

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____)	
RUSSELL W. SIMMONS,)	Index No.: 157136/2025
)	
Plaintiff,)	<u>VERIFIED</u>
)	<u>AMENDED COMPLAINT</u>
vs.)	
)	Venue based on
WARNER BROTHERS DISCOVERY, INC., d/b/a)	CPLR § 503(a):
HBO, HBO MAX and MAX, JANE DOE FILMS,)	<i>Situs of Events; Location of Defendant(s)</i>
KIRBY DICK, AMY ZIERING, XYZ CORP. 1-5,)	
and JOHN/JANE DOE 1-5,)	Jury Trial Demanded
)	
)	
Defendants.)	
_____)	

Plaintiff RUSSELL W. SIMMONS by his attorneys IMRAN H. ANSARI, of AIDALA, BERTUNA & KAMINS P.C., and CARLA DIMARE, of the LAW OFFICE OF CARLA DIMARE, PC, and for his Verified Complaint against Defendants WARNER BROTHERS DISCOVERY, INC., d/b/a the brands HBO, HBO MAX and MAX; KIRBY DICK, individually, and in his capacity as a filmmaker or producer; AMY ZIERING, individually, and in her capacity as a filmmaker or producer; JANE DOE FILMS, a film production company led by Kirby Dick and Amy Ziering; XYZ CORP. 1-5, JOHN/JANE DOE 1-5, allege as follows:

JURISDICTION AND VENUE

1. This action is brought under the common and statutory laws of the State of New York. This Court has jurisdiction over this matter because Defendant Warner Brothers Discovery, Inc. and its brands HBO, HBO MAX and MAX, are, and at all relevant times, a New York corporation operating in the State of New York with its principal place of business, upon information and belief, in New York City, New York, where Defendant Warner Brothers Discovery, Inc. and its brands HBO, HBO MAX and MAX, regularly and routinely conduct

business in this state, and where the statements giving rise to the causes of action asserted herein were disseminated worldwide, including in this state.

2. Venue is proper under CPLR § 503(a) because a substantial part of the events giving rise to the within claims occurred in New York County, and at least one of the Defendants is located, or has a principal place of business, in New York, and the film that is the subject of this litigation is marketed and published/broadcasted in this jurisdiction.

THE PARTIES

3. Plaintiff Russell W. Simmons (hereafter “Plaintiff” or “Simmons”) is a 69-year-old African-American entrepreneur, record executive, philanthropist, humanitarian, writer, designer, yogi, and media mogul who co-founded Def Jam Recordings, other businesses and a charity, and is credited with bringing hip-hop music mainstream to our world.

4. Upon information and belief, at all times mentioned herein, Warner Brothers Discovery, Inc., d/b/a its brands HBO, HBO MAX and MAX are a New York corporation licensed to do business within the State of New York.

5. Defendant Warner Brothers Discovery, Inc. later branded HBO MAX to MAX (hereafter collectively “HBO MAX” or “Defendant HBO MAX”).

6. Upon information and belief, at all times mentioned herein, Defendant Kirby Dick (hereafter “Dick”) is a resident of the State of Arizona.

7. Upon information and belief, at all times mentioned herein, Defendant Amy Ziering (hereafter “Ziering”) grew up in Beverly Hills, where she currently lives and resides in the State of California.

8. Dick and Ziering are collectively referred to as “Defendants Dick and Ziering.”

9. Defendant HBO MAX, Jane Doe Films and Defendants Dick and Ziering are collectively referred to as the “Defendants.”

10. Defendants Dick and Ziering have directed films together, including the so-called “documentary” entitled “On the Record” (hereafter “OTR” or the “defamatory film”), which is the subject of this defamation lawsuit.

11. Defendants Dick and Ziering and Jane Doe Films licensed OTR to HBO Max, as part of Warner Brothers Discovery.

12. Upon information and belief, Defendant Jane Doe Films is a film production company owned and operated by Defendants Dick and Ziering and was/is located in Los Angeles, California.

13. Simmons is informed and believes that at all times described in this complaint, each Defendant was the agent, in a joint venture, and co-conspirator with each of the remaining Defendants, and in doing the things herein alleged, was acting within the course and scope of such agency and/or joint venture and with the knowledge, consent, and/or permission of the other Defendants, and that the Defendants are jointly and severally liable for the torts against the Plaintiff.

14. This lawsuit is not an attempt by the Plaintiff to stifle any free speech. The Plaintiff is not stifling free speech. Rather, this lawsuit is an effort to uphold defamation law and ensure that the Defendants are held accountable for their actions.

FACTS COMMON TO ALL CAUSES OF ACTION

15. This lawsuit is about the reckless and/or malicious defamation of Simmons in OTR, a defamatory film that was mislabeled as a factual documentary. OTR was produced and broadcast by the Defendants, upon information and belief, to ride the #MeToo movement wave for profit.

16. Simmons started his career as a music executive in 1984 and had a meteoric rise to fame as an entrepreneur, record executive, philanthropist, humanitarian, writer, designer, yogi, and co-founder of Def Jam Recordings. He is credited with bringing hip-hop music mainstream, leading to its popularity across the world. He has spent considerable time using his wealth and fame to help others, including advocating for women's rights and equality. Simmons has said he had a "longtime loathing of any form of violence and abuse."

17. In 2017, a social movement called #MeToo began to rapidly sweep across the United States after women came forward and said they had been sexually harassed, abused or raped. The #MeToo movement became a viral social movement, with women publicizing their experiences as a means for healing. Unfortunately, the movement became a double-edged sword when some people used the movement as a means for notoriety and monetary gain. Many of those who were victimized were credible and rightly pushed a public awakening about sexual misconduct. However, as is often the case, with the good apples there were bad, and some sought to capitalize on the movement and made false accusations which diminished the impact of the #MeToo movement and hurt true rape and sexual assault victims. The movement also spread like wildfire worldwide and led to the termination and "cancelling" of high-profile men both professionally and personally. Some of the accused did not have the opportunity or due process to prove their innocence in the court of law or the court of public opinion. At times there was a rush to judgment. Some consensual acts were deemed rape or abuse, and there was little recourse for an accused to rebut allegations. Statements like "believe all women," instead of "believe the facts," became the norm and "guilt by accusation" set in. However, as time passed, some recognized that the #MeToo movement pendulum may have swung too far or lacked perspective, and those accused who had little opportunity to be heard were left damaged or even defamed.

18. Upon information and belief, mere weeks after the #MeToo movement ignited in the United States, Defendants Dick and Ziering, who have described themselves as social justice advocates and often used sex as theme in their work, and their company Jane Doe Films, began to try to make a film on equity and sexual abuse in the entertainment industry. But first they needed purported “victims” to make accusations against a notable figure in the entertainment industry.

19. Dick and Ziering had a documented prior track record of producing one-sided and misleading films about sexual assault allegations. Their prior film, *The Hunting Ground* (2015), about sexual assault on college campuses, was publicly criticized for misrepresenting a sexual assault at Harvard University “involving a black man to advance the film’s thesis that sexual assault is rampant on college campuses.” (Variety Magazine, March 13, 2021). *New York Magazine* published a critical article entitled, “*The Hunting Ground* Uses a Striking Statistic about Campus Rape that’s Almost Certainly False.” Most significantly, nineteen (19) Harvard Law School professors signed a public letter denouncing *The Hunting Ground* as “misleading” “propaganda” that painted the accused as serial predators “without sufficient evidence.” Warner Brothers Discovery, Inc. knew, or upon reasonable diligence should have known, of this documented pattern of misleading and one-sided filmmaking by Defendants Dick and Ziering when it made the decision on or about February 3, 2020 to license OTR for broadcast.

20. Eventually, Defendants Dick and Ziering produced and filmed a production called OTR, which is the subject of this defamation lawsuit.

21. Defendants Dick and Ziering labeled and marketed and continue to label and market OTR as a “documentary.” However, OTR is *not* a documentary because it is not a “factual” record. It is a tabloid hit piece that blurred the lines between documentary and drama to exploit #MeToo movement for media profit.

22. In OTR, Simmons is falsely accused of raping four adult women *decades before* the release of the purported documentary, OTR. Those four women are: Accuser #1 who is publicly identified as the film’s central figure and to whom all further references to “Accuser #1” also refer), Accuser #2, Accuser #3, and Accuser #4 (hereafter collectively the “Accusers”).

