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8 F/S/O SCARLETT JOHANSSON

9
10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 PERIWINKLE ENTERTAINMENT, INC.,
13 F/S/O SCARLETT JOHANSSON, a
California corporation,

14 Plaintiff,

15 v.

16 THE WALT DISNEY COMPANY, a
17 Delaware corporation,

18 Defendant.

CASE NO. 21STCV27831

**COMPLAINT FOR (1) INTENTIONAL
INTERFERENCE WITH
CONTRACTUAL RELATIONS; AND (2)
INDUCING BREACH OF CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Periwinkle Entertainment, Inc. f/s/o Scarlett Johansson (“Ms. Johansson” or
2 “Plaintiff”) alleges against The Walt Disney Company (“Disney”) as follows:

3 **I. INTRODUCTION**

4 1. Over the past decade, Scarlett Johansson’s work has generated billions of dollars
5 for Marvel Studios, and, by extension, its parent company, Disney. In recognition of and reliance
6 on this impressive track record, Marvel¹ and Ms. Johansson agreed that her compensation for
7 starring in the latest motion picture addition to the Marvel Cinematic Universe (“MCU”), *Black*
8 *Widow* (the “Picture”), would be based largely on “box office” receipts generated by the Picture.
9 To maximize these receipts, and thereby protect her financial interests, Ms. Johansson extracted a
10 promise from Marvel that the release of the Picture would be a “*theatrical* release.” As Ms.
11 Johansson, Disney, Marvel, and most everyone else in Hollywood knows, a “theatrical release” is
12 a release that is exclusive to movie theatres. Disney was well aware of this promise, but
13 nonetheless directed Marvel to violate its pledge and instead release the Picture on the Disney+
14 streaming service the very same day it was released in movie theatres.

15 2. The reasons for this were twofold. First, Disney wanted to lure the Picture’s
16 audience away from movie theatres and towards its owned streaming service, where it could keep
17 the revenues for itself while simultaneously growing the Disney+ subscriber base, a proven way
18 to boost Disney’s stock price. Second, Disney wanted to substantially devalue Ms. Johansson’s
19 agreement and thereby enrich itself. In the months leading up to this lawsuit, Ms. Johansson gave
20 Disney and Marvel every opportunity to right their wrong and make good on Marvel’s promise.
21 Unlike numerous other movie studios, however – including Warner Brothers who, on information
22 and belief, settled with its talent on films such as *Wonder Woman* after it released those films
23 “day-and-date” to its streaming service HBO Max last year – Disney and Marvel largely ignored
24 Ms. Johansson, essentially forcing her to file this action.

25 3. Ms. Johansson is one of Hollywood’s most well-known and talented actresses,
26 with decades of acting experience and a lengthy filmography of critically acclaimed and

27 _____
28 ¹ The contracting entity named in Ms. Johansson’s Agreement is MVL East Coast Productions, LLC (“Marvel”).

1 financially successful performances. After making her feature film debut at just 10 years old, she
2 has appeared in both comedies and dramas, including numerous award-winning films such as
3 *Lost in Translation*, *Vicky Cristina Barcelona*, *Marriage Story*, and *Jojo Rabbit*.

4 4. In 2010, Ms. Johansson proved that she could also perform in an action-packed
5 blockbuster when she appeared in *Iron Man 2*, a superhero film based upon characters and stories
6 from Marvel Comics. In that film, Ms. Johansson played “Natasha Romanoff,” better known by
7 her superhero name: “Black Widow.” For her work, she garnered significant acclaim, including a
8 Best Supporting Actress nomination from the Academy of Science Fiction, Fantasy & Horror
9 Films. She went on to reprise the role of Black Widow in six more films, helping to build what
10 would eventually become the MCU, one of the biggest and most lucrative film franchises ever
11 created.

