

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE

2. PLEASE TYPE OR PRINT

3. STAPLE ALL ADDITIONAL PAGES

| | | |
|---|--|--|
| Case Caption: Anas Osama Ibrahim Abdin | District Court or Agency: Southern District of NY | Judge: Lorna G. Schofield |
| v. CBS Broadcasting, Inc., et al. | Date the Order or Judgment Appealed from was Entered on the Docket: 9/20/19 | District Court Docket No.: 1:18-cv-07543 |
| | Date the Notice of Appeal was Filed: 9/30/19 | Is this a Cross Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

| | | | | | |
|---|--|----------|----------------|----------|---------|
| Attorney(s) for Appellant(s): <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | Counsel's Name: John Johnson 447 Broadway, NY | Address: | Telephone No.: | Fax No.: | E-mail: |
| | | | | | |

| | | | | | |
|--|-----------------|----------|----------------|----------|---------|
| Attorney(s) for Appellee(s): <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant | Counsel's Name: | Address: | Telephone No.: | Fax No.: | E-mail: |
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| Has Transcript Been Prepared? yes | Approx. Number of Transcript Pages: 19 | Number of Exhibits Appended to Transcript: | Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.) |
|--------------------------------------|---|--|---|

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION

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|---|---|--|--|
| 1. <u>Federal Jurisdiction</u> | | 2. <u>Appellate Jurisdiction</u> | |
| <input type="checkbox"/> U.S. a party | <input type="checkbox"/> Diversity | <input checked="" type="checkbox"/> Final Decision | <input type="checkbox"/> Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b)) |
| <input checked="" type="checkbox"/> Federal question (U.S. not a party) | <input type="checkbox"/> Other (specify): _____ | <input type="checkbox"/> Interlocutory Decision Appealable As of Right | <input type="checkbox"/> Other (specify): _____ |

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

| PART B: DISTRICT COURT DISPOSITION (Check as many as apply) | | |
|--|--|---|
| 1. Stage of Proceedings <input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial | 2. Type of Judgment/Order Appealed <input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal <input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify): _____ | 3. Relief <input checked="" type="checkbox"/> Damages: <input type="checkbox"/> Sought: \$ <u>TBA</u> <input type="checkbox"/> Granted: \$ <u>0</u> <input type="checkbox"/> Denied: \$ <u>0</u> <input checked="" type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied |

PART C: NATURE OF SUIT (Check as many as apply)

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|---|---|--|---|
| 1. Federal Statutes <input type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input checked="" type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental <input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax | 2. Torts <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Assault / Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify): _____ | 3. Contracts <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable Instruments <input type="checkbox"/> Other Specify _____ | 4. Prisoner Petitions <input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other |
| 5. Other <input type="checkbox"/> Hague Int'l Child Custody Conv. <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____ | 6. General <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer | 7. Will appeal raise constitutional issue(s)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Will appeal raise a matter of first impression? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |

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|--|---|-----------|------------------|
| 1. Is any matter relative to this appeal still pending below? <input type="checkbox"/> Yes, specify: _____ <input checked="" type="checkbox"/> No | | | |
| 2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which: | | | |
| (A) Arises from substantially the same case or controversy as this appeal? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| (B) Involves an issue that is substantially similar or related to an issue in this appeal? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| If yes, state whether <input type="checkbox"/> "A," or <input type="checkbox"/> "B," or <input type="checkbox"/> both are applicable, and provide in the spaces below the following information on the <i>other</i> action(s): | | | |
| Case Name: | Docket No. | Citation: | Court or Agency: |
| Name of Appellant: | | | |
| Date: 11/7/19 | Signature of Counsel of Record: /Allan Chan/ | | |

NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT CIVIL
APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

ADDENDUM “A”

Description of the Nature of the Action

Plaintiff commenced the copyright action in the court below seeking damages in an amount to be determined at trial and a permanent injunction based on the defendants’ infringement of plaintiff’s copyrighted work. Said work culminated in a compilation of text, artwork, video. Plaintiff’s work is available on the internet and had developed a large cult following. Plaintiff developed original characters, that interacted with a stylized life size tardigrade which traveled through space. Plaintiff’s work was published and/or posted from 2014 through and including 2017. Plaintiffs’ use and/or publication of the work was prior to the infringement. Plaintiff asserted infringement based upon the copying of his original work, and the use of that original work to create a derivative work. Plaintiff asserted access to his work based on its availability on various well know gaming sites. Additionally, plaintiff provided evidence of the public’s confusion between the infringing work and plaintiff’s work. Based upon the defendant’s motion to dismiss the District Court held there was no substantial similarity as a matter of law.

The District Court’s Holding Below/The Result Below

The district court granted Defendant’s Motion to Dismiss.

Specifically, the district court concluded that Defendant’s work is not substantially similar to Plaintiff’s work as a matter of law. The district court recognized that Defendant’s current work is birthed from iconic piece of intellectual property, Star Trek; wherein aspects of the Plaintiff’s work is incorporated into the vast existing Star Trek universe. Such aspects in which Defendant’s own public statements declare that the alleged copied material, the spore drive symbolized by the tardigrade is a story device that propels the entire season of Star Trek Discovery. Nevertheless, the court ruled that elements within Defendant’s Star Trek Discovery season 1 which bear similarity to Plaintiff’s work was declared non copyrightable material, disparate or not essential. The district court’s analysis similarity for Plaintiff’s tardigrade utilized the “more discerning” standard of review. The district court’s determination of

similarity systematically dissected the Plaintiff's tardigrade into aspects of the: ability to travel in space, interact with other characters, size, color, and physical attributes. The district court rejected Plaintiff's assertion that work should not be dissected into components, and compared only those elements which are in themselves copyrightable. The district court ruled that Plaintiff's concepts are not original based upon two obscure references, "The Search for Wondla" and "Captain Tardigrade, thus rejecting Plaintiff's assertion that novelty is not a requirement of copyright protection. The district court concluded that physically attributes of Plaintiff's tardigrade creature are considered non-protectable facts, ignoring the creative expression of the Plaintiff. The district court further concluded that Plaintiff's additional characters were generalized non-protectable descriptions without consideration for the similarity of the likeness of their expression contained in Plaintiff's drawings.

Notice of Appeal & District Court Docket Sheet

Plaintiffs provide the Notice of Appeal entered September 30, 2019 and the District Court's docket sheet as Exhibits A & B, respectively

The September 20, 2019 District Court Order

Plaintiffs provide the September 20, 2019 Order of the United District Court Southern District of New York (Schofield, L.) as Exhibit C

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT CIVIL
APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

ADDENDUM “B”

List of Proposed Issues and Applicable Standard of Review

Issue 1: Whether two previous obscure works, “The Search for WondLa” and “Captain Tardigrade”, with conceptual similarities be relied upon to conclude a finding of non-copyrightability – do such conclusions impart a novelty standard on the Plaintiff?

Standard of Review: The Second Circuit reviews de novo legal conclusions.

Issue 2: Whether the district court erred by applying a “more discerning” standard instead of an “ordinary observer” standard to compare Plaintiff’s drawings because they are representations of a microscopic organism existing in nature?

Standard of Review: The Second Circuit reviews de novo legal conclusions.

Issue 3: Whether the district court erred by concluding non-copyrightability of Plaintiff’s wholly original, artistic renderings of characters, setting, scenes, and creatures with its own unique qualities within the medium of text, 2D artwork and video; based upon scenes a faire, scientific facts, and genericness; which their exceptions for copyrightability for the lack of creativity?

Standard of Review: The Second Circuit reviews de novo legal conclusions.

Issue 4: Whether the district court erred by dissecting Plaintiff’s works into individual components and comparing only those elements which are copyrightable?

Standard of Review: The Second Circuit reviews de novo legal conclusions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANAS OSAMA IBRAHIM ABDIN

(List the full name(s) of the plaintiff(s)/petitioner(s).)

1:19 CV 07543(LGS)()

-against-

NOTICE OF APPEAL

CBS Broadcasting, INC and/or

CBS Corp. and/or CBS ALL ACCESS ET AL.

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: ANAS OSAMA IBRAHIM

ABDIN

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the judgment order entered on: September 20, 2019

(date that judgment or order was entered on docket)

that: Granted Defendants Motion to Dismiss Pursuant to 12(b)(6)

(if the appeal is from an order, provide a brief description above of the decision in the order.)

September 30, 2019

Dated

Signature

John Johnson Esq. + William Chan, Esq.