23. To put these rape allegations in perspective:

- Accuser #1 alleged that she was raped by Simmons in 1995, or 25 years before OTR was released. Simmons did not rape Accuser #1. They had consensual sex multiple times. Accuser #1 was not “lured” into Simmons’s bedroom in his penthouse apartment in New York City. On her own volition, Accuser #1 regularly went to Simmons’s apartment and appeared excited to do so. She was there so often that at least one person thought she lived there. People saw her there regularly, which Defendants Dick and Ziering did not include in their so-called documentary, OTR.
- Dick and Ziering also refused to include in their so-called documentary, OTR, that Oprah Winfrey and others found “inconsistencies” in Accuser #1’s allegations about Simmons.
- Accuser #2’s rape allegation allegedly occurred in 1983 or the early 1980s (she changed the date), which was 39 years before the release of OTR. Accuser #2 had never publicly reported the alleged rape before 2019. Simmons did not rape Accuser #2. He has no recollection of ever being alone with her. In 2008, Accuser #2 favorably dedicated a book she wrote about her life to Simmons and others, which Defendants Dick and Ziering also refused to include in OTR. In her book, Accuser #2 never said that Simmons raped her.

- Accuser #3's rape allegation allegedly occurred in 1994, or 26 years before the release of the purported documentary, OTR. Accuser #3 had never publicly reported the alleged rape before 2019. Simmons did not rape Accuser #3. They dated and had consensual sex. Accuser #3's allegation about Simmons was directly contradicted by at least one extremely credible witness, which Defendants Dick and Ziering also refused to include in OTR. Unfortunately, and sadly, Accuser #3 had many problems and called herself a "blackout drunk by the age of fourteen." She admitted that she was very drunk on the night she claims she was raped when she went to Simmons's NY City apartment.
- Accuser #4's rape allegation allegedly occurred in 1990, or 30 years before the release of the purported documentary, OTR. Like other Accusers, Accuser #4 did not publicly report the alleged rape before 2019, when she was contacted by Defendants Dick, Ziering and Accuser # 1. Simmons has maintained he did not rape Accuser #4. They dated and had consensual sex. Multiple people confirmed that Accuser #4 and Simmons dated, which Defendants Dick and Ziering also did not include in OTR.

24. The Defendants deliberately, recklessly, and maliciously persisted in publicly releasing or broadcasting OTR, resulting in this lawsuit, after being repeatedly notified by Simmons and others on his behalf about, amongst other things: (a) highly relevant and credible evidence favorable to Simmons that discredited or refuted the Accusers' rape allegations, (b) that the Defendants had violated journalistic ethics and professional standards, and (c) it was wrong to only present the Accusers' allegations and exclude the plethora of evidence favorable to Simmons, including evidence that discredited or refuted the Accusers' rape allegations. The culmination of

these reckless actions and more resulted in the defamation of Simmons and other tortious and unethical conduct for which Simmons seeks justice by way of this lawsuit.

25. Upon information and belief, Accuser #1, did not participate in OTR merely as a subject, but played an active, instrumental, behind-the-scenes role in producing, developing, and expanding the film - a role that was not disclosed to the public, and which was financially compensated. Specifically, upon information and belief, Accuser #1 negotiated and entered into a private compensation deal with Defendants Dick and Ziering for her involvement in OTR. Evidence, including communications, indicates that Accuser #1 “definitely had a private deal” for compensation with Dick and Ziering. Accuser # 1 was “in it for the money and attention reasons period.” Accuser # 1 has described herself as “the main one most associated with the film.”

26. Upon information and belief, Accuser # 1’s involvement in OTR was the product of a premeditated, multi-year personal plan for career advancement and financial gain. Accuser # 1 reportedly said she had “planned this for years,” to advance her career after she did not receive the professional recognition she sought in the music industry. See **EXHIBIT 1** at 3; **EXHIBIT 2** at 4. By August 2019—months before OTR premiered at Sundance and before HBO Max licensed the film—Accuser # 1 had prepared a commercial book proposal in which she repeated her rape allegations against Plaintiff and prominently promoted the “upcoming” “documentary” as “executive produced by Oprah Winfrey.” See **EXHIBIT 3** at 2. Accuser # 1 thus simultaneously monetized her rape allegations in at least two commercial formats: the film and a book deal.

27. Defendants Dick and Ziering were aware of Accuser # 1’s financial arrangement and her role as an undisclosed co-producer throughout the production of OTR, including because, upon information and belief, Defendants Dick and Ziering were parties responsible for making such deal with Accuser # 1. Defendants concealed Accuser # 1’s financial stake and producer-like

function from the public, and did not disclose it in OTR, thereby presenting Accuser # 1 to viewers as an objective, disinterested witness and survivor—when she was in fact a financially compensated participant with a personal commercial stake in the film’s content and reception.

Accuser #4 and Denouncing Participant Condemn the Production

28. After OTR was broadcast, Accuser #4 said she “wished she had not participated in the film [OTR],” and she regrets trusting Dick and Ziering. *See* Variety Magazine article annexed hereto as **EXHIBIT 4** at 6. She said Ziering did not seem to know “even basic details” about her; she described questioning about the rape as “completely out of control;” and she “regrets not vetting the filmmakers [Dick and Ziering].” *See id.* at 4-6. Accuser #4 was recruited by Dick and Ziering at the “last minute” in December 2019, following Winfrey’s withdrawal, at which time—upon information and belief—Accuser # 1 actively “groomed” and “lured” her into participating in OTR. *See* **EXHIBIT 2** at 2, 4.

29. Upon information and belief, one of the Four Women who participated in OTR (hereafter the “Denouncing Participant”) has, in post-broadcast written communications, condemned the production of OTR and the conduct of its filmmakers in the most forceful terms. In written communications, the Denouncing Participant has stated, among other things: (a) that Accuser # 1 “lured” and manipulated her into participating in OTR and misled her about the nature of the project;¹ (b) that Accuser # 1 “was desperate, she was broke, and she had no future other than to become ‘rape famous²’”—an explicit statement about Accuser # 1’s mercenary motives; (c) that the entire production was “all a big manipulation;³” (d) that Accuser # 1 told her to “lie” to the filmmakers;⁴ (e) that OTR “is not a documentary”—“it’s a film because in documentaries

¹ *See* **EXHIBIT 2** at 4.

² *See id.*

³ *See* **EXHIBIT 1** at 2.

⁴ *See id.* at 4.

people don't get paid,⁵” confirming that participants were compensated; (f) that she had “asked to be edited out of the film” and was “ashamed” to be in it;⁶ (g) that Dick, Ziering, and co-producer Amy Herdy are “horrible, vile, duplicitous filmmakers” who “do not have integrity, who exploit people for their pain;⁷” and (h) that her involvement with Dick, Ziering, Accuser # 1, and co-producer Herdy was “one of the worst experiences of my life.⁸” These communications further state that Accuser # 1 told the Denouncing Participant “I planned this for years” and that “whatever deal she cut with [the filmmakers] fixed all that.” See **EXHIBIT 1** at 3. These written statements from within Defendants’ own cast of subjects provide, in themselves, stark and clear instances of powerful, contemporaneous evidence corroborating that OTR was not a bona fide documentary based on good-faith investigation, but rather a commercially motivated, pre-planned hit piece based on biased, unreliable, financially interested sources.

The Passage of Time

30. The Defendants knew the Accusers’ rape allegations were decades old, seemingly without independent support, and there were no contemporaneous documents to corroborate the Accusers’ allegations.

31. Furthermore, the Defendants knew that Simmons was never charged with, convicted of, or found liable for any sex-related offense, and he had passed multiple lie detector tests, as discussed below.

Lie Detector Tests and Other Safeguards

32. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that Simmons voluntarily took and passed *nine* (9) prosecution-grade lie detector tests, including

⁵ See *id.*

⁶ See **EXHIBIT 2** at 5.

⁷ See **EXHIBIT 1** at 1, 5.

⁸ See *id.* at 6.

those administered by polygraph examiner, Rex McEvoy, who is the past President of the California Association of Polygraph Examiners.⁹ In discussing the results of the tests, McEvoy stated: “I believe he [Simmons] was truthful in all of these [tests].” Rather than include this information in OTR, the Defendants chose to exclude information about the polygraph tests and produced and broadcast OTR to millions of people across the United States and then internationally.

33. It is unclear what the Defendants did, if anything, to personally vet the credibility of the Accusers before publishing their stories in OTR. Upon information and belief, the Defendants did not rely on any sworn statements under oath by the Accusers, let alone have them submit to lie detector tests, nor undertake basic reporting due diligence to ensure adherence to journalistic and media standards and ethical duties.

