lodestar that shall guide the contemporary application of the antitrust laws.” *Hospital Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986). Accordingly, courts have repeatedly rejected the type of speculative assertions of anticompetitive effects in merger challenges that Plaintiffs present here. *See, e.g., Fry*, 2025 WL 1397163, at *4 (out-of-circuit authority “does not override binding Supreme Court and Ninth Circuit precedent”); *Demartini*, 662 F. Supp. 3d at 1064–65 (rejecting reliance on “Supreme Court merger cases from the 1960’s” and relying instead on subsequent Ninth Circuit law); *Malaney*, 2010 WL 3790296, at *6–7 (rejecting reliance on same 1960s Supreme Court cases “enjoin[ing] mergers involving companies with smaller market shares than those found here”).

III. THE MERGER SHOULD NOT BE ENJOINED BECAUSE IT IS LIKELY TO BENEFIT COMPETITION AND CONSUMERS

In a Section 7 case, if the plaintiff establishes a *prima facie* case that the merger is likely to substantially lessen competition, Defendants may then rebut that *prima facie* case by “cast[ing] doubt on the accuracy of the [Plaintiffs’] evidence as predictive of future anticompetitive effects.” *St. Alphonsus*, 778 F.3d at 788. “[I]f the [defendant] successfully rebuts the *prima facie* case, the burden of production shifts back to the [plaintiff] and merges with the ultimate burden of persuasion, which is incumbent on the [plaintiff] at all times.” *Id.* at 783. Ultimately, “plaintiffs have the burden on every element of their Section 7 challenge, and a failure of proof in any respect will mean the transaction should not be enjoined.” *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 116 (D.D.C. 2004).

Here, Plaintiffs failed to carry their initial *prima facie* burden, so the burden does not shift to Defendants, and the preliminary injunction should be denied. But even if Defendants bore any burden, they have carried it by presenting substantial evidence that the merger is likely to result in significant benefits to competition and consumers, rather than a substantial lessening competition. As with every other aspect of their claims, Plaintiffs have not offered any evidence addressing these likely benefits of the merger.

A. THE MERGER IS LIKELY TO INCREASE COMPETITION BY MAKING PARAMOUNT A STRONGER RIVAL TO NETFLIX AND OTHER LEADING STREAMERS

The merger should not be enjoined because the evidence shows it would likely “create a more efficient combined entity and thus increase competition.” *Alphonsus*, 778 F.3d at 790. Declarations submitted by Paramount’s senior executives demonstrate that the primary objective of the merger is to achieve the scale necessary to better compete with much larger, leading streaming platforms, including Amazon Prime Video, Netflix, and Disney+ that currently dwarf Paramount+ and HBO Max in subscriber base, revenue, and content diversity and production. Goldberg Decl. ¶ 25; Gordon Decl. ¶ 17. Combining Paramount and Warner Bros.’ streaming platforms would place Paramount closer to competitive parity with these larger platforms and enable it to greatly expand the content that it can make available to consumers through a single platform with one subscription fee. Goldberg Decl. ¶¶ 25–26. Specifically, the evidence shows that increased scale would enable the merged company to achieve efficiencies and

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1 make investments that neither Paramount nor Warner Bros. could on their own. Gordon Decl. ¶¶ 5–15.
 2 Because Defendants “seek[] to merge in order to strengthen, rather than reduce, competition,” that “argues
 3 strongly in favor of the planned merger’s reasonableness.” *United States v. Carilion Health Sys.*, 707 F.
 4 Supp. 840, 849 (W.D. Va. 1989).

5 **B. THE MERGER IS LIKELY TO INCREASE OUTPUT AND QUALITY IN**
 6 **STREAMING, FILM PRODUCTION, AND TELEVISION NETWORKS**

7 Defendants have also come forward with evidence that the merger should not be enjoined for the
 8 additional reason that Paramount expects to increase investment in content development, which will
 9 increase the quality and quantity of content available to consumers across various entertainment mediums.
 10 Golberg Decl. ¶¶ 28–30; Gordon Decl. ¶ 16. *See Bradt v. T-Mobile US, Inc.*, 2020 WL 1809716, at *3
 11 (N.D. Cal. Feb. 28, 2020) (declining to enjoin merger where defendants provided evidence that combining
 12 “complementary assets will result in a superior network and lower costs”); *Lab. Corp.*, 2011 WL 3100372,
 13 at *20 (“Mergers may enhance competition by combining complementary assets, eliminating duplicative
 14 assets, or achieving scale economies,” which “may directly benefit consumers by . . . improving quality,
 15 increasing innovation, and lowering prices.”).