Name (Last, First, MI)

30 WALL Street NY NY 8th 10005

Address

City

State

Zip Code

212 566 3019

Telephone Number

ChanEsq.@outlook.com/JohnEJ-1mw.com

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:18-cv-07543-LGS

Abdin v. CBS Broadcasting, Inc. et al
Assigned to: Judge Lorna G. Schofield
Case in other court: U.S.C.A. - 2nd Circ., 19-03160
Cause: 17:101 Copyright Infringement

Date Filed: 08/19/2018
Date Terminated: 09/23/2019
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

Anas Osama Ibrahim Abdin

represented by **Allan Chan**
Allan Chan & Assoc
225 Broadway Suite 700
New York, NY 10007
(917)-833-0818
Fax: (212)-202-5186
Email: achan@chanesq.com
ATTORNEY TO BE NOTICED

John Johnson
John Johnson & Associates
25 Broadway 9th Floor
New York, NY 10004
212-566-3019
Fax: 347-619-0694
Email: john@jj-law.com
ATTORNEY TO BE NOTICED

V.

Defendant

CBS Broadcasting Inc

represented by **Wook J Hwang**
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345 Park Avenue
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(212) 407-4967
Fax: (212) 202-5183
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jonathan Zavin
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
(212) 407-4161
Fax: (212) 407-4990

Email: jzavin@loeb.com
 ATTORNEY TO BE NOTICED

Defendant**Netflix, Inc.**

represented by **Wook J Hwang**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Jonathan Zavin
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant**CBS Corp.**

represented by **Wook J Hwang**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Jonathan Zavin
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant**CBS Interactive, Inc.**

represented by **Wook J Hwang**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Jonathan Zavin
 (See above for address)
 ATTORNEY TO BE NOTICED

ADR Provider**CBS ALL ACCESS**

| Date Filed | # | Docket Text |
|------------|-------------------|--|
| 08/19/2018 | 1 | COMPLAINT against CBS Broadcasting Inc, Netflix, Inc.. (Filing Fee \$ 400.00, Receipt Number 0208-15468262) Document filed by Anas Abdin.(Johnson, John) (Entered: 08/19/2018) |
| 08/20/2018 | | ***NOTICE TO ATTORNEY TO ELECTRONICALLY FILE CIVIL COVER SHEET. Notice to Attorney John Johnson. Attorney must electronically file the Civil Cover Sheet. Use the event type Civil Cover Sheet found under the event list Other Documents. (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | ***NOTICE TO ATTORNEY TO SUBMIT AO 121 FORM COPYRIGHT. Notice to Attorney John Johnson to submit a completed AO 121 Form Copyright to court for review. Use the event type AO 121 Copyright - Notice of Submission by Attorney found under the event list Other Documents. (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | ***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney John Johnson. The party information for the following party/parties has |

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| | | been modified: Anas Osama Ibrahim Abdin; CBS Broadcasting, Inc., Netflix, Inc.. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error. (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | ***NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney John Johnson. The following case opening statistical information was erroneously selected/entered: County code Albany. The following correction(s) have been made to your case entry: the County code has been modified to XX Out of U.S.. (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Naomi Reice Buchwald. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | Magistrate Judge James L. Cott is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (sj) (Entered: 08/20/2018) |
| 08/20/2018 | | Case Designated ECF. (sj) (Entered: 08/20/2018) |
| 08/20/2018 | 2 | CIVIL COVER SHEET filed. (Johnson, John) (Entered: 08/20/2018) |
| 08/20/2018 | 3 | AO 121 FORM COPYRIGHT - NOTICE OF SUBMISSION BY ATTORNEY. AO 121 Form Copyright for case opening submitted to court for review.(Johnson, John) (Entered: 08/20/2018) |
| 08/22/2018 | 4 | REQUEST FOR ISSUANCE OF SUMMONS as to CBS Broadcasting, Inc. Netflix, Inc., re: 1 Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 08/22/2018) |
| 08/23/2018 | 5 | ELECTRONIC SUMMONS ISSUED as to CBS Broadcasting Inc, Netflix, Inc.. (dnh) (Entered: 08/23/2018) |
| 08/23/2018 | 6 | FILING ERROR - DEFICIENT PLEADING - FILED AGAINST PARTY ERROR - AMENDED COMPLAINT amending 1 Complaint against CBS Corporation with JURY DEMAND.Document filed by Anas Osama Ibrahim Abdin. Related document: 1 Complaint.(Johnson, John) Modified on 8/24/2018 (pc). (Entered: 08/23/2018) |
| 08/23/2018 | 7 | REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting, Inc. and/or CBS Corp. Netflix, Inc., re: 6 Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 08/23/2018) |
| 08/24/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney John Johnson to RE-FILE re: Document No. 6 Amended Complaint,. The filing is deficient for the following reason(s): all of the parties listed on the pleading were not entered on CM ECF; the wrong party/parties whom the pleading is against were selected;. Docket the event type Add Party to Pleading found under the event list Complaints and Other Initiating Documents.. Re-file the pleading using the event type Agriculture Appeal found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. (pc) (Entered: 08/24/2018) |
| 08/24/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR |

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|------------|-----------|--|
| | | ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. <u>7</u> Request for Issuance of Amended Summons. The filing is deficient for the following reason(s): The summons requested was not processed due to the deficient pleading. Please file your request for summons when you correct and refile your pleading. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (pc) (Entered: 08/24/2018) |
| 08/24/2018 | <u>8</u> | AMENDED COMPLAINT amending <u>6</u> Amended Complaint, against CBS Broadcasting Inc, CBS Corporation, Netflix, Inc. with JURY DEMAND. Document filed by Anas Osama Ibrahim Abdin. Related document: <u>6</u> Amended Complaint,.(Johnson, John) (Entered: 08/24/2018) |
| 08/24/2018 | <u>9</u> | FILING ERROR - DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS PDF ERROR REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting, Inc. CBS Corporation Netflix, Inc., re: <u>8</u> Amended Complaint, <u>6</u> Amended Complaint,. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 8/24/2018 (sj). (Entered: 08/24/2018) |
| 08/24/2018 | | ***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney John Johnson. The party information for the following party/parties has been modified: CBS Corp.. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party role was entered incorrectly. (sj) (Entered: 08/24/2018) |
| 08/24/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. <u>9</u> Request for Issuance of Amended Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; Only parties previously issued a summons require an amended summons and "AMENDED" must also be stated on PDF; newly added defendant must be on a separate summons and request for issuance of summons. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (sj) (Entered: 08/24/2018) |
| 08/27/2018 | <u>10</u> | FILING ERROR - DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS PDF ERROR REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting Inc. Netflix, Inc., re: <u>8</u> Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 8/27/2018 (sj). (Entered: 08/27/2018) |
| 08/27/2018 | <u>11</u> | FILING ERROR - DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS PDF ERROR REQUEST FOR ISSUANCE OF SUMMONS as to CBS Corporation, re: <u>8</u> Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 8/27/2018 (sj). (Entered: 08/27/2018) |
| 08/27/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. <u>11</u> Request for Issuance of Summons, <u>10</u> Request for Issuance of Amended Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; caption must match exactly the caption of Amended pleading. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (sj) (Entered: 08/27/2018) |
| 08/28/2018 | <u>12</u> | REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting INC |