Oprah Winfrey Withdrew from Having Her Name Associated with OTR After She Discovered Inconsistencies in OTR

34. On December 3, 2019, Defendants Dick and Ziering announced that they were collaborating with Oprah Winfrey (hereafter “Winfrey”) as Executive Producer to produce OTR. Winfrey is an American media mogul, actress, producer, and longtime philanthropist. Upon information and belief, after watching OTR, researching the Accusers’ stories, and interviewing people, Winfrey and her company Harpo TV withdrew as the Executive Producer, and she removed her name from OTR. Winfrey *publicly* declared that she was withdrawing from OTR in January 2020, *before* Defendant HBO MAX licensed it. (See Gayle King Interview, Jan. 21, 2020, CBS). Winfrey expressly objected to her company releasing and premiering OTR at a film festival

⁹ Here is a link to a video of the polygraph examiner who gave Mr. Simmons’s polygraph exams, <https://rgoon.vids.io/videos/ee9bdbb51818e1c664/rws1>. Type in the passcode !ntrepidGr@y to access this video. Significantly, this video and others in this Complaint were offered to the Defendants before the broadcast of the defamatory film, OTR, and the Defendants refused to include this video and the other videos in OTR.

and said, “pulling out was the right thing to do.” (*Id.*). Winfrey said she contacted “the filmmakers, and I said to them, *Houston, I think we have a problem here ...*”. Winfrey said, “[t]here’s some inconsistencies in the stories we need to look at.” (*Id.*). “There were too many inconsistencies in [Accuser #1’s] story.” (LA Sentinel, Why HBO Refuses to Answer Questions about Russell Simmons Documentary, by Stacy M. Brown, NNPA Newswire Sr. Correspondent, April 23, 2020 [emphasis added] <https://lasentinel.net/why-hbo-max-refuses-to-answer-questions-about-russell-simmons-documentary.html>).

35. Upon information and belief, in connection with her withdrawal, Winfrey made an affirmative request to Defendants Dick and Ziering that they obtain perspectives from individuals who might contradict Accuser # 1’s narrative and include such perspectives in OTR. Defendants Dick and Ziering rejected Winfrey’s request, refused to seek out contradicting witnesses, and proceeded with the one-sided version of OTR despite Winfrey’s specific and documented concerns. The failure of Defendants to act upon Winfrey’s affirmative request—and their deliberate decision to proceed anyway—evidences their purposeful avoidance of the truth and done with great malice as to Simmons.

36. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that after Winfrey researched the contents of OTR and *before* Defendant HBO MAX licensed it, Winfrey publicly withdrew from OTR as Executive Producer. Winfrey found that the lead accuser, Accuser #1, who took up the bulk of the film’s time, had “too many inconsistencies” in her story. The public watching this so-called “documentary” may have wanted to know that Winfrey withdrew and why she withdrew. However, Defendants Dick and Ziering deliberately chose not to include this key information in OTR, and Defendant HBO MAX intentionally looked the other way.

Other Media Declined to Publish the Accusers' Stories

37. According to news reports, after vetting the Accusers' stories, Apple TV (MAX's competitor) withdrew from licensing OTR. CNN, the New York Post, New York Magazine, MSNBC, NBC, and other media outlets also declined to publish some or all of the Accusers' false rape accusations about Mr. Simmons. *See* **EXHIBITS 5-7**.

38. On or about February 3, 2020—after Winfrey's January, 2020 withdrawal, and after multiple major media outlets had declined to publish the Accusers' allegations—HBO Max publicly announced that it would license OTR for broadcast. Despite the obvious and unmissable serious red flags presented by Winfrey's withdrawal and by the refusal of Apple TV, CNN, MSNBC, NBC, New York Post, New York Magazine, and other outlets to endorse the rape allegations, Warner Brothers Discovery, Inc. and HBO MAX made the deliberate decision to proceed with licensing and broadcasting OTR.

Prominent, Trustworthy Worldwide Industry Leaders Were Ignored

39. Before OTR was broadcast, the Defendants ignored the requests of many highly respected and notable civil rights leaders, including but not limited to, Reverend Al Sharpton and Reverend Jesse Jackson, politicians, and music and film industry leaders, who asked the Defendants to verify the Accusers' stories and not to release a one-sided story. Similarly, the Defendants ignored at least one Time Warner Board Member who had asked the Defendants to include both sides of the story in OTR, which the Defendants again refused to do.

OTR is Released

40. On January 25, 2020, OTR premiered at the Sundance Film Festival.

41. In stark contrast to Winfrey, Apple TV, CNN, the New York Post, New York Magazine, MSNBC, NBC, and other media outlets, HBO MAX licensed the rights to the

defamatory film, OTR, from Defendants Dick and Ziering’s film production company, Jane Doe Films.

42. The Licensing Agreement between Jane Doe Films (as Licensor) and WarnerMedia Direct, LLC (as Licensee), dated January 31, 2020, granted HBO Max a license to distribute OTR. The Licensing Agreement granted HBO Max, among other rights, Subscription Video-On-Demand (SVOD) distribution rights to OTR, expressly including distribution through bundled subscription packages. Pursuant to Section 10(a) of the Licensing Agreement, HBO Max was granted “complete, exclusive and unqualified discretion and control as to the time, manner and terms of distribution, exhibition and exploitation of the Picture.” *See* Licensing Agreement annexed hereto as **EXHIBIT 8**. Accordingly, all subsequent decisions about how, when, to whom, and through what channels OTR was distributed—including but not limited to the decision to include OTR in the 2024 Disney+/Hulu/Max bundle described below—were deliberate, affirmative, and fully discretionary choices by HBO Max and Warner Brothers Discovery, not passive or automatic continuations of a prior distribution arrangement.

43. Before OTR was broadcast, the Defendants knew that it was defamatory, that Defendants Dick and Ziering had deliberately, recklessly, and maliciously produced a defamatory film, violated journalistic ethical standards, did not legitimately scrutinize sources or corroborate the scandalous and reputation-destroying rape accusations about Simmons, did not adhere to fair reporting and publishing the truth, lumped Simmons in with other men who had been charged with sexual abuse knowing that Simmons had never been charged with any sexual crime, and deliberately refused to include Simmons’s side of the story and relevant and credible evidence favorable to Simmons that discredited or refuted the Accusers’ rape allegations.

Award-Winning Journalist Ignored

44. Before OTR was broadcast, a senior investigative journalist, Stacy M. Brown (hereafter “Brown”), who had researched the story, tried to get a comment from the Defendants regarding whether they planned to use any of the “30 witnesses that Mr. Simmons provided.” Brown also tried to determine if any of the Accusers’ stories were thoroughly vetted “after Oprah Winfrey pulled out citing problems.” The Defendants “repeatedly declined to answer questions about the film.” Brown wrote that Winfrey’s withdrawal “should give HBO pause before its planned airing.” It did not. See, *How to Kill a Mogul in the #Me Too Era*. <https://www.washingtoninformer.com/brown-how-to-kill-a-mogul-in-the-metoo-era/>

45. The Defendants ignored and deliberately, recklessly, and maliciously refused to include in OTR a February 13, 2020, letter from Thomasina Perkins-Washington, CEO/Principal Publicist, Capitol Public Relations, to Randall Stephenson, CEO at AT&T (HBO MAX was under AT&T’s umbrella at that time). The Defendants also refused to research the contents of her letter.

46. In pertinent part, Perkins-Washington’s letter states:

[W]hen is it ever right to have a one-sided conversation where if you defend yourself against accusations by offering your truth, you are accused of shaming, rather than having a difference in recollection ... [i]n this vein, I present to you the documentation my client has provided to a select few as it pertains to his truth ... My client has ... issued countless detailed denials of false accusations against him ... these denials have been validated by his passing 9 prosecution-grade lie detector tests He has also provided sworn statements and pointed out fatal flaws and inconsistencies in written accounts, some published in the very books authored by the subjects of your documentary. Other reputable media have taken the opportunity to review and have acted responsibly by not publishing these stories. The outlets who have passed ... include MSNBC, CNN, BuzzFeed, the NY POST, and most recently Harpo Productions and Apple TV. The film’s production company has been offered over 25 names and numbers of witnesses many of whom have signed letters and shared devastating accounts contradicting the words of all 3 of your leads in this movie, in fact none of these should ever have been printed by any credible publication much less made into a movie ... These producers [filmmakers] never told Harpo that 2 of the 3 women in question wrote books that discredit their own words and have been serial accusers, or that the lead [Accuser

#1] has made ... accusations of sexual assault ... The producers [filmmakers] have also been accused by other subjects of their films of having a blatant disregard for facts. This is a one-sided narrative with no credibility or integrity ... Mr. Simmons has lived his life honorably as an open book for decades, devoid of any kind of violence against anyone ... Attached please find the documentation which supports the conversation above, but is of course not exhaustive. We believe after review of this information you should be convinced to walk away from this documentary.

See **EXHIBIT 9**.

47. Before OTR was broadcast, Defendant HBO MAX remarkably informed Simmons to “cease” contacting them about OTR. In April 2020, an attorney wrote to Simmons’s agent on behalf of “HBO Max, AT&T, Inc., and Debra L. Lee, a member of AT&T’s Board of Directors,” and that attorney stated in pertinent part: *“Commencing several weeks ago and resuming today, Mr. Simmons has directed a number of communications to Ms. Lee ... regarding the broadcast of the documentary ‘On the Record’ on the streaming platform HBO Max, scheduled to launch next month. These communications are unwelcome ... For that reason we request that Mr. Simmons cease his attempts to contact or otherwise communicate with Ms. Lee.”* See **EXHIBIT 10**.