12 5. In 2019, Marvel Studios officially announced that Black Widow and Ms.
13 Johansson would have their own film. Prior to this announcement, representatives for Marvel and
14 Ms. Johansson had finalized a deal for her services in connection with the Picture. That deal is
15 set forth in an agreement dated as of May 9, 2017 and a series of amendments thereto
16 (collectively referred to herein as the “Agreement”). At issue in this lawsuit is the portion of this
17 Agreement that guaranteed her a share of “box office receipts,” meaning receipts from movie
18 theatre ticket sales. To protect her financial interests in these box office receipts, Ms. Johansson
19 obtained from Marvel a valuable contractual promise that the release of the Picture would be a
20 “wide theatrical release.” Both parties, as well as Disney, understood this meant that the Picture
21 would initially be released *exclusively in movie theatres*, and that it would remain *exclusively in*
22 *movie theatres* for a period of between approximately 90 and 120 days. This roughly 90-120 day
23 theatrical “window” was not only industry-standard at the time the Agreement was finalized but
24 also standard practice for prior Marvel movies distributed by Disney, including those starring Ms.
25 Johansson.

26 6. In November 2019, approximately six months after the Agreement was entered
27 into, Disney launched Disney+, its wholly owned flagship subscription video-on-demand
28 (“SVOD”) service. Leading up to this launch, the SVOD market was crowded, with established

1 players such as Netflix, Amazon, and Hulu and newcomers such as HBO Now and Apple TV+ all
2 competing for subscribers. In order to convince consumers that Disney+ was worth the \$7 (now
3 \$8) monthly access fee—and to convince investors that the service would be profitable—Disney
4 announced that the offerings on Disney+ would include Disney’s entire library of films, a number
5 of library television series, original content, and—crucially—that Disney+ would eventually be
6 the go-to source to stream the MCU.

7 7. In light of these announcements, Ms. Johansson’s representatives sought
8 assurances that Marvel would hold up its end of the bargain with respect to the theatrical release
9 of the Picture guaranteed in her contract. In response, Marvel’s Chief Counsel confirmed to Ms.
10 Johansson’s representatives in May 2019:

11 We totally understand that Scarlett’s willingness to do the film and
12 *her whole deal* is based on the premise that the film would be
13 widely theatrically released *like our other pictures*. We understand
14 that should the plan change, we would need to discuss this with you
15 and come to an understanding as *the deal is based on a series of*
16 *(very large) box office bonuses*.

17 (Emphases added.) Marvel thereby confirmed the parties’ understanding that (1) the box office
18 bonus component of Ms. Johansson’s Agreement represented the lion’s share of her expected
19 compensation, and (2) the wide theatrical release that Marvel had promised would be “like our
20 other pictures,” meaning the standard Marvel/MCU 90-120 days of theatrical exclusivity.

21 8. In late March 2021, however, in direct violation of these promises and her
22 Agreement, Disney announced that the Picture would be simultaneously released in theatres and
23 on Disney+ Premier Access, a service available only to Disney+ subscribers that provides
24 unlimited on-demand access to select films for an additional \$30-per-film fee beyond the monthly
25 subscription cost. On information and belief, this was the direct result of Disney directing Marvel
26 to ignore Ms. Johansson’s Agreement and/or overruling Marvel’s wishes to comply with it. In
27 the marketing campaign that followed, Disney frequently highlighted the Picture’s upcoming
28 availability on Disney+, usually side-by-side with Ms. Johansson’s image. Throughout this
process, Ms. Johansson, through her representatives, attempted to negotiate with Marvel to reach
the aforementioned alternative “understanding” that Marvel’s Chief Counsel had promised under

1 these circumstances. Ultimately, however, Marvel ignored this outreach, no resolution was
2 reached, and the Picture was simultaneously released in theatres and on Disney+ Premier Access
3 on July 9, 2021.

4 9. To no one's surprise, Disney's breach of the Agreement successfully pulled
5 millions of fans away from the theatres and toward its Disney+ streaming service. According to
6 Disney's own self-congratulatory press releases, the Picture grossed more than \$60 million on
7 Disney+ Premier Access in its first weekend alone.

8 10. As numerous publications noted, this strategy dramatically decreased box office
9 revenue for the Picture. According to an article from one well-known Hollywood trade journal
10 published three days after the Picture was released: "Veteran distribution executives say it's clear
11 that the availability of the movie on Disney+ cannibalized box office, noting that an entire
12 household might have gone to see the movie in the theatre but could instead pay just \$30 to watch
13 it together at home." Another article from a different, but equally well-known and established,
14 industry publication declared: "There's no question that the Disney+ Premier availability of
15 *Black Widow* ate into its domestic opening weekend box office." Notably, however, Disney's
16 stock price jumped 4% in the days following the Picture's release.