| | | |
|------------|--------------------|---|
| | | and/or CBS Corp. Netflix, INC, re: 8 Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 08/28/2018) |
| 08/28/2018 | 13 | FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST - PREVIOUSLY ISSUED TO PARTY - REQUEST FOR ISSUANCE OF SUMMONS as to CBS CORP., re: 8 Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 8/29/2018 (dnh). (Entered: 08/28/2018) |
| 08/29/2018 | 14 | ELECTRONIC AMENDED SUMMONS ISSUED as to CBS Broadcasting Inc, CBS Corp., Netflix, Inc.. (dnh) (Entered: 08/29/2018) |
| 08/29/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. 13 Request for Issuance of Summons. The filing is deficient for the following reason(s): The wrong event type was used to file the request for issuance of summons; This party was previously issued a summons. If you require a new summons you must request an Amended Summons. Please include the word "Amended" on the summons. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (dnh) (Entered: 08/29/2018) |
| 08/31/2018 | 15 | AO 121 FORM COPYRIGHT - CASE OPENING - SUBMITTED. In compliance with the provisions of 17 U.S.C. 508, the Register of Copyrights is hereby advised that a court action has been filed on the following copyright(s) in the U.S. District Court Southern District of New York. Form e-mailed to Register of Copyrights. (dnh) (Entered: 08/31/2018) |
| 09/19/2018 | 16 | AFFIDAVIT OF SERVICE of Summons and Amended Complaint. CBS Broadcasting Inc served on 9/11/2018, answer due 10/2/2018. Service was accepted by Legal representative of CSC. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 09/19/2018) |
| 09/19/2018 | 17 | AFFIDAVIT OF SERVICE of Summons and Amended Complaint. CBS Corp. served on 9/11/2018, answer due 10/2/2018. Service was accepted by Legal Representative of CSC. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 09/19/2018) |
| 09/25/2018 | 18 | AFFIDAVIT OF SERVICE of Summons and Amended Complaint. Netflix, Inc. served on 9/12/2018, answer due 10/3/2018. Service was accepted by Sattie Jarman Legal Clerk CT Corp.. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 09/25/2018) |
| 10/01/2018 | 19 | NOTICE OF CHANGE OF ADDRESS by John Johnson on behalf of Anas Osama Ibrahim Abdin. New Address: John Johnson & Associates, 25 Broadway, 9th Floor, New York, New York, USA 10004, 2125663019. (Johnson, John) (Entered: 10/01/2018) |
| 10/01/2018 | 20 | PROPOSED STIPULATION AND ORDER. Document filed by CBS Broadcasting Inc, CBS Corp., Netflix, Inc.. (Hwang, Wook) (Entered: 10/01/2018) |
| 10/01/2018 | 21 | STIPULATION AND ORDER: IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, that the time for Defendants CBS Broadcasting, Inc., CBS Corp. and Netflix, Inc. to answer, move or otherwise respond to the Amended Verified Complaint [Dkt. No. 8] in this action is hereby extended from October 2, 2018 (in the case of CBS Broadcasting, Inc. and CBS Corp.) and October 3, 2018 (in the case of Netflix, Inc.) to and through November 6, 2018. This is the first request for an extension of Defendants' time to answer, move or otherwise respond to the Amended Verified Complaint. SO ORDERED., CBS Broadcasting Inc answer due 11/6/2018; CBS Corp. answer due 11/06/2018; Netflix, Inc. answer due 11/6/2018. (Signed by Judge Naomi |

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| | | Reice Buchwald on 10/01/2018) (ama) Modified on 10/2/2018 (ama). (Entered: 10/02/2018) |
| 10/01/2018 | | Set/Reset Deadlines: CBS Broadcasting Inc answer due 11/6/2018; CBS Corp. answer due 11/6/2018. (ama) (Entered: 10/02/2018) |
| 10/24/2018 | 22 | FIRST LETTER MOTION for Conference re: 8 Amended Complaint 2 addressed to Judge Naomi Reice Buchwald from John Johnson dated October 22, 2018. Document filed by Anas Osama Ibrahim Abdin. (Attachments: # 1 Exhibit proposed amendment, # 2 Exhibit Copyright certificate, # 3 Exhibit Copyright Filing, # 4 Exhibit Article, # 5 Exhibit Article, # 6 Exhibit Article, # 7 Exhibit Article, # 8 Exhibit Article)(Johnson, John) (Entered: 10/24/2018) |
| 10/25/2018 | 23 | NOTICE OF APPEARANCE by Allan Chan on behalf of Anas Osama Ibrahim Abdin. (Chan, Allan) (Entered: 10/25/2018) |
| 10/29/2018 | 24 | PROPOSED STIPULATION AND ORDER. Document filed by Anas Osama Ibrahim Abdin. (Attachments: # 1 Exhibit Proposed Second Amended Complaint) (Johnson, John) (Entered: 10/29/2018) |
| 10/30/2018 | 25 | STIPULATION AND ORDER FOR FILING OF SECOND AMENDED COMPLAINT: IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, 1. Defendants hereby consent to the filing of the Second Amended Complaint (the "SAC") in the form annexed hereto, subject to the entry of this Stipulation and Order as an order of the Court. 2. Upon Plaintiff's filing of the SAC, the SAC shall be deemed served upon all Defendants named in the SAC, including newly added Defendant CBS Interactive Inc. 3. Defendants shall have 30 days from the date of the filing of the SAC to answer, move or otherwise respond to the SAC. 4. Except as expressly set forth herein, Defendants reserve and do not waive any and all defenses, objections, claims, rights and remedies with respect to the SAC or otherwise in connection with this action. SO ORDERED. (Signed by Judge Naomi Reice Buchwald on 10/30/2018) (jca) (Entered: 10/30/2018) |
| 11/01/2018 | 26 | SECOND AMENDED COMPLAINT amending 8 Amended Complaint against CBS Broadcasting Inc, CBS Corp., Netflix, Inc., CBS Interactive, Inc. with JURY DEMAND.Document filed by Anas Osama Ibrahim Abdin. Related document: 8 Amended Complaint. (Attachments: # 1 Exhibit Copyright Registration, # 2 Exhibit Copyright Filing, # 3 Exhibit Some Relevant Similarities, # 4 Exhibit Screen Rant Page, # 5 Exhibit Articles, # 6 Exhibit Advocate Magazine, # 7 Exhibit Rock Paper Shotgun) (Johnson, John) (Entered: 11/01/2018) |
| 11/02/2018 | 27 | FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to CBS Broadcasting, Inc. and/or CBS Corp.and/or CBS INTERACTIVE, INC and/or NETFLIX,INC., re: 26 Amended Complaint,, Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 11/5/2018 (pc). (Entered: 11/02/2018) |
| 11/05/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. 27 Request for Issuance of Summons,. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; the date field on the official A.O. Summons form was completed by the attorney; Do not modify or cross out the text on the summons form in any such manner. Multiple parties were previously issued a summons. If you require a new summons for these parties, they will require a separate amended summons. (pc) (Entered: 11/05/2018) |
| 11/05/2018 | 28 | FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR |

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| | | - REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting, Inc. and/or CBS Corp. and/or CBS Interactive, Inc. and/or Netflix, Inc., re: 26 Amended Complaint,, Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 11/6/2018 (pc). (Entered: 11/05/2018) |
| 11/06/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. 28 Request for Issuance of Amended Summons,. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; Please include the word "Amended" in front of "Summons in a Civil Action". CBS Corp. and CBS Interactive, Inc. were not previously issued summons. Caption title is incorrect. (pc) Modified on 11/6/2018 (pc). (Entered: 11/06/2018) |
| 11/06/2018 | 29 | FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting, Inc. and/or CBS Corp. and/or CBS Interactive, Inc. and/or Netflix, Inc., re: 26 Amended Complaint,, Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 11/7/2018 (pc). (Entered: 11/06/2018) |
| 11/07/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. 29 Request for Issuance of Amended Summons,. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; CBS Corp. and CBS Interactive, Inc. were not previously issued summons, caption title is incorrect;. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (pc) (Entered: 11/07/2018) |
| 11/07/2018 | 30 | FILING ERROR - DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS PDF ERROR REQUEST FOR ISSUANCE OF SUMMONS as to CBS INTERACTIVE, INC, re: 26 Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 11/8/2018 (sj). (Entered: 11/07/2018) |
| 11/07/2018 | 31 | FILING ERROR - DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS PDF ERROR REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS Broadcasting, Inc. and/or CBS Corp. and/or Netflix, Inc. re: 26 Amended Complaint. Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) Modified on 11/8/2018 (sj). (Entered: 11/07/2018) |
| 11/08/2018 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney John Johnson to RE-FILE Document No. 30 Request for Issuance of Summons, 31 Request for Issuance of Amended Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; CAPTION must match exactly as pleading listing all defendants. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (sj) (Entered: 11/08/2018) |
| 11/09/2018 | 32 | REQUEST FOR ISSUANCE OF AMENDED SUMMONS as to CBS BROADCASTING, INC. and/or CBS CORP. and/or CBS INTERACTIVE, INC. NETFLIX, INC., re: 26 Amended Complaint,, Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 11/09/2018) |
| 11/13/2018 | | ***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to |