48. On May 5, 2020, Peter J. Mozarsky, Senior Vice President & Senior Counsel, Home Box Office, Inc., stated: *“[A]s I noted in my February 21, 2020 email to you (responding to your emails to Randall Stephenson and Tanya Lombard), HBO MAX did not create ‘On the Record.’ Rather, HBO MAX has simply acquired a license to exhibit the film. The information you sent to Mr. Stankey [CEO, Warner Media] appears to be substantively similar to the materials you previously sent to others at our company and to the filmmakers. The filmmakers have advised us that they have considered that information and they stand behind the content of the film they have delivered to HBO MAX.”* See **EXHIBIT 11**.

49. Defendant HBO MAX took the word of the Defendant filmmakers, Dick and Ziering, despite significant evidence that Defendants Dick and Ziering were unreliable and/or

untrustworthy, and OTR was produced with malice and reckless disregard for the truth. Upon information and belief, Mr. Mozarsky abdicated HBO's responsibility to (a) vet the contents of OTR, and (b) vet Defendants Dick and Ziering's veracity and motives, even though HBO MAX was on notice of the aforementioned issues.

50. Before OTR was broadcast, Simmons spoke to Casey Bloys, now Chairman of HBO and Max Content and a media executive. Simmons told Bloys he had witness testimony and a short movie rebuttal (the video clips), and he asked Bloys to review it for the inclusion in OTR. Bloys thought that was funny, laughed, and replied in sum and substance: "*Only if the girls agree to be in it.*" Bloys deliberately placed unreasonable and unrealistic conditions on Simmons for inclusion of Simmons's rebuttal evidence.

51. Before OTR was broadcast, the Defendants deliberately, recklessly, and maliciously refused to include any parts of Simmons's relevant film, which included multiple credible witness interviews that Simmons's team had produced and offered to the Defendants that discredited or refuted the Accusers' rape allegations about Simmons. It would have been easy for the Defendants to include witness interviews to rebut the Accusers' rape allegations in their so-called "documentary" to try to present a fair picture of the allegations from both sides. However, the Defendants again refused.

52. Before OTR was broadcast, HBO MAX ignored Simmons's May 26, 2020, email to John Stankey, CEO of Warner Media, (hereafter "Stankey"), which states in pertinent part:

I am sending you this email in a last minute attempt to urge you to consider the evidence that made so many news media outlets, including NBC, CNN, Buzzfeed, NY Magazine, and others, decline to run the stories of your 3 leads in your documentary 'on the record' ... I believe that without considering this truthful information this could create unintended harm to all involved ... it could produce a very damaging moment for the women's movement and for your interests at AT&T. I'm simply asking you to simply look before you leap. I'm aware that I'm not the first to ask you to take a look at the evidence which includes signed letters and many

credible witnesses ... You have been called or have received written correspondence from credible people asking for you to review the evidence; Leaders like Dr. Mandella, Dr. Marcia Dyson from the Global Women's Initiative, Venessa Williams, President of the Black Mayors Association, multiple congressmen and women, powerful entertainment executives who were there at the time and some who serve as witnesses, and I am also aware the G Unit Pictures (50cents production company) has contacted you but received no response ... a prosecutor would ask and so should you since you are prosecuting me 1) Has the lead made other accusations of this nature? If the answer is 5, then are the other 4 true or disproven? 2) How many witnesses dispute her characterization of her relationship with me. If the answer is 8, then you should have your legal team speak to them. 3) what did her co-workers say about her story. ... Have you read the letter that was sent to OPRAH by her assistant, who I have never met. It's enough to give pause to any responsible journalist. ... The other two co-stars of the movie have written books and have even more conflicting evidence than your lead.

Simmons attached Brown's article, "How to Kill a Mogul," and he asked Stankey to "abort this lynching." See **EXHIBIT 12**.

Republication

53. On May 27, 2020, HBO MAX digitally released (hereafter "**broadcast**") OTR. Since that time, the Defendants have continued to offer OTR to new and different audiences for public consumption via streaming platforms and other mediums, including marketing, repackaging, rebroadcasting, and relicensing it in 2024 and 2025 in new and different markets around the world, including Europe and Asia, all of which has continued and renewed the defamation of Simmons. As such, this action is timely. Furthermore, the Defendants' republication has compounded Simmons' damages, including past and future, severe emotional distress, and pain and suffering.

54. On or about May, 2024—within one year of the filing of this action—Warner Bros. Discovery, Inc. announced that Max (formerly HBO Max), Disney+, and Hulu would be bundling their streaming services for paid subscribers in the United States. Warner Bros. Discovery described the bundling arrangement as offering "unprecedented entertainment value for fans

across...these three services...a powerful new roadmap for the future of the industry.” This was not a mere continuation of existing streaming services, but rather was a new, commercial partnership arrangement between competing entertainment companies that created a new combined distribution product for a new combined subscriber audience and newly offered onto the market available for consumers to purchase.

55. The Disney+/Hulu/Max bundle launched publicly on July 25, 2024—within one year of the filing of this action on June 3, 2025. Upon information and belief, pursuant to the bundle arrangement, Disney+ subscribers and Hulu subscribers—who, prior to July 25, 2024, would have no access to OTR—were, for the first time, given access to OTR and the entire Max content library. Upon information and belief, prior to July 25, 2024, Disney+ and Hulu subscribers could not view OTR; after July 25, 2024, they could. This encompassed a new and separate distribution of OTR to reach a new and different audience of subscribers and consumers—Disney+ and Hulu subscribers who did not previously have access to OTR and who were customers of separate and competing streaming services.

56. Defendants' decision to include OTR in the July 25, 2024 bundle was a deliberate, affirmative, and fully discretionary act by Warner Brothers Discovery, Inc. and HBO Max. Pursuant to Section 10(a) of the relevant Licensing Agreement, HBO Max possessed "complete, exclusive and unqualified discretion and control as to the time, manner and terms of distribution, exhibition and exploitation" of OTR. *See* **EXHIBIT 8** § 10(a). Section 4(a) of the Licensing Agreement expressly authorized SVOD distribution including through bundled subscription packages. *See id.* § 4(a). The decision to include OTR in the Disney+/Hulu bundle encompassed an exercise of that discretionary contractual right—not an automatic or passive occurrence. Defendants affirmatively chose to include—and chose not to exclude—OTR from the bundle

notwithstanding the fact that they had been on extensive notice of Plaintiff's defamation claims since as early as 2020. It should be noted that Defendants have conceded that "someone who purchases the 'bundle' of [these three] services will get access to the Documentary." *See* Affirmation of Anthony Schach annexed hereto as **EXHIBIT 13**, ¶ 10.

57. In the spring of 2024, HBO MAX announced its international launch and rollout. In 2024 and 2025, HBO MAX's international rollout continued and its content, including, upon information and belief, OTR, was rebroadcast in foreign countries where it had not previously been broadcast.

58. Upon information and belief, Defendants also republished OTR internationally by making it available for the first time to paid streaming audiences in multiple countries during 2024 and 2025. Warner Brothers Discovery launched Max streaming services internationally for the first time in the following countries and territories, among others, on, upon information and belief, the following dates: (i) November 19, 2024: Southeast Asia, Taiwan, and Hong Kong; (ii) March 30, 2025: Australia; (iii) April 15, 2025: Turkey; (iv) July 22, 2025: Albania, Armenia, Cyprus, Estonia, Georgia, Iceland, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malta, and Tajikistan; (v) October 15, 2025: Asia Pacific, including Bangladesh, Cambodia, Macau, Pakistan, Sri Lanka, and Ukraine; (vi) January 13, 2026: Italy, Germany, Austria, Switzerland, Luxembourg, Liechtenstein, Israel, and Greece.

59. Warner Brothers Discovery's media releases announcing these international launches did not identify or exclude any specific content titles from the launch. OTR was, upon information and belief, included among content made available to paid subscribers in these newly launched international markets. Indeed, Defendant Dick himself has admitted in a sworn

affirmation that OTR was “licensed internationally.” (Affirmation of Kirby Dick, NYSCEF Doc. 17, para. 6.)

60. Further, upon information and belief, OTR was republished in New Zealand at a point that occurred on or about January 11, 2025 and subsequent to that was also republished in Ireland.

61. Each of the international launches set forth and alleged above constituted a new and separate publication of OTR to new and additional audiences. Prior to each of these referenced launch dates, paid streaming subscribers in the relevant countries, upon information and belief, could not view OTR, and following such relevant launches, they could. These were not passive continuations of an existing distribution, but were instead new, affirmative, market-entry decisions by Defendants that introduced OTR to new audiences. Each such launch constitutes a separate republication restarting the statute of limitations anew.

