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The Walt Disney Company and ABC, Inc.  
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9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 MJJ PRODUCTIONS, INC., a California  
13 corporation, OPTIMUM  
PRODUCTIONS, a California  
14 corporation, NEW HORIZONS TRUST  
III, LLC, a Delaware limited liability  
15 company, d/b/a MIJAC MUSIC, THE  
MICHAEL JACKSON COMPANY, LLC,  
16 a Delaware limited liability company, and  
MJJ VENTURES, INC., a California  
17 corporation,

18 Plaintiffs,

19 v.

20 THE WALT DISNEY COMPANY, a  
Delaware corporation, ABC, INC., a  
21 Delaware corporation, and DOES 1  
through 10, inclusive,  
22

23 Defendants.

Case No. 2:18-cv-04761-PSG-(SKx)

Hon. Philip S. Gutierrez

**THE WALT DISNEY  
COMPANY'S AND ABC, INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES IN RESPONSE TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

## INTRODUCTION

1  
2 The Walt Disney Company and ABC, Inc. (together, “ABC”), by and  
3 through their attorneys, hereby answer the first amended complaint (“Complaint,”  
4 Doc. 24) filed by plaintiffs MJJ Productions, Inc., Optimum Productions, New  
5 Horizons Trust III, LLC, The Michael Jackson Company LLC, and MJJ Ventures,  
6 Inc. (collectively, “Plaintiffs”).

7 This case is about the right of free speech under the First Amendment, the  
8 doctrine of fair use under the Copyright Act, and the ability of news organizations  
9 to use limited excerpts of copyrighted works—here, in most instances well less than  
10 1% of the works—for the purpose of reporting on, commenting on, teaching about,  
11 and criticizing well-known public figures of interest in biographical documentaries  
12 without fear of liability from overzealous copyright holders. *See, e.g.*, 17 U.S.C.  
13 § 107 (“[T]he fair use of a copyrighted work...for purposes such as *criticism,*  
14 *comment, news reporting, teaching...*, scholarship, or research, is *not* an  
15 infringement of copyright.”) (emphasis added). As Plaintiffs acknowledge,  
16 Michael Jackson (“Jackson”) is one of the most iconic performers of the last  
17 century, and his music career, tumultuous personal life, and tragic passing continue  
18 to be enduring topics of public interest even today, nearly a decade after his  
19 passing. ABC News used and incorporated short excerpts of some songs, music  
20 videos and other material featuring Jackson within a two-hour documentary entitled  
21 *The Last Days of Michael Jackson* for the purpose of providing historical context  
22 and explanation tracing the arc and aspects of Jackson’s life and career—precisely  
23 what is contemplated and permitted by the First Amendment. Plaintiffs’ lawsuit, in  
24 violation of these legal principles, constitutes an attempt to exercise unfettered  
25 control over public commentary and opinion on Jackson’s life and career.

26 As set forth below, ABC denies that it is liable in any way for the copyright  
27 infringement claims alleged by Plaintiffs and will request that the Court dismiss the  
28 Complaint in its entirety with prejudice and enter judgment in its favor.

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**ANSWER**

**JURISDICTION AND VENUE**

1. ABC admits that the Complaint purports to allege claims for copyright infringement against The Walt Disney Company and ABC, Inc., but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 of the Complaint and on that basis denies the allegations.

2. The allegations in Paragraph 2 of the Complaint state a legal conclusion to which no answer is required; if such an answer is required, ABC denies the allegations.

3. The allegations in Paragraph 3 of the Complaint state a legal conclusion to which no answer is required; if such an answer is required, ABC denies the allegations.

**FACTUAL ALLEGATIONS**

4. ABC admits that it or its affiliates own intellectual property rights in and to various entertainment-related works, and that ABC, Inc. is owned indirectly by The Walt Disney Company. The remaining allegations in Paragraph 4 of the Complaint state a legal conclusion to which no answer is required; if such an answer is required, ABC denies the allegations.

5. ABC admits that it or its affiliates own intellectual property rights in and to various entertainment-related works and that it endeavors to protect those rights. ABC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5 of the Complaint and on that basis denies the allegations.

a. ABC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5(a) of the Complaint and on that basis denies the allegations.

1           b.     ABC lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations in Paragraph 5(b) of the Complaint and on that  
3 basis denies the allegations.