17 11. Of course, this was Disney's plan all along. Disney knew that a "day-and-date"
18 release on Disney+ would drive up the total number of Disney+ subscribers—a key metric
19 impacting Disney's stock price—both by luring new subscribers to Disney+ and by giving
20 existing ones reasons to keep paying their monthly fees, thus reducing subscriber "churn."
21 Disney also knew that having such a well-known film as the Picture debut on Disney+ would help
22 it justify future price increases to the Disney+ monthly subscription fees. Moreover, Disney
23 knew that its ability to deliver blockbuster content like *Black Widow* to its subscribers would
24 perpetuate the view of many investors—as reflected in Disney's share price—that Disney+ is the
25 only streaming platform that has a chance to one day compete with rival streaming giant Netflix,
26 providing another way to bolster Disney's market valuation. In short, Disney chose to placate
27 Wall Street investors and pad its bottom line, rather than allow its subsidiary Marvel to comply
28 with the Agreement.

1 12. The icing on the cake for Disney was that, with the bulk of Ms. Johansson’s
2 compensation being tied to box office receipts, Disney knew that the cannibalization of such
3 receipts by Disney+ would save Marvel (and by extension, Disney) “very large” amounts of
4 money that it would otherwise owe Ms. Johansson. On information and belief, Disney
5 intentionally induced Marvel’s breach of the Agreement, without justification, in order to prevent
6 Ms. Johansson from realizing the full benefit of her bargain with Marvel.

7 13. Disney’s financial disclosures make clear that the very Disney executives who
8 orchestrated this strategy will personally benefit from their and Disney’s misconduct. In fiscal
9 year 2021, Disney’s Chief Executive Officer, Robert Chapek, was awarded equity grants totaling
10 3.8 times his \$2.5 million base salary. The primary justification for that award, according to
11 Disney’s compensation committee (as detailed in the company’s 2021 Annual Report), was that
12 Mr. Chapek “worked to quickly program new offerings on our DTC [direct-to-consumer] and
13 linear channels” and “launched our direct-to-consumer services in several key markets.” Robert
14 Iger, Mr. Chapek’s predecessor, also received the overwhelming majority of his compensation—
15 just over \$16.5 million—in the form of stock grants. The reason for his mammoth award
16 (according to the same Annual Report) was that he “[s]uccessfully launched Disney+ and drove
17 unprecedented subscriber growth in the first year.” In short, the message to—and from—
18 Disney’s top management was clear: increase Disney+ subscribers, never mind your contractual
19 promises, and you will be rewarded.

20 **II. JURISDICTION AND VENUE**

21 14. The Court has personal jurisdiction over Disney pursuant to California Code of
22 Civil Procedure § 410.10 because Disney is domiciled in and doing business in the State of
23 California. The amount in controversy exceeds the jurisdictional minimum of this Court.

24 15. Venue is proper in this County pursuant to California Code of Civil Procedure §§
25 395(a) and 395.5 because Disney has its principal place of business in the County of Los Angeles.

26 **III. PARTIES**

27 16. Plaintiff Periwinkle Entertainment, Inc., f/s/o Scarlett Johansson is a corporation
28 organized under the laws of the State of California, with its principal place of business located in

1 the county of Los Angeles. At all relevant times, Plaintiff was and is the “loan-out” company
2 through which Scarlett Johansson provided her acting services in connection with the Picture.

3 17. Defendant The Walt Disney Company, on information and belief, is, and at all
4 relevant times was, a corporation organized under the laws of the State of Delaware doing
5 business throughout the United States, including at its offices in the State of California, County of
6 Los Angeles.

7 **IV. FACTUAL BACKGROUND**

8 **A. Ms. Johansson is Cast in the Role of Natasha Romanoff/Black Widow**

9 18. Ms. Johansson is an esteemed and versatile actress with over 25 years of
10 Hollywood acting experience. Her credits include lead roles in critically-acclaimed films such as
11 *Lost in Translation*, *Match Point*, *The Prestige*, *The Other Boleyn Girl*, *Vicky Cristina Barcelona*,
12 *Her*, *Don Jon*, *Chef*, *Hail, Caesar!*, *The Jungle Book*, *Isle of Dogs*, *Marriage Story*, and *Jojo*
13 *Rabbit*. She is a two-time Academy Award nominee, a five-time Golden Globe nominee, winner
14 of a BAFTA award, and winner of the 2010 Tony Award for Best Featured Actress in a Play. She
15 will be honored later this fall as the 35th recipient of the American Cinematheque Award.