62. Weeks after OTR was first broadcast, the Defendants ignored a June 19, 2020, letter to Stankey from Rev. Marcia L. Dyson, Founder and President, Women’s Global Initiative, which states in pertinent part:

This letter concerns the airing of ‘On the Record’ HBO’s documentary vilifying Russell Simmons. ... I have great compassion for women of sexual abuse and exploitation ... in the documentary where HBO ignored the many letters and testimonies from women who had relationships with Russell Simmons ... Oprah Winfrey backed off the project ... she went on to say, ‘there are inconsistencies in the stories we have to look at.’ In my estimation, to ignore Oprah’s step back on the documentary was a sexist and racist act. ... Oprah’s withdrawal signaled the lack of trustworthiness of the filmmakers which was tarnished by incomplete investigations by the accuser; and ignoring counter narratives from people who worked with [Accuser #1] and Simmons. ... HBO has a track record of assassinating the character of famous black men—as if they are the poster boys for every patriarchal sin—via programming. ... It is abhorring that HBO, a trusted name and an often partner in uplifting black folks ... would turn around and wound not only the men in your documentaries, but their families and livelihoods ... How can, Mr. Stankey, your company turn the tide ... to a more benevolent, non-black

male digital lynching? Here is how: Do not replay the 'On the Record' documentary ...

See **EXHIBIT 14** at 1.

Ms. Dyson included a copy of a video that contained relevant, reliable, and favorable evidence for Mr. Simmons, which the Defendants could have easily cut and pasted into the defamatory “documentary.” The Defendants deliberately refused to do that.

Accuser #1

63. Prior to broadcasting OTR, Defendants knew that Accuser #1’s rape allegation was 26 years old, and they deliberately, recklessly, and maliciously refused to include in OTR information that supported Simmons.

64. Accuser #1 (Accuser # 1) worked at Def Jam Records (“DJR”) for approximately two years as an Artist and Repertoire Director (“A&R Director”), beginning in approximately 1994. DJR terminated Accuser # 1’s employment on March 8, 1996. At no time during her employment at DJR—including in the period following the alleged 1995 rape—did Accuser # 1 report, file, or make any allegation of rape against Plaintiff. The absence of any contemporaneous report—despite Accuser # 1 working directly for and with Plaintiff’s organization for over a year following the alleged rape—is a material fact omitted from OTR that bears directly on the credibility of her allegations.

65. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that Accuser #1 had made allegations of sexual abuse against at least four (4) other men, including another music media mogul, demonstrating a pattern of serial accusations against prominent men in her industry. As such, Defendants again had notice that Accuser #1’s credibility was suspect, which provided further reason to allow Simmons to provide his side of the story.

66. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that in 1995, after the alleged rape, Accuser #1 claimed that she told her boyfriend and Def Jam co-worker that Simmons had assaulted or sexually harassed her or words to that effect, but *the former boyfriend said he has “no knowledge” of any such allegation.* He said he “never had the impression Russell was running after women in the office. He dated famous models” The Defendants had his name but did not include him or conduct any journalistic due diligence to investigate his refutation of Accuser #1’s allegations. The former boyfriend also reported that Accuser #1’s “stars didn’t align in the music business” as she had hoped, and she “would do anything to be famous or even infamous.” Again, that was not in the defamatory film, OTR.

67. The Defendants deliberately, recklessly, and maliciously refused to interview or include in OTR, Accuser #1’s 1994 Def Jam intern, (hereafter the “Intern”), an eyewitness to parts of Accuser #1’s story. A video interview of the Intern was offered to the Defendants, and they deliberately, recklessly, and maliciously refused to include it in OTR.¹⁰ The Intern came forward voluntarily after hearing Accuser #1’s story, and the Intern said Accuser #1 said things [in OTR] “that were just not true.” For example, Accuser #1 told a story about her Def Jam office door. Accuser #1 said that Simmons came into her office and would lock the door and come on to her, so she “developed a system”—she allegedly gave her office key to a man and told him that if she called him, he should come to her office and unlock her door. The Intern said that was “not true.” The Intern said she was there almost all the time, and if there was a key she would have had it, and she did not. The Intern said if anyone had a key, she would have been aware of it, and she was not. The Intern said Simmons was “never” at the Def Jam office, Accuser #1 was “smitten” by

¹⁰ Here is a link to the video of the woman who was the Intern for Accuser #1 at Def Jam in 1994: <https://rgoon.vids.io/videos/729bdbb51818e0c5f8/rws2>. Type in the passcode !ntrepidGr@y to access this video.

Simmons, Accuser #1 was “always excited” and “was never afraid to go” into Simmons’s penthouse apartment. Some people who consistently saw Accuser #1 at his penthouse apartment spoke to Winfrey before OTR was broadcast. “At least ten times” the Intern “accompanied” Accuser #1 to Simmons’s apartment, and Accuser #1 made the Intern wait in the car. The Intern said that when Accuser #1 returned to the car or the office, “at no point was she [Accuser #1] upset or bothered,” and at no point was she “upset, angry, or with a changed demeanor.”

68. In addition to the omission of favorable evidence, OTR contained biased and misleading editing techniques that distorted the presentation of evidence and created false impressions about Plaintiff. These editorial choices were deliberate decisions by Defendants to manipulate the viewer’s perception of Plaintiff and the allegations against him and were undertaken with malice as to Simmons in Defendants’ production and publication of OTR.

69. Before OTR was broadcast, the Defendants deliberately, recklessly, and maliciously refused to include counterpoints that indicated that Accuser #1’s decades-old rape allegation against Simmons had substantial weaknesses and glaring inconsistencies.

70. The Defendants deliberately, recklessly, and maliciously refused to include in the defamatory film, OTR, that after working at Def Jam Recordings, Arista Records hired Accuser #1 as an “assistant.” She left Arista Records in approximately 2002. In 2017, Accuser #1 alleged that her boss at Arista Records, a famous and successful American Record Executive, wanted her, he sexually assaulted her twice, required “quid pro quo,” and sabotaged her career. The Defendants did not include in the film that there was a pattern where Accuser #1 claimed powerful and successful men wanted her.

71. The Defendants knew or should have known that Accuser #1 alleged that Simmons apologized to her in writing, but she never produced any such writing (and that is because Simmons

never apologized for anything in writing to her). Upon information and belief, it was Accuser #1 who apologized for pushing her prior claim for expenses at Def Jam, saying that “she just needed money at that point.”

Accuser #2

72. The Defendants knew that Accuser #2’s rape allegation was approximately 37-39 years old, and Simmons had never heard about this rape allegation until 2017, or 37 years after the alleged rape.

73. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that Accuser #2 had written a book about her life, *Mercedes Ladies*, which she dedicated to “Russell Simmons” and others. When questioned, Accuser #2 claimed her book’s acknowledgment to Simmons was meant to be “sarcastic,” but her explanation defies common sense.

74. The Defendants deliberately, recklessly, and maliciously refused to include in the defamatory film that Accuser #2’s story did not add up to a timeline and verifiable facts.¹¹

75. For example, the Defendants knew or should have known that Accuser #2’s former bandmates said that she understood that Accuser #2 and Simmons had a relationship that ended amicably. They pointed out inconsistencies or untruths in Accuser #2’s stories about Simmons.

¹¹ For example, Accuser #2 claimed that in 1983 she and a friend who worked for KTU 92.3 radio went to a rap club so her friend could interview Kurtis Blow (now known as Reverend Walker) who was managed by Simmons. Accuser #2 met Simmons that night and she alleged that he walked her from the party at the Hotel Diplomat to his office and raped her. The problem with Accuser #2’s story is that Simmons last promotion of Kurtis Blow at the Hotel Diplomat was 1979, four years before the alleged rape. Blow, now known as Reverend Walker, said that he has no recollection of any rap club near Simmons’s office. Additionally, Accuser #2 said that Simmons was part owner of Disco Fever, which Blow said is untrue. Blow also said he does not recall ever being at Disco Fever with her and Baby Dee, as Accuser #2 alleged. Additionally, Accuser #2 told a reporter that Simmons “lured” her to his supposed “office” under the guise of offering her a record deal in the early 1980s (apparently 1983). However, Simmons did not have an ability to sign artists until 1985.

They said Accuser #2's story about recording with Simmons in a recording studio was not true. One bandmate said Accuser #2 seemed to have an "obsession with Mr. Simmons."

Accuser #3

76. Before OTR was broadcast, the Defendants deliberately, recklessly, and maliciously refused to include in OTR that in 1994, the day after Accuser #3 alleges that she was raped, Accuser #3 called and spoke to former female President of Def Jam Recordings, Nana Carmen Ashhurst, (now an ordained minister), and it was clear that from that phone call that Accuser #3 had *consensual* sex with Simmons. It was clear there was no rape.