4           c.     ABC lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations in Paragraph 5(c) of the Complaint and on that  
6 basis denies the allegations.

7           6.     ABC admits that *The Last Days of Michael Jackson* (the “Documentary”)  
8 aired on May 24, 2018 at 8 p.m. (EST) and 7 p.m. (Central). ABC lacks  
9 knowledge or information sufficient to form a belief as to the truth of the  
10 remaining allegations in Paragraph 6 of the Complaint and on that basis denies the  
11 allegations.

12           7.     ABC admits that the Documentary is titled *The Last Days of Michael*  
13 *Jackson* and that a May 25, 2018 *Rolling Stone* article by Elias Leight concerning  
14 the Documentary used, in part, the words quoted in Paragraph 7 of the Complaint,  
15 but otherwise denies the remaining allegations in Paragraph 7 of the Complaint.

16           8.     ABC admits the Documentary contains short excerpts of various musical  
17 and other works featuring Jackson that were included in the Documentary on a  
18 transformative and fair use basis. The remaining allegations in Paragraph 8 of the  
19 Complaint state a legal conclusion to which no answer is required; if such an  
20 answer is required, ABC denies the allegations.

21           9.     ABC lacks knowledge or information sufficient to form a belief as to the  
22 truth of the allegation in Paragraph 9 of the Complaint that “the lifeblood of the  
23 Estate’s business is intellectual property” and on that basis denies the allegation.  
24 The remaining allegations in Paragraph 9 of the Complaint state a legal conclusion  
25 to which no answer is required; if such an answer is required, ABC denies the  
26 allegations.

27           10.    ABC admits the Documentary contains short excerpts of various musical  
28 and other works featuring Jackson that were included in the Documentary on a

1 transformative and fair use basis. The remaining allegations in Paragraph 10 of the  
2 Complaint state a legal conclusion to which no answer is required; if such an  
3 answer is required, ABC denies the allegations.

4 11. ABC admits the Documentary contains short excerpts of various musical  
5 and other works featuring Jackson that were included in the Documentary on a  
6 transformative and fair use basis, but otherwise denies the remaining allegations in  
7 Paragraph 11 of the Complaint.

8 12. a. ABC admits the Documentary contains short excerpts of the songs  
9 referenced in Paragraph 12(a) of the Complaint that were included in the  
10 Documentary on a transformative and fair use basis. ABC lacks knowledge or  
11 information sufficient to form a belief as to the truth of the allegations that  
12 Plaintiffs and other third parties own the rights to the songs identified in Paragraph  
13 12(a) of the Complaint and on that basis denies the allegations. The remaining  
14 allegations in Paragraph 12(a) of the Complaint state a legal conclusion to which  
15 no answer is required; if such an answer is required, ABC denies the allegations.

16 b. ABC admits the Documentary contains short excerpts of the  
17 music videos referenced in Paragraph 12(b) of the Complaint that were included in  
18 the Documentary on a transformative and fair use basis. ABC lacks knowledge or  
19 information sufficient to form a belief as to the truth of the remaining allegations in  
20 Paragraph 12(b) of the Complaint and on that basis denies the allegations.

21 c. ABC admits the Documentary contains short excerpts of the  
22 videos referenced in Paragraph 12(c) of the Complaint that were included in the  
23 Documentary on a transformative and fair use basis. ABC lacks knowledge or  
24 information sufficient to form a belief as to the truth of the remaining allegations in  
25 Paragraph 12(c) of the Complaint and on that basis denies the allegations.

26 d. ABC admits the Documentary contains short excerpts of concert  
27 footage featuring Jackson that were included in the Documentary on a  
28 transformative and fair use basis. ABC lacks knowledge or information sufficient

1 to form a belief as to the truth of the remaining allegations in Paragraph 12(d) of the  
2 Complaint and on that basis denies the allegations.

3 e. ABC admits the Documentary contains short excerpts of the  
4 *This Is It* and *Michael Jackson's Journey from Motown to Off the Wall* films that  
5 were included in the Documentary on a transformative and fair use basis. ABC  
6 further admits that ABC News licensed excerpts from a 20/20 interview of Jackson  
7 for use in *Michael Jackson's Journey from Motown to Off the Wall*. ABC lacks  
8 knowledge or information sufficient to form a belief as to the truth of the remaining  
9 allegations in Paragraph 12(e) of the Complaint and on that basis denies the  
10 allegations.