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| | | attorney John Johnson. The party information for the following party/parties has been modified: CBS Interactive, Inc.. The information for the party/parties has been modified for the following reason/reasons: party role was entered incorrectly;. (pc) (Entered: 11/13/2018) |
| 11/13/2018 | 33 | ELECTRONIC AMENDED SUMMONS ISSUED as to CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (pc) (Entered: 11/13/2018) |
| 12/03/2018 | 34 | LETTER addressed to Judge Naomi Reice Buchwald from Wook Hwang dated 12/3/2018 re: Requesting Pre-Motion Conference. Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 12/03/2018) |
| 12/03/2018 | 35 | FILING ERROR NOT ALL CORPORATE PARENTS/OTHER AFFILIATES WERE ADDED - RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Other Affiliate CBS Corporation for CBS Broadcasting Inc; Corporate Parent CBS Corporation for CBS Interactive, Inc.. Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) Modified on 12/4/2018 (lb). (Entered: 12/03/2018) |
| 12/03/2018 | 36 | NOTICE OF APPEARANCE by Jonathan Zavin on behalf of CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Zavin, Jonathan) (Entered: 12/03/2018) |
| 12/03/2018 | 37 | NOTICE OF APPEARANCE by Wook J Hwang on behalf of CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Hwang, Wook) (Entered: 12/03/2018) |
| 12/04/2018 | | ***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney Wook J Hwang to RE-FILE Document 35 Rule 7.1 Corporate Disclosure Statement,. ERROR(S): Not All Corporate Parents were added. Please re-file this document and when prompted: Are there any corporate parents or other affiliates?, select the YES radio button and enter the Corporate Parent(s) or Affiliate(s) one party name at a time. (lb) (Entered: 12/04/2018) |
| 12/04/2018 | 38 | RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Other Affiliate National Amusements, Inc. for CBS Corp. ; Other Affiliate CBS Corporation for CBS Broadcasting Inc; Corporate Parent CBS Corporation for CBS Interactive, Inc.. Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 12/04/2018) |
| 12/05/2018 | 39 | LETTER MOTION for Conference re: 34 Letter addressed to Judge Naomi Reice Buchwald from John Johnson dated 12/5/2018. Document filed by Anas Osama Ibrahim Abdin. Return Date set for 12/5/2018 at 04:58 PM.(Johnson, John) (Entered: 12/05/2018) |
| 12/11/2018 | | NOTICE OF CASE REASSIGNMENT to Judge Lorna G. Schofield. Judge Naomi Reice Buchwald is no longer assigned to the case. (jc) (Entered: 12/11/2018) |
| 12/12/2018 | 40 | ORDER: Initial Conference set for 12/18/2018 at 11:00 AM in Courtroom 1106, Thurgood Marshal Courthouse, 40 Foley Square, New York, NY 10007 before Judge Lorna G. Schofield. (As further set forth in this Order.) (Signed by Judge Lorna G. Schofield on 12/12/2018) (cf) (Entered: 12/12/2018) |
| 12/13/2018 | 41 | ORDER: It is hereby ORDERED that if there is no scheduling order in place, the parties shall prepare a joint Proposed Civil Case Management Plan and Scheduling Order in the form available at the Court's website (http://nysd.uscourts.gov/judge/Schofield) and append it to their joint letter to be filed no later December 17, 2018, at noon. (Signed by Judge Lorna G. Schofield on 12/13/2018) (cf) (Entered: 12/13/2018) |
| 12/13/2018 | 42 | ORDER: It is hereby ORDERED that the conference in this matter previously scheduled for December 18, 2018 at 11:00 a.m., is rescheduled for December 18, 2018 at 10:45 a.m., due to a scheduling conflict. Any parties not located within the metropolitan area who |

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| | | wish to participate telephonically may do so by advising the Court, convening all parties on the line and calling chambers at (212) 805-0288 from a landline. Initial Conference set for 12/18/2018 at 10:45 AM before Judge Lorna G. Schofield. (Signed by Judge Lorna G. Schofield on 12/13/2018) (cf) (Entered: 12/13/2018) |
| 12/13/2018 | 43 | LETTER MOTION to Adjourn Conference <i>scheduled for 12/18/2018</i> addressed to Judge Lorna G. Schofield from Wook Hwang dated 12/13/2018. Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 12/13/2018) |
| 12/14/2018 | 44 | ORDER granting 43 Letter Motion to Adjourn Conference. Application GRANTED. The December 18, 2018, initial pretrial conference and pre-motion conference is adjourned to January 8, 2019, at 11:00 a.m. The parties shall file their status letter and proposed case management plan by January 2, 2019, at noon. Initial Conference set for 1/8/2019 at 11:00 AM before Judge Lorna G. Schofield. Pre-Motion Conference set for 1/8/2019 at 11:00 AM before Judge Lorna G. Schofield. (Signed by Judge Lorna G. Schofield on 12/14/2018) (cf) (Entered: 12/14/2018) |
| 01/02/2019 | 45 | STATUS REPORT. <i>Joint Status Letter and Proposed Civil Case Management Plan</i> Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Hwang, Wook) (Entered: 01/02/2019) |
| 01/04/2019 | 46 | ORDER: It is hereby ORDERED that the conference in this matter previously scheduled for January 8, 2019 at 11:00 a.m., is rescheduled for January 8, 2019 at 10:40 a.m., due to a scheduling conflict. Any parties not located within the metropolitan area who wish to participate telephonically may do so by advising the Court, convening all parties on the line and calling chambers at (212) 805-0288 from a landline. (Initial Conference set for 1/8/2019 at 10:40 AM before Judge Lorna G. Schofield., Pre-Motion Conference set for 1/8/2019 at 10:40 AM before Judge Lorna G. Schofield.) (Signed by Judge Lorna G. Schofield on 1/4/2019) (cf) (Entered: 01/04/2019) |
| 01/08/2019 | | Minute Entry for proceedings held before Judge Lorna G. Schofield: Pre-Motion Conference held on 1/8/2019. (jcs) (Entered: 01/08/2019) |
| 01/08/2019 | 47 | CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER: All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. See 28 U.S.C. § 636(c). Fact Discovery 3/19/2019 -- on the limited issue of whether Defendants accessed or viewed Plaintiff's work on the "STREAM" website and any action or activity with respect to that viewing, including voting. The parties may not conduct depositions. This case is to be tried to a jury. By 2/12/2019, the parties shall submit a joint status letter, as outlined in Individual Rule IV.A.2. The Clerk of Court is directed to enter the dates under paragraphs 5, 6, 8(a), 9(b)-(c) and 13(a)-(c) into the Court's calendar. (Fact Discovery due by 3/19/2019.) (Signed by Judge Lorna G. Schofield on 1/8/2019) (rro) (Entered: 01/08/2019) |
| 01/08/2019 | 48 | ORDER: WHEREAS, for the reasons stated at the conference held on January 8, 2019; it is hereby ORDERED that Plaintiff shall file his Third Amended Complaint, if any, by January 15, 2019. It is further ORDERED that Defendants shall file their motion to dismiss, if any, by February 12, 2019, not to exceed 25 pages. Plaintiff shall file his opposition to Defendants' motion to dismiss, if any, by March 5, 2019, not to exceed 25 pages. Defendants shall file their reply, if any, by March 12, 2019, not to exceed 10 pages. The parties shall comply with the Court's Individual Rules, including exhibit limits and courtesy copies. (Amended Pleadings due by 1/15/2019., Motions due by 2/12/2019., Responses due by 3/5/2019, Replies due by 3/12/2019.) (Signed by Judge Lorna G. Schofield on 1/8/2019) (mro) Modified on 1/8/2019 (mro). (Entered: 01/08/2019) |
| 01/15/2019 | 49 | FILING ERROR - DEFICIENT PLEADING - FILED AGAINST PARTY ERROR |