77. Ashhurst's account directly refutes Accuser #3's rape accusation about Simmons. The Defendants knew about Ashhurst, and they deliberately, recklessly, and maliciously did *not* interview or include her credible third-party account of Accuser #3's phone call from the hospital after Accuser #3 had consensual sex with Simmons.¹² Ashhurst recalled that during that call, "...*at no point did [Accuser #3] use the term rape.*" Ashhurst said she understood from her conversation with Accuser #3 that Accuser #3 and Simmons had consensual sex; Accuser #3 became extremely upset when Simmons told her it was time for her to go home and his driver would drive her; Accuser #3 wanted a relationship with Simmons that was public, but that was not happening; and then Accuser #3 tried to kill herself. Among other things, Accuser #3 told Ashhurst that "she wanted to continue a relationship with Russell," and she was "mad at Russell because she felt he was using her and never took her out on a date." Ashhurst said, "[Accuser #3] said she felt used and misused by all men," "she was remorseful about relationships with men," and she felt like a "chew toy for men of power." Ashhurst very insightfully said that some women feel exploited by powerful men, she did "not want to revictimize these women, [and she] want[ed] to give them

¹² Here is a link to the video of Ms. Ashhurst, <https://rgoon.vids.io/videos/ee9bdbb51818e3c464/rws3>. Type in the passcode !ntrepidGr@y to access this video.

compassion, ...but at the same time they must recognize that they were not raped and we cannot now relitigate in a decade of hindsight and change the definition of rape to accommodate a feeling of remorse and responsibility to women.” In other words, it was possible to have compassion for these women without buying into false allegations and without turning a blind eye to credible evidence. None of this was included in OTR, nor did it appear to give the Defendants any pause in their quest to profit from their salacious, one-sided and defamatory film.

78. In Accuser #3’s book about her life, “*Black Lotus: a Woman’s Search for Racial Identity*”, Accuser #3 claims that on the night she was allegedly raped, she was “in a drunken stupor” and was in no state to recall events, and she had been a “black out drunk since the age of fourteen.” After sex with Simmons, when he told her she had to go home and his driver would take her home, she said she “freaked out.” Accuser #3 wanted to be Simmons’ girlfriend and wanted to be seen in public with him. Accuser #3 said she was “so filled with rage” and “enraged” that she “swallowed” “a handful” of pills, “polished them off with a bottle of white wine” and ended up at the hospital, where she was treated with “activated charcoal.” According to the Black Press, Accuser #3 admitted in her book to having “sex with as many celebrities” as she could, and alleged “two other sexual assaults.” MSNBC and New York Magazine reported that Accuser #3 had accused other men of acts of violence. Accuser #3 also admitted in her book that she suffered from “severe chronic alcoholism.” She said, “I wanted nothing more than to find a man who would help secure my life,” and “I learned that my proximity to a man of wealth and fame could change my social status.” The Defendants did not include any of these facts in OTR, nor did it appear to give them pause in their quest to profit from their defamatory film.

79. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that Accuser #3’s allegation that Simmons’s former driver kidnapped her was refuted by that

(credible) man, who said, “To be clear, I have never driven anyone to any location against their will. If a passenger told me that she or he wanted to go home, I would have taken that person home without exception and regardless of any contrary instruction from Mr. Simmons or anyone else. However, Mr. Simmons never instructed me to take anyone somewhere against her (or his) will. If anyone is telling you otherwise, they are not being truthful. If you don’t believe me, I would be willing to take a lie detector test and give you this same statement under oath.”

80. Furthermore, the Defendants deliberately, recklessly, and maliciously refused to include in OTR other information that refuted Accuser #3’s story, including that Simmons’s assistant at the time stated that Accuser #3’s allegations that she (1) went to Accuser #3’s apartment the day after Accuser #3 had sex with Simmons, (2) was present when Accuser #3 checked into the hospital, and (3) stayed with Accuser #3’s three-year-old son on the first day of Accuser #3’s hospitalization, were false.

Accuser #4

81. Before OTR was broadcast and after Winfrey expressed concern about Accuser #1’s “too many inconsistencies,” Defendants Dick and Ziering contacted and recruited Accuser #4, a former aspiring model, at the “last minute,” and included a small amount of film time about her rape allegation in OTR.

82. The Defendants knew that Accuser #4’s rape allegation was from 1990 and was 29 years old.

83. The Defendants knew or should have known that Simmons never heard about any rape accusation from Accuser #4 until 2020, or 30 years later.

84. The Defendants deliberately, recklessly, and maliciously refused to include in OTR that Accuser #4 and Simmons dated after that first sexual encounter, where Accuser #4 alleged she was raped, and he thought she was his friend.

85. The Defendants knew or should have known and did not include in OTR that Accuser #4 alleged that Simmons raped her on their “first *and only* date.” However, multiple acquaintances of Simmons and Accuser #4 said that Simmons and Accuser #4 dated for a period of time. For example, Simmons’s former driver submitted an affidavit that the pair’s relationship lasted for approximately five months.

86. After OTR was broadcast, Accuser #4 said she “wished she had not participated in the film [OTR],” and she *regrets* trusting Dick and Ziering. She said Ziering did not seem to know “even basic details” about her [Accuser #4]; she described questioning about the rape as “completely out of control;” and she “regrets not vetting the filmmakers [Dick and Ziering].” See **EXHIBIT 4** at 4-6.

87. OTR isn’t the only film where Defendants Dick and Ziering have been criticized publicly. They were criticized in an article in Variety Magazine about another film they made called “The Hunting Ground,” about sexual abuse on college campuses. There, Dick and Ziering were accused of misrepresenting a sexual assault at Harvard “involving a black man to advance the film’s thesis that sexual assault is rampant on college campuses.” See **EXHIBIT 4** at 13. Similarly, New York Magazine ran a critical story about Dick and Ziering’s film The Hunting Ground in an article entitled, “*The Hunting Ground Uses a Striking Statistic about Campus Rape that’s Almost Certainly False.*” *Id.* As set forth in Paragraph 19 above, nineteen Harvard Law School professors publicly condemned The Hunting Ground as “misleading” “propaganda” that painted accused individuals as serial predators “without sufficient evidence.” These public

criticisms were available to Warner Brothers Discovery at the time it made its decision on February 3, 2020 to license OTR.

88. On or about February 17, 2021, Dick said to the Hollywood Reporter, “Our interest was to stand by the survivors who were courageous enough to come forward and tell their story.” However, Dick and Ziering did so at all costs and regardless of the evidence. In 2021, Ziering stated publicly: “[W]henever we get into this discussion of sides, it's always very strange...to me...There's no fact or truth. That's what happens when you say there's sides to an argument.” Ziering also stated publicly: “[T]hese stories (sexual assault) happen and you need to believe the women who report them . . .” These public statements by the filmmakers confirm their pre-determined conclusion that their subjects' allegations were true regardless of contrary evidence—the very definition of acting with reckless disregard for the truth.

89. Aiding and abetting one another in an effort to capitalize on the #MeToo movement, the Defendants knew that OTR did not present two sides of the story, they had not done their due diligence and had deliberately, recklessly and maliciously refused to include evidence favorable to Simmons that discredited or refuted the Accusers’ rape allegations, they had deliberately and unfairly smeared Simmons’s reputation, and they had abandoned their journalistic ethical standards and disseminated a false, unfair, unbalanced, non-objective film, all of which is evidence of the Defendants’ reckless disregard for the truth and/or malice.

90. The defamatory content in OTR has been widely seen, continues to be seen, and has been discussed in public, written about by journalists, and republished by other media outlets, severely damaging Simmons.

91. As set forth above, by producing and airing the defamatory film, OTR, the Defendants acted together and with actual malice and have intentionally, and/or with reckless

disregard for the truth, cast Simmons in a false, defamatory, and negative light and harmed his reputation as an individual, father, brother, leader, philanthropist, and professional, ruined his career as CEO of Rush Communications, exposed him to baseless lawsuits and ridicule, and understandably caused him severe emotional distress.

AS AND FOR THE FIRST CAUSE OF ACTION
Defamation Per Se & By Implication

92. Plaintiff realleges and incorporates herein by this reference the preceding paragraphs of this Verified Complaint as if fully set forth herein.

93. The explicit and or implicit allegations in the defamatory film, OTR, that Simmons raped the Accusers are false.

94. The Defendants made these statements in the defamatory film, OTR, which were disseminated to the public through Defendant HBO MAX and the other Defendants, and continue to be rebroadcast in the same markets, or anew, in republications to new audiences domestically and more recently, internationally. Most recently, OTR was republished to new audiences through the July 25, 2024 Disney+/Hulu/Max bundle and internationally through the 2024–2026 international streaming launches as set forth in Paragraphs 54-61 above.

95. Defendants Dick and Ziering acted deliberately, recklessly and maliciously when they produced the defamatory film, OTR, deliberately refused to include the Plaintiff's side of the story and relevant and credible evidence favorable to the Plaintiff that discredited or refuted the Accusers' rape allegations in OTR, deliberately grouped the Plaintiff in with other men who had been charged with sexual abuse knowing that the Plaintiff had never been charged with any sexual crime, did not engage in fair or balanced journalism, ignored evidence about the holes in the

Accusers' stories and instead framed them as reliable sources to bolster their sensationalized rape allegations, and hid the truth about a black celebrity for profit, amongst other things.