16 19. In 2010, Ms. Johansson made her debut in the MCU in *Iron Man 2*, and she would
17 go on to star in six additional MCU films between 2012 and 2019. The MCU began as a
18 connected series of films about individual superheroes who would come together to form the
19 Avengers superhero team, which initially consisted of Marvel superheroes Iron Man, the
20 Incredible Hulk, Thor, Captain America, Hawkeye, and Black Widow, played by Ms. Johansson.
21 Over time, the MCU grew in scope, introducing other superheroes and teams from Marvel
22 Comics and culminating in two crossover films, *Avengers: Infinity War* and *Avengers: Endgame*,
23 which brought all of these characters together.

24 20. Black Widow, also known as Natasha Romanoff or Romanova, is an elite spy and
25 assassin. She is a notable member of the Avengers, not only for being the only woman in the
26 initial lineup, but also because she does not have superhuman abilities. Whereas, for example,
27 Captain America obtained extraordinary strength and athleticism from an experimental
28 “supersoldier” serum, and Thor is the god of thunder who fights with a hammer forged by

1 dwarves in the heart of a dying star, Black Widow relies solely upon her wits and her
2 extraordinary skills, including expertise in hand-to-hand combat. Ms. Johansson accordingly
3 prepared for the role with months of strength training as well as extensive training in stunts, hand-
4 to-hand combat, and weapons combat.

5 **B. The Agreement**

6 21. The Agreement, dated May 9, 2017, sets forth the understanding between
7 Periwinkle Entertainment, Inc. (referred to therein as “Lender”) and Marvel (referred to therein as
8 “Producer”) concerning Ms. Johansson’s (referred to therein as “Artist”) services in connection
9 with the Picture. Paragraph 2, titled “ENGAGEMENT,” states:

10 Lender shall furnish Producer the services of Artist to perform the
11 role of ‘Black Widow’ / ‘Natasha Romanova’ in the theatrical
12 motion picture currently entitled ‘Black Widow’ (‘Picture’). For
13 the avoidance of doubt, if Producer in its sole discretion determines
14 to release the Picture, then such release shall be a ***wide theatrical***
15 ***release*** of the Picture (i.e., no less than 1,500 screens).

14 (Emphasis added.)

15 22. At the time the Agreement was entered, it was well understood by the parties and
16 Disney that a “theatrical release” referred to an ***exclusive release*** in theatres for an extended
17 period of time that was roughly 90-120 days. With the exception of certain less-valuable, direct-
18 to-video releases, it has long been custom and practice in the film industry for feature films to
19 have at least a 90-day exclusive theatrical release before they are released on home video.
20 Although some films have started to see shorter theatrical windows, Marvel Studios’ previous
21 films have generally had theatrical windows consistent with the industry standard, and sometimes
22 even longer. Specifically, Marvel Studios’ previous feature films had uninterrupted theatrical
23 windows between 82 and 159 days, with an average uninterrupted window of 117 days. Of the
24 seven Marvel Studios’ films in which Ms. Johansson starred prior to the Picture—for which Ms.
25 Johansson also received certain bonuses tied to box office receipts—none had a theatrical window
26 shorter than 96 days. And none included “day-and-date” releases on streaming platforms as
27 would come to pass with *Black Widow*; rather, in connection with those films, it took six to eight
28

1 months before Marvel Studios’ films would be available for streaming on an SVOD service like
2 Disney+.

3 23. In further recognition of the importance of a traditional and exclusive theatrical
4 release, the Agreement also grants Ms. Johansson “the right to full and meaningful consultation in
5 good faith with [Marvel] as to the . . . initial release pattern of the Picture[.]”

6 24. These promises concerning the Picture’s release—including the language requiring
7 a “wide *theatrical* release,” set forth on the very first page of the Agreement and in the same
8 paragraph that establishes Ms. Johansson’s role and services—were material and essential to the
9 Agreement. That is because in addition to certain fixed compensation, Ms. Johansson was to
10 receive was deferred compensation and bonuses directly tied to the amount of worldwide box
11 office (“WWBO”) receipts for the Picture. The greater the WWBO, the more Ms. Johansson
12 stands to earn. In other words, Ms. Johansson’s compensation for the Picture hinges upon
13 WWBO receipts—and, by extension, a traditional exclusive theatrical release, consistent with
14 Marvel’s past theatrical releases, that would allow her to realize the full value of her bargain.