11 f. ABC admits that the Documentary contains short excerpts of  
12 footage from the 2009 memorial service for Jackson at Staples Center. ABC lacks  
13 knowledge or information sufficient to form a belief as to the truth of the remaining  
14 allegations in Paragraph 12(f) of the Complaint and on that basis denies the  
15 allegations.

16 13. ABC admits that prior to the broadcast of the Documentary Plaintiffs'  
17 counsel wrote to the General Counsel of The Walt Disney Company and spoke  
18 with an attorney for ABC, Inc. concerning two images appearing in the  
19 promotional materials for the Documentary and that, prior to this conversation,  
20 these images had been voluntarily removed from the promotional materials for the  
21 Documentary as a courtesy. ABC lacks knowledge or information sufficient to  
22 form a belief as to the truth of the remaining allegations in Paragraph 13 of the  
23 Complaint and on that basis denies the allegations.

24 14. ABC admits that prior to the broadcast of the Documentary, an attorney  
25 for ABC, Inc. told Plaintiffs' counsel the Documentary would contain short  
26 excerpts of works featuring Jackson on a transformative and fair use basis, but  
27 otherwise denies the remaining allegations in Paragraph 14 of the Complaint.  
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1           15. ABC admits that prior to the broadcast of the Documentary, an attorney  
2 for ABC, Inc. told Plaintiffs’ counsel the Documentary would contain short  
3 excerpts of works featuring Jackson on a transformative and fair use basis, and did  
4 not identify the works by name. ABC denies that “[t]he Disney attorney said that  
5 its uses were all a ‘fair use’ because the program was a ‘documentary’” or that  
6 “[w]hen pressed, the Disney attorney kept falling back on the fact that the program  
7 was a ‘documentary.’” The remaining allegations in Paragraph 15 of the  
8 Complaint state a legal conclusion to which no answer is required; if such an  
9 answer is required, ABC denies the allegations.

10           16. ABC admits that Plaintiffs’ counsel sent letters to an attorney for ABC,  
11 Inc. dated May 22 and 23, 2018 and that no written response to these letters was  
12 provided, but otherwise denies the remaining allegations in Paragraph 16 of the  
13 Complaint.

14           17. The allegations in Paragraph 17 state a legal conclusion to which no  
15 answer is required; if such an answer is required, ABC denies the allegations.

16           18. The allegations in Paragraph 18 state a legal conclusion to which no  
17 answer is required; if such an answer is required, ABC denies the allegations.

18           19. ABC lacks knowledge or information sufficient to form a belief as to the  
19 truth of the allegations in Paragraph 19 of the Complaint and on that basis denies  
20 the allegations.

21           20. ABC admits the Documentary contains short excerpts of various musical  
22 and other works featuring Jackson that were included in the Documentary on a  
23 transformative and fair use basis, but otherwise denies the remaining allegations in  
24 Paragraph 20 of the Complaint.

25           21. The allegations in Paragraph 21 state a legal conclusion to which no  
26 answer is required; if such an answer is required, ABC denies the allegations.

27           22. ABC denies that it engaged in “flagrant and willful infringement of the  
28 Estate’s copyrights.” The remaining allegations in Paragraph 22 of the Complaint



1 state a legal conclusion to which no answer is required; if such an answer is  
2 required, ABC denies the allegations.

3 PARTIES

4 23. ABC admits that Jackson was a popular musician, but lacks knowledge  
5 or information sufficient to form a belief as to the truth of the remaining  
6 allegations in Paragraph 23 of the Complaint and on that basis denies the  
7 allegations.

8 24. ABC admits that Jackson appeared in music videos for the songs  
9 identified in Paragraph 24 of the Complaint, but lacks knowledge or information  
10 sufficient to form a belief as to the truth of the remaining allegations in Paragraph  
11 24 and on that basis denies the allegations.

12 25. ABC admits that Jackson performed the “moonwalk” dance at Motown’s  
13 25<sup>th</sup> anniversary special, but lacks knowledge or information sufficient to form a  
14 belief as to the truth of the remaining allegations in Paragraph 25 of the Complaint  
15 and on that basis denies the allegations.

16 26. ABC admits that Jackson reportedly passed away on or about June 25,  
17 2009, but lacks knowledge or information sufficient to form a belief as to the truth  
18 of the remaining allegations in Paragraph 26 of the Complaint and on that basis  
19 denies the allegations.