16 ***Synergies Created by the Merger.*** The merger is estimated to save over \$6 billion per year, and
 17 those synergies will generate significant benefits for consumers and competition. Gordon Decl. ¶¶ 5–6,
 18 16. Given the complementary nature of Warner Bros. and Paramount’s businesses, the synergies will
 19 allow the combined company to increase its film and television production. Goldberg Decl. ¶ 27. These
 20 are procompetitive benefits that rebut any *prima facie* case.

21 ***Increased Streaming Content.*** Post-merger, Paramount will be able to offer a more compelling
 22 streaming product, increase the amount of content being provided to consumers, and increase consumer
 23 choice. Gordon Decl. ¶ 17; Goldberg Decl. ¶¶ 26, 31. By combining services, the merged firm will be
 24 able to offer, for the first time, a one-stop shop to access the original content, sports, and news from both
 25 services. Goldberg Decl. ¶¶ 26, 31. The merged company will also invest more money developing its
 26 combined streaming platform content than Paramount and Warner Bros. would have spent on their
 27 standalone platforms. Gordon Decl. ¶¶ 18–19. Offering more content and a better streaming product will
 28 increase subscribers, engagement, and revenue, which will create a positive feedback loop of increasing

content, as the merged firm can spread the cost of that content across a broader and more engaged base of subscribers. Goldberg Decl. ¶ 32; Gordon Decl. ¶¶ 18–19.

Increased Film Investment. The merger will also enable Paramount to increase its investments in movies released in theaters. Goldberg Decl. ¶¶ 27–29. Paramount has committed to keeping both Warner Bros. Discovery Films and Paramount Pictures as separate brands and to releasing at least 30 theatrical films per year, with each studio producing roughly half of those films. *Id.* ¶ 23. Paramount has further committed that each of these films will be in theaters for at least 45 days before becoming available on paid video-on-demand or streaming platforms. *Id.* More movies in theaters will benefit consumers, talent, theater owners, and other industry stakeholders.

Increased Television Investment. The savings from merger synergies will enable the combined firm to invest more in television content, leading to a more sustainable television network model in the face of current cord cutting. *Id.* ¶¶ 26, 32. Paramount TV has about 30 shows in different levels of production right now with the goal of producing 40 by 2030. *Id.* ¶ 30. When combined with Warner Bros.’ television studios, that output will increase to around 170 shows, and the combined firm will invest in increasing that number even further. *Id.* Such increased content will also support the competitiveness of the combined firm’s streaming service and provide consumers with the benefit of increased variety and choice. *Id.*

In the face of this evidence of significant procompetitive benefits, Plaintiffs cannot meet their burden to clearly show a likelihood of a substantial lessening of competition.

IV. PLAINTIFFS HAVE MADE NO SHOWING OF IMMINENT OR ACTUAL IRREPARABLE INJURY

To meet the stringent preliminary injunction standard, Plaintiffs must also establish that they are “likely to suffer irreparable harm in the absence of preliminary relief.” *Beatty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir. 2011). To meet this burden, Plaintiffs must demonstrate an “immediate” threatened injury. *Demartini*, 2023 WL 3569993, at *3. They must do more than “merely allege” an irreparable injury; they must “demonstrate” it. *Id.* at *2; *Delco LLC v. Giant of Maryland*, 2007 WL 3307018, at *19 (D.N.J. Nov. 8, 2007) (denying injunction against merger because claimed injuries of higher prices and longer drive times were not irreparable). Additionally, “[i]n evaluating plaintiffs’ purported irreparable harm . . .

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the Court must only consider those injuries plaintiffs advance that are personal to them were defendants to merge, and cannot consider any injuries that plaintiffs allege would be suffered by the . . . public as a whole.” *Malaney*, 2010 WL 3790296, at *13; *see also Demartini*, 2023 WL 3569993, at *2 (to obtain preliminary injunction, “the threatened loss or damage must be personal to the private plaintiff”); *Bradt*, 2020 WL 1233939, at *4 (rejecting argument that “irreparable injury is established by the merger itself”).