15 **C. Disney Announces the Launch of Streaming Platform Disney+, Leading**
16 **Marvel to Further Clarify Its Promises to Ms. Johansson**

17 25. On August 8, 2017, Disney announced its plans to launch “a new Disney-branded
18 direct-to-consumer service in 2019.” This then-unnamed service would eventually become
19 Disney+, a SVOD platform that is wholly owned by Disney and features films and television
20 series from an array of Disney brands.

21 26. By the time Disney+ launched on November 12, 2019, it was competing with a
22 number of other major subscription streaming platforms, including but not limited to Netflix,
23 Hulu, Amazon Prime Video, CBS All Access, HBO Now, and Apple TV+. With an initial
24 subscription fee of \$7 per month, which was thereafter increased to \$8 per month, Disney+
25 needed premium content to convince potential customers to dig into their wallets and shell out for
26 yet another premium SVOD service.

27 27. At a shareholder meeting on March 7, 2019, Disney’s then-CEO Bob Iger
28 announced that Disney’s entire feature film library would be made available on Disney+. He also

1 signaled that Disney's 2019 theatrical releases, beginning with MCU entry *Captain Marvel*,
2 would debut on Disney+ for streaming after their theatrical runs. Finally, Mr. Iger indicated that
3 Disney+ would have its own slate of original films and series.

4 28. In light of these announcements, Ms. Johansson's representatives reached out to
5 Marvel to confirm that the launch of Disney+ would not impact the exclusive, wide theatrical
6 release that Ms. Johansson had bargained for in the Agreement. Dave Galluzzi, Marvel's Chief
7 Counsel, responded on March 20, 2019:

8 Further [to] our conversation today, it is 100% our plan to do a
9 *typical wide release* of Black Widow. We have very high
10 expectations for the film and are very excited to try to do for Black
11 Widow what we've just done with Captain Marvel.

12 We totally understand that Scarlett's willingness to do the film and
13 *her whole deal* is based on the premise that the film would be
14 widely theatrically released *like our other pictures*. We understand
15 that should the plan change, we would need to discuss this with you
16 and come to an understanding as *the deal is based on a series of*
17 *(very large) box office bonuses*.

18 (Emphases added.) Mr. Galluzzi attached a fully executed copy of the Agreement to this email.

19 29. Thus, Mr. Galluzzi, on Marvel's behalf, communicated his understanding that Ms.
20 Johansson's WWBO bonus was her primary consideration under the Agreement, that the Picture
21 would be "widely theatrically released," and that this release would be "like our other pictures,"
22 meaning exclusively to theatres for between 82 and 159 days, with an average uninterrupted
23 window of 117 days. Moreover, Mr. Galluzzi acknowledged on behalf of Marvel that any change
24 in that planned theatrical release would materially and adversely impact the value of the
25 Agreement to Ms. Johansson and thus the deal would need to be renegotiated to account for the
26 reduction in her promised backend compensation.

27 **D. In Blatant Breach of Marvel's Promises to Ms. Johansson, Disney Gives the**
28 **Picture a Day-and-Date Release on Disney+**

29 30. The Picture was initially scheduled to be released on May 1, 2020. However, its
30 release was delayed several times during the COVID-19 pandemic. As of September 2020, the
31 Picture was scheduled to be released exclusively in theatres on May 7, 2021.

1 31. By early 2021, industry commentators began speculating about the possibility that
2 the Picture’s release might be delayed again, or, in the alternative, that it might be released
3 simultaneously in theatres and on Disney+ for a premium price.

4 32. When asked by an industry publication in January 2021 if the Picture would “stick
5 to a theatrical release or go to Disney+,” Marvel’s President, Kevin Feige, was noncommittal.
6 But he admitted that parent company Disney—not Marvel—was calling the shots when it came to
7 Marvel Studios’ content on Disney+ and in the theatres, and that the intent was for the MCU’s
8 “storytelling” to continue to unfold both in theatres and on Disney’s flagship streaming platform,
9 stating:

10 All I can tell you is that for the past three years since Bob Iger
11 brought me into his office and talked about a streaming platform
12 that would become Disney+ and asked us to start working on
13 programs for it. [sic] Our long lead plan was to have the MCU and
14 the storytelling woven between weekly episodic big swings on
15 Disney+ and into the feature big swings in theaters.