20 a. ABC lacks knowledge or information sufficient to form a belief  
21 as to the truth of the allegations in Paragraph 26(a) of the Complaint and on that  
22 basis denies the allegations.

23 b. ABC lacks knowledge or information sufficient to form a belief  
24 as to the truth of the allegations in Paragraph 26(b) of the Complaint and on that  
25 basis denies the allegations.

26 c. ABC lacks knowledge or information sufficient to form a belief  
27 as to the truth of the allegations in Paragraph 26(c) of the Complaint and on that  
28 basis denies the allegations.



1 d. ABC lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations in Paragraph 26(d) of the Complaint and on that  
3 basis denies the allegations.

4 e. ABC lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations in Paragraph 26(e) of the Complaint and on that  
6 basis denies the allegations.

7 27. ABC admits that the Complaint refers to Plaintiffs collectively as the  
8 “Estate,” but lacks knowledge or information sufficient to form a belief as to the  
9 truth of the remaining allegations in Paragraph 27 of the Complaint and on that  
10 basis denies the allegations.

11 28. ABC admits that The Walt Disney Company is a Delaware corporation,  
12 but otherwise denies the remaining allegations in Paragraph 28 of the Complaint.

13 29. ABC admits that ABC, Inc. is owned indirectly by The Walt Disney  
14 Company, but otherwise denies the remaining allegations in Paragraph 29 of the  
15 Complaint.

16 30. ABC denies the allegations of Paragraph 30 of the Complaint as to The  
17 Walt Disney Company and ABC, Inc. ABC lacks knowledge or information  
18 sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the  
19 Complaint as to any other defendants and on that basis denies the allegations.

20 FURTHER ALLEGATIONS

21 31. ABC admits that Jackson reportedly passed away on or about June 25,  
22 2009, but lacks knowledge or information sufficient to form a belief as to the truth  
23 of the remaining allegations in Paragraph 31 of the Complaint and on that basis  
24 denies the allegations.

25 32. ABC admits that the Documentary aired on May 24, 2018 at 8 p.m.  
26 (EST) and 7 p.m. (Central) and that the Documentary included some paid  
27 advertising between segments of the show, but otherwise denies the remaining  
28 allegations of Paragraph 32 of the Complaint.

1 33. ABC admits that the Documentary was previously available for viewing  
2 on a few streaming services for a short period of time, but otherwise denies the  
3 allegations of Paragraph 33 of the Complaint.

4 34. ABC denies the allegations of Paragraph 34 of the Complaint.

5 35. ABC denies the allegations of Paragraph 35 of the Complaint.

6 36. ABC denies the allegations of Paragraph 36 of the Complaint.

7 37. The allegations in Paragraph 37 of the Complaint state a legal conclusion  
8 to which no answer is required; if such an answer is required, ABC denies the  
9 allegations.

10 38. The allegations in Paragraph 38 of the Complaint state a legal conclusion  
11 to which no answer is required; if such an answer is required, ABC denies the  
12 allegations.

13 39. The allegations in Paragraph 39 of the Complaint state a legal conclusion  
14 to which no answer is required; if such an answer is required, ABC denies the  
15 allegations.

16 40. ABC lacks knowledge or information sufficient to form a belief as to the  
17 truth of the allegations in Paragraph 40 of the Complaint that the “Estate’s  
18 investigation is ongoing,” that the Estate owns copyrights to “other concert footage  
19 not listed here and several [other] photographs and images,” and that the “Estate  
20 will amend this Complaint with those further works when further information is  
21 discovered,” and on that basis denies the allegations. The remaining allegations in  
22 Paragraph 40 of the Complaint state a legal conclusion to which no answer is  
23 required; if such an answer is required, ABC denies the allegations.

24 FIRST CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT  
25 OF MICHAEL JACKSON’S SOUND RECORDINGS

26 41. ABC lacks knowledge or information sufficient to form a belief as to the  
27 truth of the allegations in Paragraph 41(a)-(i) of the Complaint and on that basis  
28 denies the allegations.

1           42. ABC lacks knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in Paragraph 42 of the Complaint and on that basis denies  
3 the allegations.