Plaintiffs make no effort to meet this heavy burden. They spend only two sentences in their Motion repeating unverified conclusory allegations of “irreparable harm,” proclaiming that the merger somehow “threaten[s] . . . higher prices, reduced output, reduced quality, diminished consumer choice, reduced promotional availability, fewer independent sources of premium programming, fewer independent editorial decision-makers, reduced theatrical output, narrowed release slates, and fewer meaningful alternatives at local theaters.” Mot. at 21–22. Plaintiffs offer no evidence to back up any of these sprawling allegations nor do they even try to explain why these claimed generic harms are imminent or how they will cause irreparable and personal damage to Plaintiffs. The failure to offer any evidence to support their claim of irreparable harm to individual Plaintiffs, by itself, requires that the injunction be denied. *See Demartini*, 662 F. Supp. 3d at 1062 (dismissing as “insufficient” Plaintiffs’ counsel’s “general allegation that the merger may cause ‘higher prices, less innovation, less creativity, less consumer choice, decreased output, and other potential anticompetitive effects’”); *Ginsberg v. INBEV SA/NV*, 2008 WL 4965859, at *5 (E.D. Mo. Nov. 18, 2008) (denying a preliminary injunction motion by Plaintiffs’ counsel because “bare allegations . . . are insufficient to establish irreparable injury.”).²

Moreover, to the extent Plaintiffs allege “threatened” “higher prices” for streaming services, such an economic harm would not be irreparable as it could be fully compensated through monetary damages. *Nat’l Ass’n of Chain Drug Stores v. Express Scripts, Inc.*, 2012 WL 3655459, at *5 (W.D. Pa. Aug. 27, 2012) (rejecting plaintiffs’ attempt to block a pharmaceutical merger because claimed injury of higher

² Plaintiffs cite *In re Nexstar-Tegna Merger Litigation*, 2026 WL 1049295 (E.D. Cal. Apr. 17, 2026), multiple times in their brief, including for the proposition that interim relief can preserve the ability to obtain a divestiture. Mot. at 13, 23, 25. However, *In re Nexstar-Tegna* is a very different case because plaintiffs there presented evidence in support of their motion for preliminary injunction, including multiple declarations from fact witnesses and an expert economist (who provided an analysis of highly concentrated markets, with some having combined market shares exceeding 50%). *In re Nexstar-Tegna*, 2026 WL 1049295, at *7, 15, 17, 23. That alone makes *In re Nexstar-Tegna* inapposite to the present case.

prices was not irreparable). *Taleff v. Sw. Airlines Co.*, 828 F. Supp. 2d 1118, 1123 (N.D. Cal. 2011) (similar); *Malaney*, 2010 WL 3790296, at *12–13 (similar); *Delco*, 2007 WL 3307018, at *19 (similar).

The *Malaney* case is instructive. There, Plaintiffs’ counsel at least went through the exercise of submitting affidavits from the plaintiffs in which they set forth their allegedly threatened harm from a merger. But since these injury claims from the challenged merger were both “speculative” and a “*de minimis* injury,” the court found them to be “insufficient to establish irreparable harm.” See *Malaney*, 2010 WL 3790296, at *14.

Here, like in *Malaney*, the claimed injuries are speculative, not personal to Plaintiffs, de minimis in amount, and not shown to be immediate. These many failings show that Plaintiffs have not met their burden to show the personal and immediate irreparable harm that is necessary to grant the extraordinary remedy of a preliminary injunction. See *Malaney*, 2010 WL 3790296, at *14 (“Although plaintiffs allege, in their briefing, that this merger will adversely affect consumer choice and purchasing power by resulting in increased [prices], decreased capacity, poorer service, and a constraint on the ability of [rival companies] to compete . . . they still must establish that these alleged effects will be personal to them.”); *Fry*, 2025 WL 1397163, at *6 (“general allegations cannot establish that the threat of [alleged] harms is so immediate as to warrant the drastic remedy of preliminary injunctive relief”).

V. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH HEAVILY IN FAVOR OF DEFENDANTS

The Court need not reach the balance of equities because of Plaintiffs’ failures of proof on standing, the merits of their claims, and irreparable harm. See, e.g., *Malaney*, 2010 WL 3790296, at *14 (“Indeed, in the face of such an insufficient showing of harm to the plaintiffs, the Court need not address what defendants argue will be substantial injury to them were the merger preliminarily enjoined.”). Nonetheless, the harm an injunction would inflict on Defendants from a delayed closing of the merger would significantly outweigh any alleged harm to Plaintiffs if their requested relief is denied.