16 33. Speaking about the Picture on a February 11, 2021 earnings call, Mr. Iger’s
17 successor, Bob Chapek, stated that “We are still intending it to be a theatrical release,” but
18 declined to clarify if it would be released on May 7 as scheduled or delayed again. In a February
19 12 article, Variety reported that Marvel’s Mr. Feige “was opposed to a hybrid rollout,” but that
20 “the powers that be” from Disney could still “convince Feige to change his mind—or overrule
21 him completely.”

22 34. On March 17, 2021, Disney’s Mr. Chapek cleared up any remaining doubt that it
23 was Disney, not Marvel, calling the shots, telling Bloomberg Television that “We’ll make the call
24 probably at the last minute in terms of how these films come to market, whether it’s *Black Widow*
25 or any other title. . . . We’ll be watching the call carefully and make the call when we have to.”
26 Days later, on March 23, 2021, Disney announced that, instead of having a traditional exclusive
27 theatrical release to maximize WWBO receipts, the Picture would get a “day-and-date” release on
28 July 9, 2021 and be released simultaneously both in theatres and on Disney+ Premier Access.

 35. As previously stated, Disney+ Premier Access is available only to customers who
pay for a Disney+ subscription. Those customers can then pay an additional \$30 fee to unlock

1 access to a new release that they could otherwise only see in theatres. Unlike traditional premium
2 video-on-demand releases, which typically give the viewer a 48-hour window to watch the
3 content they have purchased, once a Disney+ Premier Access film is unlocked, the customer can
4 watch it as many times as she wants for no additional fee as long as she remains a subscriber.

5 36. On May 24, 2021, Disney’s Mr. Chapek openly admitted that the theatrical market
6 was “still fairly weak” from the pandemic and predicted that “the marketplace will recover more
7 fully and that type of exclusive [theatrical] distribution will make more sense” by the time other
8 Disney movies, such as *Free Guy* and *Shang-Chi*, are released in August and September. He
9 offered no explanation for why *Black Widow*—a guaranteed box office smash in a pre-pandemic
10 world—was still scheduled for an early July release.

11 **E. Marvel’s Breach is the Direct Result of Disney’s Tortious Interference**

12 37. Why would Disney forgo hundreds of millions of dollars in box office receipts by
13 releasing the Picture in theatres at a time when it knew the theatrical market was “weak,” rather
14 than waiting a few months for that market to recover? On information and belief, the decision do
15 so was made at least in part because Disney saw the opportunity to promote its flagship
16 subscription streaming service using the Picture and Ms. Johansson, thereby attracting new
17 paying monthly subscribers, retaining existing ones, and establishing Disney+ as a must-have
18 service in an increasingly competitive marketplace. Ms. Johansson, and the express promises that
19 Marvel had made to her concerning WWBO bonuses and a “traditional” theatrical release “like
20 our other pictures,” were simply collateral damage. By interfering with the Agreement and
21 inducing Marvel to breach it, Disney not only increased the value of Disney+, but it also
22 intentionally saved Marvel (and thereby itself) what Marvel’s itself referred to as “very large box
23 office bonuses” that Marvel otherwise would have been obligated to pay Ms. Johansson.

24 38. Disney unquestionably understood how it would benefit from inducing a breach of
25 the Agreement. When he announced the release of another Disney film, *Mulan*, on Disney+
26 Premier Access, Mr. Chapek noted that “under a premiere access offering, not only does it get us
27 revenue from our original transaction of [Premium Video on Demand], but it’s a fairly large
28 stimulus to sign up for Disney+.”