4           43. ABC admits the Documentary contains short excerpts of the songs  
5 referenced in Paragraph 41(a)-(i) of the Complaint that were included in the  
6 Documentary on a transformative and fair use basis. The remaining allegations in  
7 Paragraph 43 of the Complaint state a legal conclusion to which no answer is  
8 required; if such an answer is required, ABC denies the allegations.

9           44. The allegations in Paragraph 44 of the Complaint state a legal conclusion  
10 to which no answer is required; if such an answer is required, ABC denies the  
11 allegations.

12           45. ABC lacks knowledge or information sufficient to form a belief as to the  
13 truth of the allegations in Paragraph 45 of the Complaint and on that basis denies  
14 the allegations.

15           46. The allegations in Paragraph 46 of the Complaint state a legal conclusion  
16 to which no answer is required; if such an answer is required, ABC denies the  
17 allegations.

18           47. The allegations in Paragraph 47 of the Complaint state a legal conclusion  
19 to which no answer is required; if such an answer is required, ABC denies the  
20 allegations.

21           48. ABC denies the allegations of Paragraph 48 of the Complaint.

22           49. The allegations in Paragraph 49 of the Complaint state a legal conclusion  
23 to which no answer is required; if such an answer is required, ABC denies the  
24 allegations.

25           50. The allegations in Paragraph 50 of the Complaint state a legal conclusion  
26 to which no answer is required; if such an answer is required, ABC denies the  
27 allegations.

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1                   SECOND CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT  
2                   OF MICHAEL JACKSON’S MUSICAL COMPOSITIONS

3           51. ABC lacks knowledge or information sufficient to form a belief as to the  
4 truth of the allegations in Paragraph 51(a)-(g) of the Complaint and on that basis  
5 denies the allegations.

6           52. ABC admits the Documentary contains short excerpts of the songs  
7 referenced in Paragraph 51 of the Complaint that were included in the  
8 Documentary on a transformative and fair use basis. The remaining allegations in  
9 Paragraph 52 of the Complaint state a legal conclusion to which no answer is  
10 required; if such an answer is required, ABC denies the allegations.

11           53. The allegations in Paragraph 53 of the Complaint state a legal conclusion  
12 to which no answer is required; if such an answer is required, ABC denies the  
13 allegations.

14           54. ABC lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations in Paragraph 54 of the Complaint and on that basis denies  
16 the allegations.

17           55. The allegations in Paragraph 55 of the Complaint state a legal conclusion  
18 to which no answer is required; if such an answer is required, ABC denies the  
19 allegations.

20           56. The allegations in Paragraph 56 of the Complaint state a legal conclusion  
21 to which no answer is required; if such an answer is required, ABC denies the  
22 allegations.

23           57. ABC denies the allegations of Paragraph 57 of the Complaint.

24           58. The allegations in Paragraph 58 of the Complaint state a legal conclusion  
25 to which no answer is required; if such an answer is required, ABC denies the  
26 allegations.

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1           59. The allegations in Paragraph 59 of the Complaint state a legal conclusion  
2 to which no answer is required; if such an answer is required, ABC denies the  
3 allegations.

4                   THIRD CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT  
5                   OF MICHAEL JACKSON’S AUDIOVISUAL WORKS

6           60. ABC lacks knowledge or information sufficient to form a belief as to the  
7 truth of the allegations in Paragraph 60(a)-(q) of the Complaint and on that basis  
8 denies the allegations.

9           61. ABC lacks knowledge or information sufficient to form a belief as to the  
10 truth of the allegations in Paragraph 61 of the Complaint concerning ownership of  
11 and an application to register the copyright in *Michael Jackson’s Journey from*  
12 *Motown to Off the Wall*, and on that basis denies the allegations. The remaining  
13 allegations in Paragraph 61 of the Complaint state a legal conclusion to which no  
14 answer is required; if such an answer is required, ABC denies the allegations.

15           62. ABC lacks knowledge or information sufficient to form a belief as to the  
16 truth of the allegations in Paragraph 62 of the Complaint and on that basis denies  
17 the allegations.

18           63. ABC admits the Documentary contains short excerpts of the music  
19 videos and works referenced in Paragraphs 60(a)-(p) and 61-62 of the Complaint  
20 that were included in the Documentary on a transformative and fair use basis. The  
21 remaining allegations in Paragraph 63 of the Complaint state a legal conclusion to  
22 which no answer is required; if such an answer is required, ABC denies the  
23 allegations.