Plaintiffs claim the requested injunction would simply “preserve the status quo until trial,” Mot. at 23, but that framing ignores the real-world costs of delaying the multi-billion-dollar merger. See *Fry*, 2025 WL 1397163, at *7 (“delaying this multi-billion-dollar merger” would not “simply maintain the status quo”). Here, if a preliminary injunction delays the merger’s closing past September 30, 2026,

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Paramount would have to pay nearly \$7 million per day to Warner Bros. through closing. Gordon Decl. ¶ 22. Any delay in closing would also result in continued carrying costs to Paramount on committed financing, potential expiration or renegotiation of financing commitments, and ongoing uncertainty in the capital markets in which Paramount obtains financing. *Id.* ¶ 23. And if the delay is long enough, it could scuttle the merger, Goldberg Decl. ¶ 36, requiring Paramount to pay a \$7 billion termination fee, Ex. 5 (Merger Agreement) § 8.3(b). “The cost of enjoining this huge undertaking [shortly] before its long awaited consummation is simply staggering in its magnitude, in the number of lives touched and dollars lost. To assume that enjoining the merger would do no more than preserve the status quo, in the face of this upheaval, would be to blink at reality.” *W. Airlines, Inc. v. Int’l Bhd. of Teamsters*, 480 U.S. 1301, 1309 (1987).

Furthermore, Paramount has prepared to quickly create cost synergies between the two combined companies that will benefit consumers, and it estimates that 70% of those synergies will be realized within two years of closing, with the balance within the following year. Gordon Decl. ¶ 21. But a delay in closing through trial would also delay the realization of these synergies, causing harm to consumers and Paramount’s business. *Id.*

Because Plaintiffs have failed to present any evidence that they would suffer any concrete harm from the merger, there is no equity on Plaintiffs’ side of the ledger for the Court to balance. *See Malaney*, 2010 WL 3790296, at *13. Further, even if the Court were to credit Plaintiffs’ claims of a possible price increase on a streaming service they purchase, such a *de minimis* personal injury cannot possibly outweigh the massive harm and disruption that will be caused to Paramount if the merger is enjoined, let alone “tip[] sharply toward the plaintiff.” *Bennett*, 118 F.4th at 1126 (emphasis in original).

Finally, the public interest does not support granting the injunction. Courts should not grant preliminary injunctions “unless those public interests [favoring an injunction] outweigh other public interests that cut in favor of *not* issuing the injunction.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (emphasis in original). Plaintiffs provide no evidentiary support for their conclusory assertion that “[t]he public interest favors preliminary relief.” Mot. at 24. To the contrary, the public interest favors consummation of the merger because it will provide “pro-competitive advantages for consumers,” including increased access to content. *Supra* § III; *see Microsoft*, 681 F. Supp. 3d at 1100

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(holding that public interest did not outweigh private interest where merger would increase access to the product). The public interest also will be furthered by not granting a preliminary injunction to delay a multi-billion dollar merger that will positively impact the lives of thousands at the behest of five consumers who have not submitted any evidence to support their challenge and who have a history of filing serial meritless challenges to any prominent merger that catches their attention. This behavior is an abuse of the legal process, not an action in furtherance of the public interest. Courts have “a strong interest in preserving free operation of the nation’s markets and insuring that it does not unduly restrain free enterprise.” *Ginsberg*, 2008 WL 4965859, at *6.

VI. PLAINTIFFS SHOULD BE REQUIRED TO POST A BOND

Given the significant costs Paramount would incur if a preliminary injunction were issued, Plaintiffs should be required to post a significant bond to cover those costs. If an injunction issues, a bond should account for “the costs and damages sustained by [Defendants]” if they are “found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Thus, Plaintiffs should be required to post a bond in the amount of at least \$50 million to account for the likely costs and damages that would be inflicted on Defendants from ticking fees and other harm they will suffer if the merger were delayed until trial. *See, e.g., Illumina, Inc. v. Qiagen, N.V.*, 207 F. Supp. 3d 1081, 1095 (N.D. Cal. 2016) (“[Plaintiff] must post a bond of twenty million dollars as security for the injunction.”); *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 2008 WL 5216027, at *5 (S.D. Ind. Dec. 11, 2008) (\$132 million bond required to protect defendant against damages “by improper issuance of the preliminary injunction”).

CONCLUSION

For all the reasons set forth above, Plaintiffs’ extraordinary request for a preliminary injunction against the Paramount-Warner Bros. merger—without any evidence filed in support—should be denied.

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Dated: June 3, 2026

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