1 39. Moreover, Disney knew that the availability of the Picture on Disney+ would
2 dissuade a number of would-be moviegoers, including many would-be repeat moviegoers, from
3 paying to see the Picture in theatres. When Disney first announced its plan to release the Picture
4 on Premier Access, no less than the *New York Times* described it as “a move that will likely hurt
5 cinemas (lower ticket and concession sales) while helping Disney (higher streaming revenue).”
6 Similarly, one Hollywood trade journal opined on January 11, 2021 that “it’s insurmountably
7 more challenging for a film the size and scale of ‘Black Widow’ to become profitable without a
8 traditional theatrical window.” On June 10, 2021, one month before the release of the Picture,
9 another prominent Hollywood trade journal reported that with respect to Disney’s day-and-date
10 strategy, “[t]he whole game now is to bring subscribers into the Disney+ ecosystem and keep
11 them there,” and that this “has been damaging for talent” who are compensated by sharing in the
12 box office receipts from a film. Just as these news outlets predicted and Ms. Johansson feared,
13 the Picture’s box office receipts for its opening weekend were significantly below the opening-
14 weekend performance of Marvel’s previous films and have “suffered [a] steeper-than-normal
15 decline[]” since then. In short, Disney’s strategy to lure viewers away from the theatres and
16 toward Disney+ worked.

17 40. There can be no doubt that Disney’s conduct was knowing and intentional.
18 Indeed, as recently as March 1, 2021, Mr. Chapek publicly acknowledged that shortening or
19 eliminating the standard exclusive theatrical window could “cut the legs off a theatrical exhibition
20 run.” Yet he and Disney have done just that, notwithstanding (and in disregard of) Marvel’s
21 contractual promises.

22 41. This negative impact upon traditional WWBO receipts is exacerbated by the
23 Disney+ Premier Access model, which will allow viewers who pay the Premier Access fee to re-
24 watch the Picture an unlimited number of times so long as they remain subscribed to Disney+.

25 42. Traditionally, if a moviegoer enjoyed a film enough to see it a second time, he or
26 she would have to either buy another theatre ticket or wait to buy the film on home video,
27 electronic-sell-through (iTunes), or some other form of distribution after the theatrical window
28 concluded. And historically there was no shortage of Marvel superfans willing to do so. Indeed,

1 movie-ticket service Fandango announced that in the first week alone, *Avengers: Endgame* saw
2 85% more repeat viewers than *Avengers: Infinity War*. Marvel itself has banked on these repeat
3 viewers in the past, having re-released *Avengers: Endgame* with seven minutes of additional
4 footage in an explicit bid to draw in enough additional ticket sales to make the film the highest-
5 grossing of all time. In fact, the Guinness World Record for the most times seeing the same film
6 in theaters is held by a Marvel fan who saw *Avengers: Endgame* 191 times in theatres; the
7 previous record was held by a fan who saw *Avengers: Infinity War* 103 times.

8 43. But with Premier Access, there are no repeat ticket sales. Subscribers pay a one-
9 time fee to view the Picture as many times as they want. It is tantamount to handing each
10 moviegoer a free DVD on their way out of the theatre. On top of that, unlike in the theatres, a
11 single Premier Access purchase of the Picture can be shared with tens if not hundreds of would-
12 be paying moviegoers whose ticket buying would have generated WWBO. Still other viewers
13 will forego the theatre *and* the \$30 Premier Access fee because they know they can simply wait
14 what is widely expected to be just 90 days to access the Picture on Disney+ through a regular \$8
15 monthly subscription. And millions of others who would have watched in the theatres will
16 instead view the Picture on perfect digital pirated copies—all made possible by Disney’s decision
17 to release the Picture “day-and-date” on Disney+. Indeed, *Black Widow* was the No. 1 pirated
18 title of the July 19 week, per the news site TorrentFreak. All of this has undermined the
19 consideration promised to Ms. Johansson in her Agreement and ignores Marvel’s recognition that
20 her “whole deal is based on the premise that the film would be widely theatrically released like
21 our other pictures.”

22 44. Adding insult to injury, Ms. Johansson has spent the last several months fulfilling
23 her own obligation under the Agreement to promote the Picture—and therefore, by association,
24 its release on Disney+. In other words, Disney has enjoyed the benefits of having one of
25 Hollywood’s top actresses promote its wholly owned subscription service at no additional cost to
26 Disney, and with the intended effect of taking money out of that actress’ own pocket.