96. Defendant HBO MAX acted deliberately, recklessly and maliciously when it took the word of Defendants Dick and Ziering knowing that Dick and Ziering were unreliable and untrustworthy filmmakers and had deliberately refused to include in OTR the Plaintiff's side of the story and relevant and credible evidence favorable to the Plaintiff that discredited or refuted the Accusers' rape allegations, intentionally grouped the Plaintiff in with other men who had been charged with sexual abuse knowing that the Plaintiff had never been charged with any sexual crime, did not engage in fair or balanced journalism, ignored evidence about the Accusers' lack of credibility and instead framed them as reliable sources to bolster their sensationalized rape allegations, and hid the truth about a black celebrity for profit, amongst other things.

97. Each Defendant, by the above-described acts, knew there was relevant and reliable evidence that refuted the rape accusations or cast doubt on the Accusers' stories, but the Defendants produced/broadcast/rebroadcast the defamatory film knowing it would defame the Plaintiff, and/or they published the defamation with malice and or reckless disregard for the truth.

98. The rape accusations and material falsities in the defamatory film produced, broadcast, and rebroadcasted by the Defendants (as the case may be) are false, on their face inflammatory, and it was known to the Defendants to be false and/or was published with reckless disregard for the truth or falsity of the accusations and or malice.

99. Every time the Defendants permit the defamatory film to be viewed/purchased and or rebroadcast, the salacious and defamatory rape allegations are heard, seen, and are apparent on the face of the defamatory film.

100. Defendants' statements consisted of false facts that injured Plaintiff in his individual capacity and business trade or profession. The defamatory film was produced, aired, and rebroadcast with actual malice, exposing Plaintiff to public ridicule, contempt, aversion, disgrace in the minds of right-thinking persons, while depriving him of business, friendly relationships in society, and damaging his reputation. As such, Plaintiff was injured in his name and reputation.

101. Defendants' publishing the defamatory statements accusing Plaintiff of rape and sexual misconduct are about and concerning Plaintiff.

102. Defendants procured the defamatory statements and published them to a broad audience.

103. Defendants published defamatory statements concerning Plaintiff that are false.

104. Defendant knew, or should have known, the defamatory statements contained in the film were false at the time they procured, produced, and published them, and Defendants acted with reckless disregard to the truth or falsity of those statements.

105. Defendant deliberately published defamatory statements knowing they would be disseminated to a broad audience and would harm Plaintiff's reputation and good standing.

106. Defendant acted with spite and actual malice and/or reckless disregard for truth, when procuring and publishing the defamatory statements.

107. The defamatory statements falsely charge Plaintiff with serious crimes and injured Plaintiff in his business and profession, as well as personally.

108. The defamatory statements are defamatory *per se*, and damages are therefore presumed.

109. The defamatory statements impacted Plaintiff in his profession, trade, and business by imputing to him sexual misconduct, criminal acts of a sexual nature, among other things, and further tarnished the personal and business reputation of Plaintiff.

110. Because of the Defendants' defamatory film, Plaintiff has been and continues to be greatly injured in name and reputation, including, *inter alia*, Plaintiff's personal and professional reputations. Plaintiff has been brought into public scandal and disrepute and has suffered hatred, contempt, ridicule, aversion, shame, and disgrace among others in his profession, among citizens of the State of New York, the nation, and the world. As such, Plaintiff has suffered significant damages and is entitled to recover an amount to be determined at trial.

111. As set forth above, by reason of the Defendants' production and airing of the defamatory film, Plaintiff is entitled to an award of monetary and punitive damages against each and every Defendant.

AS AND FOR THE SECOND CAUSE OF ACTION
Intentional Infliction of Emotional Distress

112. Plaintiff realleges and incorporates herein by this reference the preceding paragraphs of this Verified Complaint as if fully set forth herein.

113. Defendants engaged in extreme and outrageous conduct, and beyond the bounds of decency tolerated in civilized society.

114. Defendants' conduct described above was willful, wanton, and malicious. Defendants took these actions knowingly and with the intention to cause, or with disregard of a substantial probability of causing, severe emotional distress to Plaintiff.

115. Independently and additionally, Defendants' July 25, 2024 decision to include OTR in the Disney+/Hulu/Max bundle—made with full and specific knowledge of Plaintiff's defamation claims herein, which had been communicated to Defendants' senior executives since

2020—constitutes a new and independent act of extreme and outrageous conduct. By deliberately choosing to extend OTR’s distribution to millions of new Disney+ and Hulu subscribers with full knowledge of its false and defamatory content, Defendants caused a new, additional, and substantial wave of reputational damage and emotional distress to Plaintiff, compounding the original harm. Similarly, Defendants’ international launches set forth in Paragraphs 54-61 above constitute additional independent acts of extreme and outrageous conduct causing additional injury to Plaintiff.

116. The Defendants’ conduct produced the foreseeable and foreseen effect and caused Plaintiff to suffer aggravated, severe emotional distress.

117. There exists a causal connection between the above conduct and said injury.

118. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered, is now suffering, and will continue to suffer irreparable injury, including but not limited to severe emotional distress, anxiety, stress, mental anguish and the physical effects therefrom, and other ailments and compensable and economic damages.

119. By reason of the foregoing, Plaintiff seeks compensatory damages in an amount to be determined at trial, punitive damages, attorneys’ fees, the costs of this litigation, along with other damages as outlined below.

120. Defendants’ grossly negligent, untruthful, and defamatory film amounted to extreme and outrageous conduct.

121. Each and every Defendant engaged in extreme and outrageous conduct when they created, produced, broadcast, and rebroadcast the rape allegations about Plaintiff, and amongst other things, did not adequately fact check/failed to fact check their sources, refused to include Plaintiff’s side of the story, blatantly mislead the listener by presenting speculation as an

allegation, and claiming the defamatory film was a documentary when it was not a documentary, it was a hit piece.

122. By doing the acts described above, the Defendants, individually and collectively, inflicted and caused Plaintiff to suffer severe emotional distress.

123. The Defendants' reckless disregard for their actions severely damaged the Plaintiff.

124. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and will continue to suffer significant damage to his personal and professional reputation, economic loss, extreme and severe emotional anguish and distress and Plaintiff is entitled to compensatory and punitive damages in an amount to be determined at a trial.

125. The Defendants knew or should have known that their actions producing, broadcasting and rebroadcasting the malicious and defamatory film, OTR, and their intentional, reckless, and/or grossly reckless defamatory film would cause Plaintiff such injuries.

AS AND FOR THE THIRD CAUSE OF ACTION
Negligent Infliction of Emotional Distress

126. Plaintiff realleges and incorporates herein by this reference the preceding paragraphs of this Verified Complaint as if fully set forth herein.

127. Defendants breached a duty owed directly to Plaintiff that endangered Plaintiff's emotional well-being by engaging in life-altering defamation of Plaintiff, causing him significant personal and professional damage.

128. The July 25, 2024 bundling of OTR with Disney+ and Hulu services, and the 2024–2026 international launches as set forth above, constitute new and independent breaches by Defendants of their duty to Plaintiff, each of which independently gives rise to a new cause of action for NIED within the applicable three-year statute of limitations period. CPLR § 214. Each new distribution event caused Plaintiff new and additional harm to his emotional well-being.

129. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, is now suffering, and will continue to suffer irreparable injury, including but not limited to severe emotional distress, anxiety, stress, mental anguish and the physical effects therefrom, and other ailments and compensable damages.

130. By reason of the foregoing, Plaintiff seeks compensatory damages in an amount to be determined at trial, punitive damages, attorneys' fees, the costs of this litigation, along with other damages as outlined below.

AS AND FOR THE FOURTH CAUSE OF ACTION
New York Civil Rights Law Sections 50 & 51

131. Plaintiff realleges and incorporates herein by this reference the preceding paragraphs of this Verified Complaint as if fully set forth herein.

132. Defendants used for commercial, advertising purposes, or for the purposes of trade, Plaintiff's name and/or picture in the manner described above.

133. Defendants did not have the written consent from Plaintiff to do so.

134. Each new distribution event—including but not limited to the July 25, 2024 Disney+/Hulu/Max bundle launch and each of the relevant international streaming launches as set forth in paragraphs 54-61—constitutes a new and independent use of Plaintiff's name, portrait, and image for commercial purposes under Civil Rights Law §§ 50–51, to a new audience, without Plaintiff's consent. Each such republication refreshes the statute of limitations applicable to Plaintiff's Civil Rights Law §§ 50–51 claim herein.

135. As the Defendant disseminated the aforementioned content in a false, defamatory, slanderous, improper manner, there is no legitimate interest of the public in being apprised of the matters publicized, and said matters were false, and disseminated with actual malice, and/or reckless disregard for the truth.

136. As a direct and proximate result of Defendants' actions, Plaintiff has been harmed and has suffered damages.

137. Plaintiff demands judgment against Defendants in an amount to be determined upon the trial of this action; said amount being sufficient to compensate Plaintiff for his damages and injuries as well as an amount sufficient to punish Defendants for willful, wanton, reckless and unlawful conduct constituting a complete and reckless disregard for Plaintiff, together with interest, attorneys' fees, costs and disbursements in this action; and said amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR THE FIFTH CAUSE OF ACTION

Deceptive Acts and Practices in Violation of New York General Business Law § 349

138. Plaintiff realleges and incorporates herein by this reference the preceding paragraphs of this Verified Complaint as if fully set forth herein.