24           64. The allegations in Paragraph 64 of the Complaint state a legal conclusion  
25 to which no answer is required; if such an answer is required, ABC denies the  
26 allegations.

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1           65. ABC lacks knowledge or information sufficient to form a belief as to the  
2 truth of the allegations in Paragraph 65 of the Complaint and on that basis denies  
3 the allegations.

4           66. The allegations in Paragraph 66 of the Complaint state a legal conclusion  
5 to which no answer is required; if such an answer is required, ABC denies the  
6 allegations.

7           67. The allegations in Paragraph 67 of the Complaint state a legal conclusion  
8 to which no answer is required; if such an answer is required, ABC denies the  
9 allegations.

10          68. ABC denies the allegations of Paragraph 68 of the Complaint.

11          69. The allegations in Paragraph 69 of the Complaint state a legal conclusion  
12 to which no answer is required; if such an answer is required, ABC denies the  
13 allegations.

14          70. The allegations in Paragraph 70 of the Complaint state a legal conclusion  
15 to which no answer is required; if such an answer is required, ABC denies the  
16 allegations.

17           FOURTH CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT  
18           OF MICHAEL JACKSON’S THIS IS IT AND RELATED WORKS

19          71. ABC lacks knowledge or information sufficient to form a belief as to the  
20 truth of the allegations in Paragraph 71 of the Complaint and on that basis denies  
21 the allegations.

22          72. ABC admits the Documentary contains short excerpts of the *This Is It*  
23 film that were included in the Documentary on a transformative and fair use basis,  
24 and that it contains short excerpts of footage from the 2009 memorial service for  
25 Jackson at Staples Center. The remaining allegations in Paragraph 72 of the  
26 Complaint state a legal conclusion to which no answer is required; if such an  
27 answer is required, ABC denies the allegations.  
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SECOND AFFIRMATIVE DEFENSE

(First Amendment)

82. Plaintiffs’ claims are barred in whole or in part by the First Amendment.

THIRD AFFIRMATIVE DEFENSE

(Fair Use)

83. Plaintiffs’ claims are barred in whole or in part by the doctrine of fair use.

FOURTH AFFIRMATIVE DEFENSE

(*De Minimis* Use)

84. Without admitting any liability or infringement, any alleged use of the works purportedly owned by Plaintiffs was *de minimis*.

FIFTH AFFIRMATIVE DEFENSE

(Wrong Parties)

85. Plaintiffs’ claims are barred, in whole or in part, because the entities named in the Complaint—ABC, Inc. and The Walt Disney Company—were not responsible for producing and broadcasting the Documentary.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Ownership)

86. Plaintiffs’ claims are barred in whole or in part because they do not own some or all of the purported rights at issue.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Standing / Failure to Register)

87. Plaintiffs’ claims are barred in whole or in part because they do not possess copyright registrations for some or all of the works at issue and therefore have no standing to assert their claims.

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EIGHTH AFFIRMATIVE DEFENSE

(Waiver / Estoppel / Acquiescence / Unclean Hands)

88. Plaintiffs’ claims are barred in whole or in part by the doctrine of waiver, estoppel, acquiescence, and/or unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Innocent Intent)

89. Plaintiffs’ claims and any relief sought against ABC are barred in whole or in part by the doctrine of innocent intent.

TENTH AFFIRMATIVE DEFENSE

(Lack of Injury / Damages)

90. Plaintiffs’ claims are barred in whole or in part because they have sustained no injury or damages.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

91. Plaintiffs’ claims are barred in whole or in part because they have failed to mitigate any alleged damages.

ADDITIONAL DEFENSES

92. ABC is informed and believe and on that basis alleges that it may have additional defenses that are not fully known of and of which ABC is not presently aware. ABC reserves the right to add and assert additional defenses as discovery commences and when they are ascertained.

WHEREFORE, ABC respectfully requests that the Court enter an Order:

- A. Dismissing Plaintiffs’ Complaint in its entirety with prejudice;
- B. Entering judgment in ABC’s favor;
- C. Awarding ABC its fees and costs incurred; and
- D. Awarding such other and further relief as the Court may deem just and

proper.

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Respectfully submitted,

Dated: August 13, 2018

O'MELVENY & MYERS LLP

By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli  
Attorneys for Defendants  
The Walt Disney Company and  
ABC, Inc.