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| | | THIRD AMENDED COMPLAINT amending 26 Amended Complaint against CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc. with JURY DEMAND.Document filed by Anas Osama Ibrahim Abdin. Related document: 26 Amended Complaint. (Attachments: # 1 Exhibit Copyright Registration, # 2 Exhibit copyright Deposit, # 3 Exhibit Artwork Comparison, # 4 Exhibit Article, # 5 Exhibit Article, # 6 Exhibit Article, # 7 Exhibit Article, # 8 Exhibit Ordinary Observer)(Johnson, John) Modified on 1/16/2019 (sj). (Entered: 01/15/2019) |
| 01/16/2019 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney John Johnson to RE-FILE re: Document No. 49 Amended Complaint. The filing is deficient for the following reason(s): all of the parties listed on the pleading were not entered on CM ECF (CBS All Access must be added); the wrong party/parties whom the pleading is against were selected. Docket the event type Add Party to Pleading found under the event list Complaints and Other Initiating Documents. Re-file the pleading using the event type Third Amended Complaint found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. (sj) (Entered: 01/16/2019) |
| 01/17/2019 | 50 | FILING ERROR - DEFICIENT PLEADING - FRCP RULE 15 NON-COMPLIANCE -THIRD AMENDED COMPLAINT amending 49 Amended Complaint,, against CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc., CBS ALL ACCESS with JURY DEMAND.Document filed by Anas Osama Ibrahim Abdin. Related document: 49 Amended Complaint,,. (Attachments: # 1 Exhibit Copyright Registration, # 2 Exhibit Copyright Deposit, # 3 Exhibit Artwork Comparison, # 4 Exhibit Article, # 5 Exhibit Article, # 6 Exhibit Article, # 7 Exhibit Article, # 8 Exhibit Ordinary Observer) (Johnson, John) Modified on 1/18/2019 (pc). (Entered: 01/17/2019) |
| 01/18/2019 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney John Johnson re: Document No. 50 Amended Complaint,,. The filing is deficient for the following reason(s): Court's leave has not been granted..The amended complaint was filed correctly after the due date. Permission from Chambers will need to be acquired to accept the correctly filed amended complaint File the Exhibit to Pleading event found under the event list Other Documents and attach either opposing party's written consent or Court's leave. (pc) (Entered: 01/18/2019) |
| 01/18/2019 | 51 | EXHIBIT TO PLEADING re: 50 Amended Complaint,,. Document filed by Anas Osama Ibrahim Abdin.(Johnson, John) (Entered: 01/18/2019) |
| 01/28/2019 | 52 | TRANSCRIPT of Proceedings re: conference held on 1/8/2019 before Judge Lorna G. Schofield. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/19/2019. Redacted Transcript Deadline set for 2/28/2019. Release of Transcript Restriction set for 4/29/2019.(McGuirk, Kelly) (Entered: 01/28/2019) |
| 01/28/2019 | 53 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a conference proceeding held on 1/8/19 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 01/28/2019) |
| 02/12/2019 | 54 | LETTER MOTION for Leave to File Hard copies of DVDs that are Exhibits to Wook Hwang Declaration of 2/12/2019 addressed to Judge Lorna G. Schofield from Wook |

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| | | Hwang dated 2/12/2019. Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 02/12/2019) |
| 02/12/2019 | 55 | MOTION to Dismiss . Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 02/12/2019) |
| 02/12/2019 | 56 | MEMORANDUM OF LAW in Support re: 55 MOTION to Dismiss . . Document filed by CBS ALL ACCESS, CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Hwang, Wook) (Entered: 02/12/2019) |
| 02/12/2019 | 57 | DECLARATION of Wook Hwang in Support re: 55 MOTION to Dismiss .. Document filed by CBS ALL ACCESS, CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14)(Hwang, Wook) (Entered: 02/12/2019) |
| 02/12/2019 | 58 | STATUS REPORT. <i>(Joint) Concerning the limited discovery that has been ordered to take place in this action</i> Document filed by CBS ALL ACCESS, CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc..(Hwang, Wook) (Entered: 02/12/2019) |
| 02/13/2019 | 59 | ORDER granting 54 Letter Motion for Leave to File Hard copies of DVDs that are Exhibits to Wook Hwang Declaration of 2/12/2019 addressed to Judge Lorna G. Schofield from Wook Hwang dated 2/12/2019. Application GRANTED. Defendants are granted leave to file the hard copy DVDs. (Signed by Judge Lorna G. Schofield on 2/13/2019) (rj) (Entered: 02/13/2019) |
| 03/01/2019 | 60 | FIRST LETTER MOTION to Compel CBS, Inc. et al. to Produce Documents and Answers addressed to Judge Lorna G. Schofield from John Johnson dated February 27, 2019. Document filed by Anas Osama Ibrahim Abdin. (Attachments: # 1 Exhibit request to resolve issues, # 2 Exhibit Documents interrogatories, # 3 Exhibit IP Address request) (Johnson, John) (Entered: 03/01/2019) |
| 03/04/2019 | 61 | ORDER granting 60 Letter Motion to Compel. Application GRANTED. This request does not comply with the Court's Individual Rule III.C.3 -- specifically, "[a]ny party wishing to raise a discovery dispute with the Court first shall confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute." The parties shall speak live (by telephone or in person) and confer in good faith, in person or by telephone, no later than March 6, 2019, in an effort to resolve this dispute. If it is not resolved, Defendants shall file a letter response (in compliance with the Court's individual rules) by March 8, 2019. A conference will be held on March 12, 2019, at 10:30. (Signed by Judge Lorna G. Schofield on 3/4/2019) (cf) (Entered: 03/04/2019) |
| 03/04/2019 | | Set/Reset Hearings: Status Conference set for 3/12/2019 at 10:30 AM before Judge Lorna G. Schofield. (cf) (Entered: 03/04/2019) |
| 03/05/2019 | 62 | FIRST MEMORANDUM OF LAW in Opposition re: 55 MOTION to Dismiss . . Document filed by Anas Osama Ibrahim Abdin. (Attachments: # 1 Exhibit Life Sized, # 2 Exhibit Similarities, # 3 Affidavit Anas Abdin)(Johnson, John) (Entered: 03/05/2019) |
| 03/08/2019 | 63 | LETTER RESPONSE to Motion addressed to Judge Lorna G. Schofield from Wook Hwang dated 3/8/2019 re: 60 FIRST LETTER MOTION to Compel CBS, Inc. et al. to Produce Documents and Answers addressed to Judge Lorna G. Schofield from John Johnson dated February 27, 2019. <i>to address certain representations made in the letter motion, and to additionally advise the court, that the issues raised in the letter motion have been resolved, so with the consent of plaintiff's counsel, to jointly request the 3/12/19 conference be removed from the calendar or adjourned to a later date.</i> Document filed by |

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| | | CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Hwang, Wook) (Entered: 03/08/2019) |
| 03/11/2019 | 64 | MEMO ENDORSEMENT on re: 63 Response to Motion, filed by CBS Interactive, Inc., CBS Corp., CBS Broadcasting Inc, Netflix, Inc. ENDORSEMENT: Application GRANTED. The March 12, 2019 conference is canceled. (Signed by Judge Lorna G. Schofield on 3/11/2019) (ks) (Entered: 03/11/2019) |
| 03/12/2019 | 65 | REPLY MEMORANDUM OF LAW in Support re: 55 MOTION to Dismiss . . Document filed by CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc.. (Hwang, Wook) (Entered: 03/12/2019) |
| 09/20/2019 | 66 | OPINION AND ORDER re: 55 MOTION to Dismiss . filed by CBS Interactive, Inc., CBS Corp., CBS Broadcasting Inc, Netflix, Inc. Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants move to dismiss the TAC on the ground that Star Trek: Discovery is not substantially similar to Plaintiff's videogame as a matter of law. For the foregoing reasons, Defendants' motion to dismiss is GRANTED. The Clerk of Court is respectfully directed to close all outstanding motions and terminate the case. (As further set forth in this Order.) (Signed by Judge Lorna G. Schofield on 9/20/2019) (cf) Transmission to Orders and Judgments Clerk for processing. (Entered: 09/20/2019) |
| 09/23/2019 | 67 | CLERK'S JUDGMENT re: 66 Memorandum & Opinion in favor of CBS Broadcasting Inc, CBS Corp., CBS Interactive, Inc., Netflix, Inc. against Anas Osama Ibrahim Abdin. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated September 20, 2019, Defendants' motion to dismiss is GRANTED; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 9/23/2019) (Attachments: # 1 Right to Appeal)(km) (Entered: 09/23/2019) |
| 09/23/2019 | | Terminate Transcript Deadlines (km) (Entered: 09/23/2019) |
| 09/30/2019 | 68 | FILING ERROR - NO ORDER SELECTED FOR APPEAL - NOTICE OF APPEAL. Document filed by Anas Osama Ibrahim Abdin. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Johnson, John) Modified on 9/30/2019 (tp). (Entered: 09/30/2019) |
| 09/30/2019 | | ***NOTICE TO ATTORNEY REGARDING DEFICIENT APPEAL. Notice to attorney Johnson, John to RE-FILE Document No. 68 Notice of Appeal. The filing is deficient for the following reason(s): the order/judgment being appealed was not selected. Re-file the appeal using the event type <i>Corrected Notice of Appeal</i> found under the event list Appeal Documents - attach the correct signed PDF - select the correct named filer/filers - select the correct order/judgment being appealed. (tp) (Entered: 09/30/2019) |
| 09/30/2019 | 69 | CORRECTED NOTICE OF APPEAL re: 68 Notice of Appeal, 66 Memorandum & Opinion,, Document filed by Anas Osama Ibrahim Abdin. (Johnson, John) (Entered: 09/30/2019) |
| 09/30/2019 | | Appeal Fee Due: for 69 Corrected Notice of Appeal. Appeal fee due by 10/15/2019. (tp) (Entered: 09/30/2019) |
| 09/30/2019 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 69 Corrected Notice of Appeal. (tp) (Entered: 09/30/2019) |
| 09/30/2019 | | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 69 Corrected Notice of Appeal filed by Anas Osama Ibrahim Abdin were transmitted to the U.S. Court of Appeals. (tp) (Entered: 09/30/2019) |
| 10/08/2019 | | Appeal Fee Payment: for 69 Corrected Notice of Appeal. Filing fee \$ 505.00, receipt number ANYSDC-17739926. (Johnson, John) (Entered: 10/08/2019) |