139. Defendants have engaged in consumer-oriented conduct that is materially misleading and deceptive in violation of New York General Business Law § 349 ("GBL § 349").

140. Defendants created, marketed, and widely disseminated the defamatory film, which contains knowingly false and misleading statements concerning Simmons' personal conduct, reputation, and professional identity, including defamatory accusations of rape and sexual misconduct.

141. These representations were made as part of a campaign directed at the public, including New York consumers, and were promoted through major media platforms with the intent to influence viewer perceptions, consumer behavior, and public sentiment.

142. Defendants' conduct constitutes consumer-oriented deception because the defamatory film, OTR, and its related advertising were marketed directly to the general public as an informational and factual documentary, when in reality, it was not a documentary, and the

Defendants knowingly omitted exculpatory evidence and promoted false claims for financial and competitive advantage.

143. Independently and additionally, Defendants' July 25, 2024 distribution of OTR to Disney+ and Hulu subscribers through the bundle, and Defendants' 2024–2026 international distribution of OTR as set forth above, each constitute new and independent acts of consumer deception in violation of GBL § 349. Each such distribution event newly exposed consumers—in the United States and internationally—to the false and misleading content of OTR while continuing to market it as a factual documentary. Each such event falls within three years of the June 3, 2025 filing of this action, and constituted an independent, separately actionable deceptive act. Further, the relevant such 2024 and 2025 distribution events are of the type that GBL § 349 is designed to address because they are consumer-oriented, market-facing acts of deceptive promotion that had broad impact on the consuming public in New York and elsewhere.

144. As a result of this deceptive conduct, Plaintiff has suffered significant injury, including but not limited to harm to his business reputation, damage to commercial goodwill, and economic losses arising from interference with his media and philanthropic enterprises.

145. The deceptive acts and omissions by Defendants are the type of conduct that GBL § 349 was designed to address, and Defendants' actions have had a broad impact on the public at large. Moreover, Defendants' actions have caused harm to the public interest, including, without limitation, in the following respects:

a. **Payment for a Materially Misrepresented Product.** Consumers paid subscription fees to HBO Max, Max, Disney+, and Hulu, and paid those fees in part in reliance on access to a content library that included OTR, which Defendants marketed, labeled, and distributed as a factual *documentary*. The term "documentary" is not marketing puffery, but rather is a specific, well-understood product classification that carries an implicit and material representation to consumers that the content is factually accurate, journalistically sourced, balanced in its investigation, and not commercially fabricated. Defendants knew that OTR did not meet the standards of a factual documentary based on, among other things: (i) Oprah Winfrey's withdrawal

following her finding of "too many inconsistencies" in the lead accuser's story; (ii) Accuser #1 Drew Accuser # 1's concealed financial compensation arrangement with the filmmakers; (iii) Accuser #1's undisclosed role as a co-producer with a years-long premeditated personal and commercial stake in the film; (iv) the filmmakers' deliberate rejection of Winfrey's affirmative request to include contradicting witnesses; (v) the testimony of more than twenty-five named witnesses contradicting the Accusers' allegations that Defendants refused to include; (vi) the public letter of nineteen Harvard Law School professors condemning Defendants Dick and Ziering's prior film as "misleading" "propaganda"; and (vii) the post-broadcast written statement of one of the film's own subjects that OTR "is not a documentary" because "in documentaries people don't get paid." Yet Defendants continued to market, label, distribute, and collect subscription revenue from consumers for OTR as though it did meet the standards of a factual documentary. Consumers who paid money to access a product represented to be a factual documentary, and who received instead a commercially motivated, one-sided advocacy film whose own participants disavow it, suffered a concrete economic harm — they paid for one thing and received another.

b. **Concealment of Source Compensation and Deceptive Testimonial Sourcing.** Consumers who watched OTR were presented with Accuser #1 Drew Accuser # 1 as a credible, disinterested rape survivor witness whose account formed the evidentiary core of the film. Defendants concealed from consumers that Accuser # 1 had entered into a private financial compensation arrangement with the filmmakers, that she functioned as an undisclosed co-producer of the film with a direct financial stake in its content and reception, and that she was simultaneously pursuing a commercial book deal monetizing the same rape allegations she made in the film. A consumer's ability to assess the credibility and reliability of a witness — particularly a witness making serious criminal accusations against a named individual — depends materially on whether that witness is financially disinterested. By concealing Accuser # 1's financial interest and producer-like role, Defendants deceived consumers into relying on her account as independent testimony, when it was in fact the compensated, commercially interested testimony of a participant with a years-long personal and financial plan built on the allegations. This form of undisclosed paid testimonial sourcing is a deceptive trade practice that causes direct harm to consumers' capacity to evaluate the accuracy and reliability of the information they are purchasing.

c. **Corruption of Public Discourse on a Matter of Substantial Public Concern.** OTR was marketed as a factual documentary about sexual assault in the entertainment industry — a subject of significant and ongoing public policy importance. Consumers and the broader public relied on OTR's "documentary" representation, and on the specific factual claims made therein, in forming their views about the credibility of the specific accusations against Plaintiff, the reliability of the broader #MeToo accountability movement, and the guilt of a named, publicly prominent individual. By presenting financially compensated accusers as disinterested witnesses, suppressing contradicting evidence from more than twenty-five witnesses, deliberately omitting Winfrey's withdrawal and the reasons for it, and concealing Accuser # 1's financial interest and producer role, Defendants corrupted the information environment on which consumers relied to form judgments about a matter of public interest. Consumers who watched OTR in reliance on its "documentary" label, and who formed or reinforced beliefs about Plaintiff based on its deceptive presentation, were harmed in their capacity as informed participants in public discourse. This public interest harm is not speculative, as consumers were deprived of the material information Defendants deliberately concealed — information that, had it been disclosed, would

have materially altered a reasonable consumer's assessment of the film's claims and the credibility of its sources.

d. **Misrepresentation of Platform Editorial Standards.** Defendant Warner Brothers Discovery, Inc. and its subsidiary HBO MAX hold themselves out to consumers as premium, curated content providers whose documentary and non-fiction programming meets heightened standards of journalistic accuracy, factual integrity, and editorial quality. Consumers pay premium subscription prices for access to HBO Max content in reliance, in part, on those represented standards. By licensing, distributing, and continuing to commercially exploit OTR – a film Defendants had ample reason to know was deceptive, one-sided, and not meeting the standards of a bona fide documentary – Defendants misrepresented to consumers that OTR satisfied the editorial and journalistic quality standards of a legitimate HBO Max documentary. Consumers who paid HBO Max subscription fees suffered a concrete harm, as they paid for premium, editorially vetted non-fiction content and received instead a commercially motivated advocacy film that Defendants' own licensors, editorial reviewers, and the film's own participants had flagged as inaccurate, inconsistent, and unreliable.

146. Plaintiff is entitled to recover actual damages and statutory damages, as well as attorneys' fees and costs pursuant to GBL § 349(h), and requests injunctive relief barring Defendants from continuing to disseminate the misleading film and associated materials.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enters judgment in his favor and against the Defendants, and each of them as follows:

- a. Judgment for Plaintiff against Defendants, and each of them, for compensatory damages in an amount consistent with the claims contained herein and to be proven at trial;
- b. Judgment for Plaintiff against Defendants, and each of them, for special damages and economic damages in an amount consistent with the claims contained herein and to be proven at trial;
- c. Judgment for Plaintiff against Defendants, and each of them, for punitive damages in an amount consistent with the claims contained herein and to be proven at trial;

d. An injunction requiring the Defendants to retract the defamatory rape accusations, cease the dissemination of OTR, destroy every copy of OTR, and all links to it online, and to refrain from further false statements about the Plaintiff;

e. Judgment for Plaintiff against Defendants, and each of them, in an amount supported by the claims in this Complaint and the evidence adduced at trial, that Plaintiff be awarded the attorney fees and costs of suit incurred herein, and that Plaintiff be awarded such other costs and relief as the court deems just and equitable.

f.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
March 18, 2026

AIDALA, BERTUNA & KAMINS, P.C.

By: /s/ Imran H. Ansari
Imran H. Ansari
Aidala, Bertuna & Kamins PC
546 Fifth Avenue, 6th Floor
New York, NY 10036
T: (212) 486-0011
iansari@aidalalaw.com

**LAW OFFICE OF CARLA DIMARE, PC
(pro hac vice)**

By: /s/ Carla DiMare
Carla DiMare
Law Office of Carla DiMare, PC
PO Box 1668
Rancho Santa Fe, CA 92067
T: (858) 775-0707
carla@carladimare.com

Attorneys for Plaintiff