27 45. On information and belief, Marvel’s decision to release the Picture simultaneously
28 in theatres and on Disney+ Premier Access—if it can be called Marvel’s decision at all—was the

1 direct result of Disney’s tortious interference with the Agreement. Absent this interference, it
2 was Marvel’s intent and desire to release the Picture exclusively in theatres at a time that would
3 have maximized box office receipts and, therefore, Marvel’s and Ms. Johansson’s profits from the
4 Picture. The only reason Marvel did not wait for a more opportune time to release the Picture
5 exclusively in theatres as intended is because it was induced or forced by Disney to release it day-
6 and-date on Disney+ Premier Access to drive profits to Disney at Ms. Johansson’s expense.

7 **FIRST CAUSE OF ACTION**

8 **Intentional Interference with Contractual Relations**

9 46. Plaintiff incorporates by reference and realleges each and every allegation in
10 paragraphs 1 through 45 of this Complaint, inclusive, as though fully set forth herein.

11 47. Plaintiff and Marvel were parties to the Agreement, which is a valid and binding
12 contract.

13 48. At all relevant times, Disney was aware of the Agreement and its terms.

14 49. On information and belief, Disney intentionally and improperly induced Marvel to
15 breach its agreement with Plaintiff by releasing the film on Disney+ simultaneously with its
16 release in theatres, in violation of the Agreement which required a “theatrical release of the
17 Picture” as the parties understood that term at the time of contracting, meaning an exclusive
18 theatrical release of the Picture. But for Disney’s actions, Marvel would not have breached the
19 Agreement.

20 50. Through the conduct described above, Disney intended to disrupt or prevent
21 Marvel’s performance under the Agreements, and did disrupt or prevent that performance.

22 51. Through its conduct, Disney caused damage to Plaintiff by, among other things,
23 cannibalizing box office receipts for the Picture and reducing Plaintiff’s deferred compensation
24 and box office bonuses under the Agreement, in an amount to be proven at trial.

25 52. Disney’s conduct was a substantial factor in causing Plaintiff’s harm.

26 53. In engaging in the misconduct alleged herein, Disney acted with malice,
27 oppression, or fraud, and in willful disregard of Plaintiff’s rights and interests, thus entitling
28

1 Plaintiff to an award of punitive damages in an amount appropriate to punish or make an example
2 of Disney pursuant to Civil Code § 3294.

3 **SECOND CAUSE OF ACTION**

4 **Inducing Breach of Contract**

5 54. Plaintiff incorporates by reference and realleges each and every allegation in
6 paragraphs 1 through 45 of this Complaint, inclusive, as though fully set forth herein.

7 55. Plaintiff and Marvel were parties to the Agreement, which is a valid and binding
8 contract.

9 56. At all relevant times, Disney was aware of the Agreement and its terms.

10 57. As set forth above, Marvel breached the Agreement, including its implied
11 covenants of good faith and fair dealing, by releasing the film on Disney+ simultaneously with its
12 release in theatres, in violation of the Agreement which required a “theatrical release of the
13 Picture” as the parties understood that term at the time of contracting, meaning an exclusive
14 theatrical release of the Picture.

15 58. Disney intended to influence, direct, induce, or cause Marvel to commit the above-
16 described breaches because Disney knew it would benefit from such breaches. Among other
17 benefits, Disney benefited by driving would-be theatre-goers to its wholly owned streaming
18 platform, Disney+, allowing Disney to profit not only from the \$30 Premier Access fee for the
19 Picture but also from the subscription revenue derived from customers who either subscribed for
20 the first time or maintained their existing subscriptions in order to watch the Picture from their
21 own homes the same day it was released in theatres. Disney will continue to profit from those
22 subscribers who maintain their subscriptions in order to retain access to the Picture after
23 purchasing it via Premier Access.

24 59. Through its conduct, Disney caused Marvel to breach the Agreement as set forth
25 above. But for the influence or direction of Disney, Marvel would have had no incentive, basis,
26 and/or ability to collude with Disney; rather, absent such collusion, Marvel’s intent and desire
27 would have been to release the Picture exclusively in theatres for an amount of time that would
28 have maximized the box office receipts of the Picture.

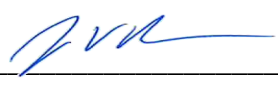
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DEMAND FOR JURY TRIAL

Plaintiff Periwinkle Entertainment, Inc., f/s/o Scarlett Johansson hereby demands a trial by jury in this matter.

Dated: July 29, 2021
Los Angeles, CA

KASOWITZ BENSON TORRES LLP

By:  _____

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