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| 10/09/2019 | USCA Case Number 19-3160 from the U.S.C.A. - 2nd Circ. assigned to 69 Corrected Notice of Appeal filed by Anas Osama Ibrahim Abdin. (nd) (Entered: 10/09/2019) |
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 ANAS OSAMA IBRAHIM ABDIN, :
 Plaintiff, :
 :
 -against- :
 :
 CBS BROADCASTING, INC., et al., :
 Defendants. :
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18 Civ. 7543 (LGS)

OPINION AND ORDER

LORNA G. SCHOFIELD, District Judge:

Plaintiff Anas Osama Ibrahim Abdin filed the Third Amended Complaint (“TAC”) on January 15, 2019, against CBS Broadcasting, Inc. and/or CBS Corp. and/or CBS Interactive Netflix, Inc. The TAC alleges that Defendants violated the Copyright Act, 17 U.S.C. § 101 *et seq.*, by copying Plaintiff’s concept for an unreleased science fiction videogame *Tardigrades* in their *Star Trek: Discovery* television series (the “Television Series”).¹ Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants move to dismiss the TAC on the ground that *Star Trek: Discovery* is not substantially similar to Plaintiff’s videogame as a matter of law. As discussed below, Defendants’ motion is granted.

I. BACKGROUND

The facts below are drawn from the TAC and its exhibits, which include all available images and video and audio footage of the Videogame, and other evidence integral to the Complaint, which includes all fifteen episodes of the Television Series’ first season. The facts are construed in the light most favorable to Plaintiff as the non-moving party. *See Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. 2016).

¹ In his Opposition to the Motion to Dismiss, Plaintiff withdrew the accounting cause of action and withdrew CBS All Access as a Defendant.

A. Plaintiff's Concept for the Videogame *Tardigrades*

Between May 2014 and September 2017, Plaintiff published draft designs, videos, and descriptions of the videogame on his personal website, YouTube, and other popular websites. Plaintiff has compiled these materials in a video file with the filename "Exhibit K-H" (the "Video Compilation"), comprising approximately thirty minutes of twenty-three separate YouTube videos, followed by static blog posts from two websites. None of the contents of the Video Compilation is alleged to be registered for copyright. On June 28, 2018, Plaintiff registered for copyright a distillation of the game concept, which was first published July 12, 2017 (the "Distillation"). Plaintiff claims, and it is assumed for purposes of this motion, that the Video Compilation and Distillation are the protected work that Defendants allegedly infringed. The videogame itself has not yet been released. Nevertheless, for ease of reference, Plaintiff's allegedly protected work hereafter is collectively referred to as the "Videogame."

The Videogame follows Carter, a blonde male botanist who lives on a space station, Marsi 3, which orbits the planet Jupiter. Other characters are Aziz, a technician with a dark complexion who is gay, Kat, a blonde engineer, Yolanda, a black woman who is the space station's communications engineer, and Natasha, a red-haired woman whom Plaintiff describes as a "bad girl." The game is set around the year 20,000 B.C., when civilization is about to discover galactic travel, and "the deserts of south Egypt and Ethiopia are green and full of advanced technology."

Carter communicates with others and explores the space station, the outer space, and planet terrains to solve puzzles. The player decides Carter's mood as he completes tasks, which may alter the Videogame's storyline. The storyline "has a plot twist and deals with slavery,

secrecy, espionage and other issues.” One video suggests that the game involves an alien race that knows the origins of the universe. Another suggests that Carter has superpowers.

In early 2015, Plaintiff changed the Videogame’s title from *Epoch* to *Tardigrades*² and introduced tardigrades to the game series, as reflected in about the last ten minutes of the Video Compilation. These ten minutes contain two video snippets depicting Plaintiff’s tardigrade. The first is the closing sequence to each of the videos showing a small tardigrade fading into the background and lasting approximately one second. The second is a thirteen-second sequence in a single video that shows a massive, deep blue tardigrade, standing upright, that grabs Carter from behind with its eight limbs and envelopes Carter within itself before crawling off into space. The same sequence appears on two pages of the Distillation. In the blog post announcing the name change, Plaintiff describes tardigrades as “indestructible.” He states that “[d]espite their little size,” tardigrades can “survive temperatures from just above absolute zero up to above the boiling point of water,” can “survive extreme conditions of radiation and the vacuum of space” and can “go without food or water for more than 10 years.” The blog post asks, “Who else can travel in space like tardigrades?” Although unexplained, it can be surmised that Carter, enveloped within the tardigrade, is also protected from the conditions of space. Despite the allegation in the TAC, the Videogame does not suggest that Plaintiff’s tardigrade is capable of “instantaneous” space travel.

² According to the Merriam-Webster Dictionary, a tardigrade is “any of a phylum (Tardigrada) of microscopic invertebrates with four pairs of stout legs that live usually in water or damp moss — called also water bear.” *Tardigrade*, MERRIAM-WEBSTER DICTIONARY (Sept. 3, 2019), available at <https://www.merriam-webster.com/dictionary/tardigrade>.

A June 2015 blog post announced a change to the Videogame's logo, describing it as "a combination of the water bear [a colloquial name for the tardigrade] posing as the ancient Egyptian scarab holding a crook and a flail, accessorized with two wings."

B. Defendant's Television Series *Star Trek: Discovery*

The Television Series first aired on September 24, 2017, and follows the same themes as earlier *Star Trek* television shows and movies.³ The protagonist is Michael Burnham, a Vulcan-raised, human, black woman who fights for the United Federation of Planets (the "Federation") on a spaceship in a war against the alien Klingons. Other characters are Captain Philippa Georgiou, an Asian woman who shares a close bond with Burnham; Captain Gabriel Lorca, a white man with a hawkish disposition; Silvia Tilly, an anxious young woman with red hair; Paul Stamets, a blonde, white man who is an "astromycologist" (someone who studies space-based fungi) and is gay; and Hugh Culber, a doctor with a dark complexion who is Stamets' partner.

A storyline early in the first season involves an advanced technology called the "Displacement Activated Spore Hub (DASH) Drive." The DASH Drive connects to a "mycelial network" that spans the galaxy and allows a spacecraft to travel instantaneously to any location. The DASH Drive, however, does not work until Burnham, Stamets and Tilly find an alien tardigrade and learn that its "unique genetic makeup allows it to navigate through the [mycelial] network because of its symbiotic relationship with the mycelium spores."

³ There have been many *Star Trek* television series and movies since the first *Star Trek* television series aired from 1966-68. See *Paramount Pictures Corp. v. Carol Pub. Group*, 11 F. Supp. 2d 329, 331-32 (S.D.N.Y. 1998) (providing background on *Star Trek*). *Star Trek* is set in a distant future where space travel is common and humans and aliens regularly communicate. The United Federation of Planets (the "Federation") includes, among others, humans from the planet Earth and aliens -- known for their preference for rationality over emotion -- from the planet Vulcan. The Federation has a history of conflict with the Klingons, an alien species known for its aggression. The Federation includes a fleet of spacecraft that travel the galaxy ("Star Fleet").

The alien tardigrade is named Ripper and is a polar bear-sized “cousin” of the microscopic earth tardigrade. Although the alien tardigrade is often lit in electric blue light, it is not blue; it is greenish brownish with four pairs of clawed limbs and body armor segments with tentacles. The alien tardigrade is at first violent, but Burnham discovers that it is normally docile. Burnham also learns that the alien tardigrade feels pain when Captain Lorca uses it to travel instantaneously through space. Rather than harm the creature, Stamets chooses to inject himself with the alien tardigrade’s DNA so that he -- instead of the entrapped tardigrade -- can connect to the DASH Drive. Michael and Tilly ultimately release the alien tardigrade into space, and the creature flies away through the subspace mycelial spore network. Episodes four and five are the only episodes of the fifteen-episode series in which Ripper (the only tardigrade-like creature in the series) makes more than a fleeting appearance.

The show interweaves storylines about the Klingon War and intergalactic travel with storylines about the personal struggles of its lead characters. Burnham carries guilt over her prior acts of mutiny and dual identity as a human-born on Vulcan. Tilly feels anxiety as a young member of the space crew. Stamets struggles to balance his professional ambitions with his personal relationship with Culber. The Television Series also follows the story of a Klingon, named Voq, whom other Klingons disrespect because of the “color of [his] skin.

II. STANDARD

On a motion to dismiss, a court accepts as true all well-pleaded factual allegations and draws all reasonable inferences in favor of the non-moving party. *Trs. of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 566 (2d Cir. 2016). To withstand dismissal, a pleading “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is

plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Where the disputed works are attached to or incorporated by reference in the complaint, a district court can “consider the similarity between those works in connection with a motion to dismiss, because the court has before it all that is necessary in order to make such an evaluation.” *Peter F. Gaito Architecture, LLC v. Simone Dev. Corp.*, 602 F.3d 57, 64 (2d Cir. 2010). In a copyright infringement action, “the works themselves supersede and control contrary descriptions of them, including any contrary allegations, conclusions or descriptions of the works contained in the pleadings.” *Id.* at 64 (internal citations and quotation marks omitted); *accord Hirsch v. Complex Media, Inc.*, No. 18 Civ. 5488, 2018 WL 6985227, at *2 (S.D.N.Y. Dec. 10, 2018). “In order to establish a claim of copyright infringement, a plaintiff with a valid copyright must demonstrate that: (1) the defendant has actually copied the plaintiff’s work; and (2) the copying is illegal because a substantial similarity exists between the defendant’s work and the protectable elements of plaintiff’s.” *Gaito*, 602 F.3d at 63 (citation and internal quotation marks omitted); *accord Gardner v Merlo*, No. 19 Civ. 6701, 2019 WL 3936965, at *2 (S.D.N.Y. Aug. 19, 2019). On a motion to dismiss, a district court may assume that actual copying by defendants occurred and proceed to the question of substantial similarity. *Gaito*, 602 F.3d at 63; *accord Carrell v Origami Owl, LLC*, No. 18 Civ. 694, 2019 WL 1330941, at *2 (S.D.N.Y. Mar. 25, 2019).

III. DISCUSSION

Defendants’ motion to dismiss is granted because *Star Trek: Discovery* and Plaintiff’s Videogame are not substantially similar as a matter of law in concept, characters, settings and

“overall feel.” *Gaito*, 602 F.3d at 63, 66. In particular, the tardigrade in *Star Trek: Discovery* is not substantially similar to Plaintiff’s tardigrade in concept, attributes and overall feel.

A. “Substantial Similarity” Applicable Law

The Copyright Act gives owners of a copyright “exclusive rights,” 17 U.S.C. § 106, to protect “original works of authorship,” 17 U.S.C. § 102(a). Not all elements of a work are entitled to copyright protection. “[C]opyright does not protect an idea, only the expression of an idea.” *Williams v. Crichton*, 84 F.3d 581, 587 (2d Cir. 1996) (citations and internal quotation marks omitted); accord *Brown v. Time Warner, Inc.*, 287 F. Supp. 3d 380, 384 (S.D.N.Y. 2017). Similarly, scènes-à-faire or “elements of a work that are indispensable, or at least standard, in the treatment of a given topic—like cowboys, bank robbers, and shootouts in stories of the American West—get no protection.” *Zaleski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 102 (2d Cir. 2014) (internal quotation marks omitted). Also, as the TAC concedes, facts, including scientific facts, are not protected because they “do not owe their origin to an act of authorship.” *New York Mercantile Exch., Inc. v. IntercontinentalExchange, Inc.*, 497 F.3d 109, 114 (2d Cir. 2007); *Perry v. Mary Ann Liebert, Inc.*, 765 F. App’x 470, 472 (2d Cir. 2019) (noting that the “protectable elements” of Plaintiffs work are “the arrangement of the diagrams, the shapes, and the colors, not the actual scientific information being conveyed”).

“The standard test for substantial similarity between two items is whether an ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard [the] aesthetic appeal as the same.” *Gaito*, 602 F.3d at 66 (quoting *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 111 (2d Cir. 2001) (alteration in original, internal quotation marks omitted)). A “more discerning” test applies when a plaintiff’s work contains both protectable and unprotectable elements. *Gaito*, 601 F.3d at 66; accord *LEGO A/S v. Best-Lock Constr. Toys*,

Inc., No. 11 Civ. 01586, 2019 WL 3387330, at *16 (D. Conn. July 25, 2019). Courts are not to consider the protectable elements of the two works in isolation. *Boisson v. Banian*, 273 F.3d 262, 272 (2d Cir. 2001). “Such a scattershot approach cannot support a finding of substantial similarity because it fails to address the underlying issue: whether a lay observer would consider the works as a whole substantially similar to one another.” *Williams*, 84 F.3d at 590; *accord LEGO A/S*, 2019 WL 3387330, at *16.

In applying either test, the task is to compare holistically the works’ “total concept and overall feel . . . as instructed by our good eyes and common sense.” *Gaito*, 602 F.3d at 66 (internal citations and quotation marks omitted). To aid the Court in its determination of substantial similarity, the Court must examine similarities in “total concept and feel, theme, characters, plot, sequence, pace, and setting.” *Williams*, 84 F.3d at 588; *accord Green v. Harbach*, No. 17 Civ. 6984, 2018 WL 3350329, at *1 (S.D.N.Y. July 9, 2018), *aff’d*, 750 Fed. App’x 57 (2d Cir. 2019).

B. Concept and Plot

The Television Series has a clear and fully constructed concept that develops across fifteen episodes and builds upon over five generations of Star Trek content. The Federation’s intergalactic missions and Klingon antagonism to the Federation has been a part of Star Trek since the first season of *The Original Series*.⁴ The Television Series also has characters with personal story arcs and who build relationships with others -- Tilly, for example, builds confidence and a friendship with Stamets as the first season progresses. In contrast, the Videogame’s concept is unclear, as only discrete and unconnected videos and images of the

⁴ See Memory Alpha “Errand of Mercy (episode)” available at [https://memory-alpha.fandom.com/wiki/Errand_of_Mercy_\(episode\)](https://memory-alpha.fandom.com/wiki/Errand_of_Mercy_(episode)).

game are available. The Video Compilation describes the game as being in an early stage of production.

Both the Videogame and Television Series employ concepts that are associated in popular culture with the tardigrade and not original to Plaintiff's work. The Videogame is set in space, at a time where space travel is common, and supernatural forces are present. The game's purpose is to guide Carter and others so that "they might be able to witness their civilization shifting into a higher type." The Television Series is also set in space, at a time when space travel is common. Through the first season, the U.S.S. Discovery's goal is to protect the Federation and defeat the Klingon opposition in the war. As is common in Star Trek productions, many of the main characters in the Television Series also seek to explore and better understand the universe. Supernatural forces, war games, and space exploration are all scènes-à-faire in science fiction dramatizations about space and not protectable. *Zalewski*, 754 F.3d at 102.

Both the Videogame and the Television Series include a large tardigrade that can fly through space and interacts with the characters. These concepts are not original to the Videogame. Since at least 2007, Tardigrades have been identified as the first known animal to survive unprotected in outer space.⁵ A 2010 children's fantasy novel titled *The Search for*

⁵ See K. Ingemar Jönsson et al., *Tardigrades survive exposure to space in low Earth orbit*, 18 CURRENT BIOLOGY 17 (Sept. 9, 2008) (available at <https://www.sciencedirect.com/science/article/pii/S0960982208008051>); <http://tardigradesinspace.blogspot.com/> (discussing TARDIS program and linking to relevant articles from 2007-2009). Judicial notice may be taken of the publication of information, not necessarily for the truth of the matter asserted. See *New London Assocs., LLC v. Kinetic Soc. LLC*, 384 F. Supp. 3d 392, 406 (S.D.N.Y. 2019) ("A court may also take judicial notice of 'relevant matters of public record'") (quoting *Giraldo v. Kessler*, 694 F.3d 161, 164 (2d Cir. 2012)).

WondLa includes a “gargantuan” tardigrade that interacts with the characters and can fly. A YouTube video from May 7, 2015, *Captain Tardigrade*, depicts a humanoid tardigrade that flies in a spaceship, and calls tardigrades “virtually indestructible.” Episodes from March and April 2014 of the non-fiction television series *Cosmos: A Spacetime Odyssey* feature discussions of tardigrades’ unique ability to survive in space. These conceptual similarities of tardigrades flying in space are thus non-copyrightable elements of the Videogame and cannot constitute the basis for a copyright infringement. *See Zalewski*, 754 F.3d at 102 (“A fundamental rule of copyright law is that it protects only original works of authorship, those aspects of the work that originate with the author himself”) (internal quotation marks omitted).

The tardigrade in both the Video Compilation and the Television Series assists humans with space flight, but in completely different ways. The Video Compilation’s thirteen-second clip of the tardigrade shows the tardigrade enveloping Carter in something like a bear hug before floating off into space. In the Television Series, Stamets gains the tardigrade’s power to travel through the mycelial network by injecting himself with the tardigrade’s DNA. The injection gives Stamets supernatural powers, but also causes him serious physical harm. These clips are small pieces of each work and do not alone represent each work’s concept and plot. *Boisson*, 273 F.3d at 272. But more importantly, there is no similarity between how the Videogame tardigrade envelops Carter and how Stamets injects himself with tardigrade DNA. *Williams*, 84 F.3d at 590.

The plots of both works are similar solely to the extent that the characters go on adventures in space, and some of the adventures involve alien tardigrades. This common storyline of adventuring through space and discovering aliens is a *scènes-à-faire* common to works that involve space travel. Just as “cowboys, bank robbers, and shootouts in stories of the

American West . . . get no protection,” alien contact in fictional stories about space adventures gets no protection. *Zalewski*, 754 F.3d at 101. Moreover, the Television Series’ plot also involves subjects that are not part of the Videogame: the war between the Federation and Klingons, and the personal struggles of individual characters that involve redemption, growth, and fitting in as an outsider.

C. Characters

“In determining whether characters are similar, a court looks at the ‘totality of [the characters’] attributes and traits[’] as well as the extent to which the defendants’ characters capture the ‘total concept and feel’ of figures in [the plaintiff’s work].” *Sheldon Abend Revocable Tr. v. Spielberg*, 748 F. Supp. 2d 200, 208 (S.D.N.Y. 2010) (quoting *Walker v. Time Life Films, Inc.*, 784 F.2d 44, 50 (2d Cir. 1986).

The tardigrade in the Videogame and the Television Series share many of the same characteristics as the real-life microscopic tardigrade. All three have eight short legs that run in pairs along a rounded body, all three have an O-shaped mouth in the center of the “face” and all three are capable of surviving in space without protection. These are non-protectable facts about the tardigrade and cannot provide the basis for copyright infringement. *See Zalewski*, 754 F.3d at 102.

Actual Tardigrade

Plaintiff’s Tardigrade

Defendants’ Tardigrade



Beyond the unprotectable physical attributes of actual tardigrades, the differences between Plaintiff's and Defendants' tardigrades defeat any finding of substantial similarity. The Videogame tardigrade is large and deep blue. The logo directly links the tardigrade to a scarab beetle, a figure in ancient Egyptian culture associated with immortality, transformation and protection. The tardigrade's power to envelope Carter and thereby transform and protect him in space suggests that it is a powerful creature that characters in the Videogame venerate.

The Television Series tardigrade is also a large space traveler, but the similarities end there. Although this tardigrade is lit with a blue light, it is brownish greenish. More importantly, the tardigrade in the Television Series does not capture the "total concept and feel" of the Videogame's tardigrade. *Nobile v. Watts*, 289 F. Supp. 3d 527, 536 (S.D.N.Y. 2017). This tardigrade is a creature kept on the U.S.S. Discovery against its will that the human characters name and initially seek to exploit for personal gain, and then -- upon learning that it feels pain -- protect and liberate. It has no god-like attributes and is not venerated, but instead is treated almost like a pet: to be protected and not harmed, but not deified. Where the Videogame tardigrade is best associated with the spiritual symbolism of the scarab beetle, the Television Series tardigrade is best associated with a beloved, but poorly behaved, pet dog. "The bar for substantial similarity in a character is set quite high," and the similarity between the two tardigrades falls short of this standard. *Spielberg*, 748 F. Supp.2d at 208.

The alleged similarities between other characters in the two works also fails to support a claim, as they are mostly generalized non-protectable descriptions. Yolanda and Burnham are both black woman, Natasha and Tilly both have red hair, Aziz and Culber are both gay and have black hair and facial hair, Stamets and Carter are blond men who work in a field of biology. Courts have denied claims of substantial similarity when comparing characters who are far more

similar than these. *See e.g., Cabell v. Sony Pictures Entm't, Inc.*, 714 F. Supp.2d 452, 454 (S.D.N.Y. 2010), *aff'd*, 425 F. App'x 42 (2d Cir. 2011) (summary order) (granting summary judgment to a defendant where main characters were both military-trained hairstylists who fight crime and wild hairdryers as weapons); *DiTocco v. Rioradan*, 496 F. App'x 126, 128 (2d Cir. 2012) (summary order) (affirming a 12(b)(6) dismissal where “[b]oth sets of books chronicle the adventures of a young male protagonist named after the Greek hero Perseus” set in modern times); *Hogan v. DC Comics*, 48 F. Supp.2d 298, 311-12 (S.D.N.Y. 1999) (granting summary judgment where the main characters in both works were named Nicholas Gaunt and were born half vampire).

The settings of the Videogame and Television Series are similar, but the similarity is not actionable. The Videogame is set in a space craft orbiting a planet that has the capacity to house large crew. The main set for the Television Series is also a spaceship -- the U.S.S. Discovery -- that has the capacity to house a large crew. The characters in both works leave these main settings to explore outer space and planets. However, these similarities are scènes-à-faire for science fiction set in outer space. *See Zalewski*, 754 F.3d at 102 (“A fundamental rule of copyright law is that it protects only original works of authorship, those aspects of the work that originate with the author himself”) (internal quotation marks omitted).

D. Overall Feel

The difference between the two works is also notable at the macro level. The Television Series is not substantially similar to the Videogame after holistically comparing the works’ “overall feel . . . as instructed by . . . good eyes and common sense.” *Gaito*, 602 F.3d at 66 (citations and internal quotation marks omitted).

The Television Series builds on over five decades of Star Trek movies and television shows to represent Star Fleet adventures in a new era. Characters use similar terminology and technology and wear similar badges. Overarching themes from prior renditions, such as multiculturalism, the importance of loyalty and the struggle to balance reason and emotion, are prevalent here. And the Television Series consistently alludes to characters and events from prior Star Trek shows -- for example, there is a reoccurring reference in the show to the “U.S.S. Defiant,” a spaceship from the Star Trek television show, *Deep Space Nine*, and one episode references the popular Vulcan character Spock. The conflict at the very center of the Television Series -- the war between the Federation and Klingons -- makes little sense without background knowledge about the Star Trek universe.

The Videogame lacks this overall feel. The disparate videos and images do not easily evince a single coherent plotline. Nevertheless, there is no suggestion that this story follows a war between dueling world orders or that the characters engage with the themes prevalent in Star Trek. It is at least clear that the Videogame follows Carter, who solves mysteries to uncover information about the universe and fellow characters. And the story also seems to “deal[] with slavery, secrecy[and] espionage.” This is not enough to conclude that the overall feel of the Videogame is substantially similar to that of the Television Series.

E. Other Purported Similarities

The Complaint includes a list of eleven purported similarities between the two works. Most of these are discussed above. The remaining similarities are disparate and not essential to the overall feel or understanding of the Television Series. The Videogame features Egyptian cultural influences and supernaturalism. Episode one of the Television Series includes Egyptian iconography on one of the space ships, but nothing further. In the Videogame, Carter is

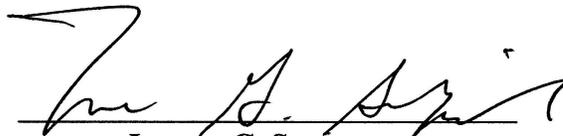
sometimes immersed in glowing blue light, and at least once walks through an “astro-plain” environment. Stamets also is sometimes immersed in a glowing blue light, and Burnham once walks through an “astro-plain.” In both works, the characters’ uniforms delineate status and rank and their space suits have a large head piece. These similarities do not change the calculus; they do not provide a sufficient basis to find substantial similarity between the works’ “total concept and feel.” *Gaito*, 603 F.3d at 67.

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss is GRANTED.

The Clerk of Court is respectfully directed to close all outstanding motions and terminate the case.

Dated: September 20, 2019
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE