UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

______, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. THE WALT DISNEY COMPANY, ROBERT CHAPEK, CHRISTINE M. McCARTHY, and KAREEM DANIEL, Defendants.	Case No. 2:23-cv-03661 <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS <u>DEMAND FOR JURY TRIAL</u>

Plaintiff _______ ("plaintiff"), on behalf of itself and all other persons similarly situated, by plaintiff's undersigned attorneys, for plaintiff's complaint against defendants, alleges the following based upon personal knowledge as to plaintiff and plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through plaintiff's attorneys, which included, among other things, a review of certain U.S. Securities and Exchange Commission ("SEC") filings, public statements and press releases by The Walt Disney Company ("Disney" or the "Company"), as well as media reports about the Company and the facts alleged herein.[1] Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

1. Jurisdiction is conferred by §27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78aa. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

2. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b) because the Company conducts business and resides in this District, and the events and omissions giving rise to the claims asserted herein occurred in substantial part in this District, including the dissemination of false and misleading statements in and from this District. Disney is headquartered in this District.

3. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

[1] Emphasis has been added unless otherwise noted.

including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

NATURE OF THE ACTION

4. This is a securities class action on behalf of all purchasers of Disney common stock between December 10, 2020 and November 8, 2022, inclusive (the "Class Period"). Plaintiff seeks to pursue remedies against Disney and certain of the Company's current and former senior executives under §§10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder.

PARTIES

5. Plaintiff ______, as set forth in the accompanying certification, which is incorporated by reference herein, purchased Disney common stock during the Class Period and has been damaged thereby.

6. Defendant Disney is a Delaware corporation whose headquarters are located in Burbank, California. The Company's common stock is listed on the New York Stock Exchange ("NYSE") under the ticker symbol "DIS."

7. Defendant Robert Chapek ("Chapek") was named Disney's Chief Executive Officer ("CEO") in February 2020 and served in that role until he was fired by the Company's Board of Directors ("Board") in November 2022. Prior to that time, Chapek served in a variety of roles since he joined the Company in 1993, including Chairman of Disney Parks, Experiences and Products; Chairman of Walt Disney Parks and Resorts; President of Disney Consumer Products; and President of Distribution for Walt Disney Studios. Chapek became a Director of the Company in 2020 and served on the Board's Executive Committee until his departure.

8. Defendant Christine M. McCarthy ("McCarthy") has served as Chief Financial Officer ("CFO") of Disney since 2015. Prior to that time McCarthy served as Executive Vice President, Corporate Real Estate, Alliances and Treasurer of the

Company. Before joining the Company in 2000, she worked in the banking industry holding various positions at Imperial Bancorp and First Interstate Bancorp.

9. Defendant Kareem Daniel ("Daniel") began working at Disney after he was hired by Chapek as an intern while studying for his MBA at Stanford. After receiving his MBA, Daniel took a job in investment banking at Goldman Sachs, where he worked for approximately three years before returning to Disney. Daniel held numerous positions at Disney including Director of Corporate Strategy (where he worked on mergers and acquisitions), Vice President of Distribution Strategy at Walt Disney Studios, and Executive Vice President of Global Business Operations at Walt Disney Imagineering (the group that designs theme park attractions). As part of defendant Chapek's October 2020 reorganization of the Company, Chapek promoted Daniel to be Chairman of the newly created Disney Media and Entertainment Distribution segment, as explained below, where Daniel functioned as Chapek's "right-hand man."

10. Defendants referenced above in ¶¶7-9 are referred to herein as the "Individual Defendants." The Individual Defendants and the Company are referred to herein as "defendants."

11. Each of the Individual Defendants was directly involved in the management and day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, services, plans, and present and future business prospects. In addition, the Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, and were aware of, or recklessly disregarded, the false and misleading statements being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

12. As officers and controlling persons of a publicly held company whose securities are registered with the SEC pursuant to the Exchange Act and traded on

the NYSE, which is governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate, truthful, and complete information with respect to the Company's operations, business, services, expenditures, and present and future business prospects. In addition, the Individual Defendants each had a duty to correct any previously issued statements that were materially misleading or untrue, so that the market price of the Company's publicly traded shares would be based upon truthful, accurate, and complete information. Defendants' false and/or misleading misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to, and did, control the contents of various SEC filings, press releases, and other public statements pertaining to the Company. Each Individual Defendant was provided with copies of the documents alleged herein to be false and misleading before or shortly after their issuance, participated in conference calls with investors during which false and misleading statements were made, and had the ability and opportunity to prevent their issuance or cause them to be corrected. Accordingly, each Individual Defendant is responsible for the accuracy of the public statements detailed herein and is, therefore, primarily liable for the representations contained therein.

BACKGROUND

The Walt Disney Company

14. The Walt Disney Company (originally known as Disney Brothers Cartoon Studio) was founded in 1923 by brothers Walt and Roy Disney. The Company began with the sale of *Alice's Wonderland*, a black-and-white silent film featuring a live-action girl who interacted with animated characters. After making a series of these "Alice Comedies" the Company transitioned to an all-cartoon series based on a character named Oswald the Lucky Rabbit before ultimately launching another cartoon series based on its now iconic character Mickey Mouse.

15. A century later, Disney stands as the world's largest entertainment group. The Company, together with its subsidiaries, engages in the film and episodic television content production and distribution business; operates television networks under the ABC, Disney, ESPN, Freeform, FX, Fox, National Geographic, and Star brands; and runs studios that produce films under the Walt Disney Pictures, 20th Century Studios, Marvel, Lucasfilm, Pixar, and Searchlight Pictures banners.

16. Disney also offers direct-to-consumer ("DTC" or "D2C") streaming services through Disney+, Disney+ Hotstar, ESPN+, Hulu, and Star+; sells and licenses film and television content to third-party television and subscription video-on-demand services; operates theatrical, home entertainment, and music distribution services; stages and licenses live entertainment events; and offers post-production services by Industrial Light & Magic and Skywalker Sound.

17. In addition, the Company operates theme parks and resorts (such as Walt Disney World Resort in Florida, Disneyland Resort in California, Disneyland Paris, Hong Kong Disneyland Resort, and Shanghai Disney Resort), Disney Cruise Line, Disney Vacation Club, National Geographic Expeditions, Adventures by Disney, and Aulani, a Disney resort and spa in Hawaii.

18. Further, Disney licenses its intellectual property to a third party who owns and operates the Tokyo Disney Resort; offers consumer products, including by the licensing of trade names, characters, visual, literary, and other IP for use on merchandise, published materials, and games; operates a direct-to-home satellite distribution platform; sells branded merchandise through retail, online, and wholesale businesses; and develops and publishes books, comic books, and magazines.

In February 2020, Defendant Chapek Replaced Disney's Longtime CEO Robert Iger

19. In February 2020, Disney announced that then-CEO Robert Iger ("Iger") would be stepping down after a storied, 15-year career leading the

Company. Iger assumed the role of Executive Chairman and was to direct the Company's creative endeavors, while leading the Board and providing the benefit of his experience, leadership, and guidance through the end of his contract on December 31, 2021.

20. Iger reportedly handpicked Chapek, who had worked under Iger for more than a decade, as his successor. "With the successful launch of Disney's direct-to-consumer businesses and the integration of Twenty-First Century Fox well underway, I believe this is the optimal time to transition to a new CEO," Iger said at the time. "I have the utmost confidence in Bob and look forward to working closely with him over the next 22 months as he assumes this new role and delves deeper into Disney's multifaceted global businesses and operations, while I continue to focus on the Company's creative endeavors."

The COVID-19 Pandemic Hit Shortly After Chapek Took Over

21. Just one month after Chapek became CEO, the COVID-19 coronavirus spread rapidly around the globe – with the World Health Organization officially declaring it a pandemic in March 2020. In response, many countries enacted various forms of lockdowns restricting their citizens' movement and work in an effort to contain the spread of the virus.

22. The pandemic and related lockdowns negatively impacted Disney's businesses, forcing the Company to shutter its theme parks, resorts, and cruise lines. Movie distribution, historically the Company's most lucrative distribution channel, was all but eliminated as were live sports, a key programming source for Disney's television networks. The economic impact on the Company was swift and severe. In May 2020, Disney announced the suspension of its dividend. In August 2020, the Company reported its first quarterly loss in 19 years. And in November 2020, the Company reported its first annual loss in more than 40 years.

Defendant Chapek Reorganized the Company Around Its New Streaming Service Disney+

23. While most of Disney's businesses suffered in the wake of the COVID-19 pandemic, subscriptions to the Company's new streaming service Disney+ rapidly took off. When Disney+ was launched in the United States in November 2019 (before Chapek took over) Disney set an initial target of 60 million to 90 million subscribers by the end of fiscal 2024.[2] After Chapek assumed leadership of the Company, however, the service experienced higher growth than originally anticipated, gaining over 50 million subscribers in its first five months online (by April 2020) and nearly 74 million subscribers in its first year (by November 2020). Thus, the success of Disney+ became virtually the only bright spot in an otherwise bleak start to Chapek's tenure as CEO.

24. Against this backdrop, Chapek decided to 'go all in' on Disney's DTC streaming strategy, essentially staking his legacy on the success or failure of Disney+. To that end, in October 2020, Disney announced a major reorganization of the Company's media and entertainment operations. The new structure was reportedly designed to further accelerate the Company's focus on a DTC strategy, in light of the rapid success of Disney+. As defendant Chapek explained in an interview on *CNBC*, the reorganization was intended to "accelerate our transition to a real direct-to-consumer priority company." He continued: "We believe that we've got the opportunity to build upon the success of Disney+, which by almost any measure has been far and above anybody's expectations and really use this to catalyze our growth and increase shareholder wealth."

25. Disney issued a press release that similarly characterized the pivot as being based on the success of Disney+, stating in relevant part as follows:

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[2] Disney's fiscal year ends on the Saturday closest to September 30th of the calendar year.

> In light of the tremendous success achieved to date in the Company's direct-to-consumer business and to further accelerate its DTC strategy, The Walt Disney Company today announced a strategic reorganization of its media and entertainment businesses. Under the new structure, Disney's world-class creative engines will focus on developing and producing original content for the Company's streaming services, as well as for legacy platforms, while distribution and commercialization activities will be centralized into a single, global Media and Entertainment Distribution organization. The new Media and Entertainment Distribution group will be responsible for all monetization of content – both distribution and ad sales – and will oversee operations of the Company's streaming services. It will also have sole P&L accountability for Disney's media and entertainment businesses.

26. The reorganization represented a dramatic departure from Disney's historical reporting structure and was hugely controversial within the Company because it took power away from creative content-focused executives and centralized it in a new reporting group led by defendant Daniel who reported directly to defendant Chapek. Prior to the announcement, the Company was organized into four reporting segments: (i) Media Networks; (ii) Parks, Experiences and Products; (iii) Studio Entertainment; and (iv) Direct-to-Consumer & International. Chapek reorganized the Company into just two reporting segments: (i) Disney Media and Entertainment Distribution ("DMED"); and (ii) Disney Parks, Experiences and Products ("DPEP").

27. Following the reorganization, the distribution and commercialization activities of the Company's media and entertainment operations were centralized into a single reporting segment, namely DMED. DMED's operating results were in turn reported across three distribution platforms/significant lines of business: (i)

Direct-to Consumer (*i.e.*, streaming); (ii) Linear Networks (*i.e.*, cable and broadcast television networks); and (iii) Content Sales/Licensing (primarily comprising theatrical, home entertainment, and third-party television and subscription video-on-demand ("TV/SVOD") distribution globally).

28. Thus, DMED became responsible for the monetization of all Disney content globally – both distribution and advertising sales – and oversaw the operations of the Company's streaming services. With this new structure, Chapek removed budgetary and distribution control from the heads of Disney's content groups (much to their dismay) and placed control in the hands of DMED's new Chairman, defendant Daniel, who reported directly to his long-time mentor Chapek. Daniel oversaw the profit and loss management, distribution, operations, sales, advertising, data, and technology functions for all of the Company's content worldwide. In this way, defendants Daniel and Chapek exerted near complete control over the Company's strategic decisions around content.

29. Critically, DMED was responsible for determining which platform the Company's content would be released on, whether it be a streaming service, a television network, or traditional movie theaters. "There is a seismic shift happening in the marketplace, and you can either lead or follow and we chose to lead," Chapek said of the Company's push into streaming, adding that the focus is now on "what platform is best to meet those consumer needs."

30. "Given the incredible success of Disney+ and our plans to accelerate our direct-to-consumer business, we are strategically positioning our Company to more effectively support our growth strategy and increase shareholder value," Chapek said at the time. Chapek further explained that:

> Managing content creation distinct from distribution will allow us to be more effective and nimble in making the content consumers want most, delivered in the way they prefer to consume it. Our creative teams will concentrate on what they do best – making world-class franchise-based

> content – while our newly centralized global distribution team will focus on delivering and monetizing that content in the most optimal way across all platforms, including Disney+, Hulu, ESPN+ and the coming Star International streaming service.

Defendants' Fraudulent Scheme

31. During the Class Period, defendants repeatedly misled investors about the success of the Disney+ platform by concealing the true costs of the platform, concealing the expense and difficulty of maintaining robust Disney+ subscriber growth, and claiming that the platform was on track to achieve profitability ***and*** 230-260 million paid global subscribers by the end of fiscal year 2024.

32. Defendants made these representations notwithstanding the fact that initial subscriber numbers for Disney+ had been boosted temporarily and unsustainably by a low launch price of $6.99 per month, a bevy of additional short-term, low-cost promotions, and a near-captive audience of consumers who were homebound due to COVID-19 restrictions. As a result, the consumers most likely to subscribe to Disney+ had already done so by the start of the Class Period. Furthermore, Disney was suffering staggering costs in creating the content needed to attract such a large number of subscribers in the highly competitive streaming wars that were then raging among Disney's many competitors such as Netflix, Apple TV+, Amazon Prime, Paramount+, HBO Max, YouTube, and Peacock. In truth, during the Class Period, Disney+ was never on track to achieve the 2024 profitability and subscriber figures provided to investors and such estimates lacked a reasonable basis in fact.

33. To conceal these adverse facts, defendants engaged in a fraudulent scheme designed to hide the extent of Disney+ losses and to make the growth trajectory of Disney+ subscribers appear sustainable and 2024 Disney+ targets appear achievable when they were not. Specifically, defendants used the newly created DMED to inappropriately shift costs out of the Disney+ platform and onto

legacy platforms. DMED, under the direction of Chapek and Daniel and with the knowledge of McCarthy, debuted content created for Disney+ initially on a legacy platform in order to shift marketing and production costs onto that platform. Under the newly reorganized Company, the initial costs of marketing campaigns were generally recognized in the DMED distribution platform of initial exploitation, with allocation of programming and production costs driven by distribution of the relevant content across windows. As part of a scheme to make Disney+'s financial performance appear more successful than it was, defendants aired certain shows that were supposed to be Disney+ originals – such as the mystery show *The Mysterious Benedict Society* and the medical drama *Doogie Kameāloha, M.D.* – first on legacy television networks such as the Disney Channel. By doing so, a significant portion of the marketing and production costs of the shows were shifted away from Disney+ and on to the legacy platforms. Despite this cost-shifting scheme, defendants repeatedly represented during the Class Period that platform distribution decisions were made based on different reasons, such as customer preferences and what was best for the business commercially.

34. Defendants implemented this scheme almost from the beginning of the October 2020 reorganization, indicating the intent to shift costs in this manner was a motivating factor behind the reorganization. For example, *The Mysterious Benedict Society* was cast in early 2020 and began production in November 2020, only one month after Disney announced the creation of DMED and one month before the 2020 Investor Day which starts the Class Period.

DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED DURING THE CLASS PERIOD

35. The Class Period begins on December 10, 2020. On that date, Disney broadcast the Company's 2020 Investor Day presentation from its Burbank headquarters. The presentation was designed to update investors about the Company's businesses, reorganization, and plans, particularly those concerning the

Company's DTC strategies. All of the Individual Defendants delivered prepared remarks; and defendants Chapek and McCarthy also answered questions from analysts. Shortly after the conclusion of the presentation, Disney made a replay of the event available and posted downloadable slides that accompanied the presentation on the Company's website.

36. Defendant Chapek boasted at the outset of his 2020 Investor Day presentation that the Company had already met its original Disney+ subscriber estimate, stating in relevant part as follows:

> Disney+ has exceeded our wildest expectations with 86.8 million subscribers as of December 2. That's quite an achievement. This success has bolstered our confidence in our continued acceleration towards a DTC-first business model. And more importantly, it's launched The Walt Disney Company into a new era of delivering consumers truly exceptional entertainment build around our world renowned brands and franchises.

37. Defendant Chapek then discussed how the Company's new distribution and commercialization team (DMED) would distribute Disney's content on the platform most beneficial to consumers, stating in pertinent part as follows:

> Our unique access to an incredible number of consumer touch points across our businesses gives us a clear advantage. Based on insights gained from this wealth of data, our distribution and commercialization team is able to better inform our creatives of consumer preferences. And the creative teams are empowered to make the high-quality branded entertainment they believe will resonate with audiences. This new organization also gives us maximum flexibility in determining when and on which platform content will be available. And this is especially important now given consumers' rapidly

changing consumption behaviors and the prolonged uncertainty due to the pandemic.

As circumstances change, we will continue to consider these and other critical factors when determining what steps we may take to most effectively distribute our programming. Our goal is always to serve consumers in the best way possible.

38. During defendant Daniel's presentation, he emphasized that the Company would distribute Disney's content on the platform most beneficial to consumers, stating in relevant part as follows:

As a company, we were set up to achieve success in an increasingly dynamic environment. ***And as Bob mentioned, consumer behavior really does drive our decision-making. While we have always valued the data gained through our numerous consumer touch points, the rapid growth of our portfolio of D2C services provides us with an even greater opportunity to understand their preferences. And we are using these insights to help determine how to optimally engage with our audiences. In fact, our team uses all of the information available to us when determining how best to allocate our creative content budgets across all platforms, with the goal to maximize both audience engagement and commercial impact***. And we share this budgetary framework and critical insights with our creative partners as part of a truly collaborative planning process that delivers high-quality branded entertainment to achieve our established growth objectives for all of our platforms, from direct-to-consumer to linear networks to theatrical exhibition.

This exchange of information is a key pillar to our organization's overall strategy, which also relies on the increased flexibility provided by our mix of distribution options, including, in no particular order, releasing content though traditional windows, such as theaters and linear networks before it is made available on our direct-to-consumer services, particularly recognizing the actual exhibition's ability to help establish major franchises that are at the heart of our Disney flywheel; providing our accretive output simultaneously, day and date on both traditional and D2C platforms, in concert with our premier access commercialization strategy for the D2C component; and exclusively distributing our content on our streaming services, providing a constant flow of new titles for subscriber acquisition and to minimize churn. Of course, regardless of where it originates, all of our films and episodic series will inevitably end up as part of our incredibly rich and increasingly robust library of content on our D2C platforms.

Since streaming has quickly become a preferred method of consumption, we are prioritizing our D2C platforms, both in terms of how we distribute our content and also through an increased investment in our original programming for Disney+, Hulu, ESPN+ and the upcoming Star-branded international general entertainment offering.

*   *   *

One of the primary benefits of our new organizational structure is our ability to quickly reevaluate and adjust our plans in light of changes in the marketplace, and we will continue to shift and optimize our mix of window theatrical, day-and-date and D2C exclusive offerings according to what is best for the consumer and our business.

39. During defendant McCarthy's presentation, she provided profitability and subscriber estimates for Disney+ (and related foreign streaming services such as Disney+ Hotstar[3]), stating in pertinent part as follows:

> ***Today, I'm going to provide guidance across our services for fiscal 2024 to be consistent with the time frame we guided to at our last Investor Day***. Let me start with Disney+ which, as you heard earlier today, had 86.8 million total paid subscribers as of December 2, approximately 30% of which were Disney+ Hotstar subscribers.
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> * * *
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> If you recall, last year, we said that we expected Disney+ to have between 60 million and 90 million subscribers by the end of fiscal 2024. But as you know, our subscriber growth to date is well ahead of our original expectations. And we have an incredible and growing slate of high-quality content that will capture a broader global audience and further fuel Disney+, making it what we believe is an even more compelling product.
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> These factors, along with the addition of our Star general entertainment offering in various markets and the growth of Disney+ Hotstar, give us an even greater optimism about our future. And they enable us to significantly increase our subscriber guidance. ***We now expect that by the end of fiscal 2024, we will have between 230 million and 260 million total paid Disney+ subscribers globally compared to the 60 million to 90 million we shared last year. I'll note that our prior outlook did not anticipate the launch of Disney+ Hotstar, which***

[3] Disney+ Hotstar is an Indian subscription video on demand streaming service owned by Disney that operates in India. Disney+ Hotstar was created after Disney's 2019 acquisition of 21st Century Fox, Star India's parent company. Star India had launched Hotstar in 2015 but it was ultimately integrated with Disney's global streaming brand Disney+ as Disney+ Hotstar in April 2020.

> ***we now expect could be between 30% and 40% of our subscriber base by the end of fiscal 2024***.
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> * * *
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> Given the value of growing our subscriber base, as you've seen today, we plan to reinvest revenue generated from our better-than-expected subscriber growth back into content investment. ***Thus we continue to expect Disney+ to achieve profitability in fiscal 2024. Again, I'll note that this guidance includes Disney+, Star, Star+ and Disney+ Hotstar***.

40. The slides that accompanied the 2020 Investor Day presentations reiterated the Company's estimate that, by the end of fiscal year 2024, Disney+ would be profitable and would have between 230-260 million paid global subscribers (30%-40% of which would be from Disney+ Hotstar). These new estimates represented an astounding ***three-fold increase*** from prior estimates ***without any degradation in expected profitability*** for the segment.

41. During the 2020 Investor Day's Q&A session, in response to a question from a Morgan Stanley analyst, defendant Chapek explained the decision-making process that went into determining when and on which platform or platforms Disney's content would be distributed, stating in relevant part as follows:

> So to me, it's really about over – of the 100 titles that we announced today, 80% of them are going first to Disney+, which I think says something about our pivot over to Disney+. But at the same time, we had $13 billion of box office last year. And that's obviously not something to sneeze at. And we know as The Walt Disney Company who've got this plethora of franchises that we just showed you today, that we build those franchises through the theatrical exhibition window and we did $13 billion back in '19. ***So for us, it's about balance. And it's about following the consumer as they make that transition***.

> ***And so part of why we did the reorganization that we did is to ensure that we've got an organization that's flexible to read all the cues, whether it's the cessation of COVID or it's changing consumer behavior so that we can very nimbly make decisions as we go forward***. And that 80% direct-to-consumer is not just Disney+, obviously, but that includes Hulu and Star as well.

42. Following the 2020 Investor Day, analyst reports heralded the remarkable claims of rapid and profitable Disney+ growth. For example, a Barclays analyst report proclaimed that "DTC guidance blows past consensus expectations"; a Wolfe Research report trumpeted "Expectations Blown Away"; a Morgan Stanley report cheered "To Infinity & Beyond"; and an RBC Capital Market Reports figuratively burst into song: "Disney, Disney, Disney, Can't You See? Sometimes Your Words Just Hypnotize Me." Some analysts even predicted that Disney+ might surpass Netflix as the most widely adopted paid streaming service in the world. Defendants' representations had their intended effect, pushing the price of Disney common stock to all-time highs of over $180 per share by the end of December 2020.

43. During the Class Period, defendants repeatedly reiterated the fiscal year 2024 profitability and global subscriber estimates for Disney+. For instance, on the Company's February 11, 2021 earnings call for its first fiscal quarter of 2021, defendant McCarthy confirmed that Disney+ was expected to reach profitability in fiscal 2024, stating in pertinent part as follows:

> Okay. Thanks, Brett. You're absolutely right. Peak losses, we expect in this fiscal year. ***We said at our Investor Day, which wasn't too long ago, that we expected to reach profitability in fiscal 2024. We're not going to change that at this point***, although we are very pleased with the results that we just announced. But we are also, given the value of growing our sub base, we are continuing to invest in high-

quality content. We believe that content is the single biggest driver to not only acquiring subs, but retaining them.

44. On the Company's May 13, 2021 earnings call for its second fiscal quarter of 2021, defendant Chapek reiterated that Disney was on track to achieve its Disney+ 2024 paid global subscriber estimate, stating in relevant part as follows:

> We are uniquely positioned with the most compelling brands and franchises in entertainment, and we continue to deliver the high-quality, one-of-a-kind content that consumers want. That's clearly reflected in the success of Disney+ which amassed nearly 104 million paid subscribers as of the end of the second fiscal quarter. ***We are on track to achieve our guidance of 230 million to 260 million subscribers by the end of fiscal 2024***.

45. During the same call, defendant McCarthy likewise stated: "***As Bob mentioned earlier, we remain right on track to reach our fiscal 2024 guidance of 230 million to 260 million subs***, powered by the addition of 30 million paid Disney+ subs in the first half of the year."

46. The statements referenced in ¶¶35-41 and 43-45 above were materially false and misleading when made because they failed to disclose the following adverse facts pertaining to the Company's business, operations, and financial condition, which were known to or recklessly disregarded by defendants as follows:

(a) that Disney+ was suffering decelerating subscriber growth, losses, and cost overruns;

(b) that the true costs incurred in connection with Disney+ had been concealed by Disney executives by debuting certain content intended for Disney+ initially on Disney's legacy distribution channels and then making the shows available on Disney+ thereafter in order to improperly shift costs out of the Disney+ segment;

(c) that DMED had made platform distribution decisions based not on consumer preference, consumer behavior, or the desire to maximize the size of the audience for the content as represented, but based on the desire to hide the full costs of building Disney+'s content library;

(d) that the Company was not on track to achieve its 2024 Disney+ paid global subscriber and profitability targets, that such targets were not achievable, and that such estimates lacked a reasonable basis in fact; and

(e) that, as a result of (a)-(d) above, defendants had materially misrepresented the actual performance of Disney+, the sustainability of Disney+'s historical growth trends, the profitability of Disney+, and the likelihood that Disney could achieve its 2024 Disney+ subscriber and profitability targets.

47. On September 21, 2021, the Company and defendant Chapek gave a virtual presentation at the Goldman Sachs Communacopia Conference. During the presentation, Chapek acknowledged that Disney+ subscriber growth had slowed in the fourth quarter of the fiscal year ended October 2, 2021: "***In Q4, I think what you can expect to see is that our global paid subs will increase by low single-digit millions of subscribers versus Q3***."

48. This new information concerning the number of global paid Disney+ subscribers failed to meet the market's expectations. Prior to the market's close that day, *CNBC* reported the disappointing news in pertinent part as follows:

> Disney's CEO Bob Chapek said Tuesday his company's streaming service growth has "hit some headwinds" related to coronavirus, causing shares to close lower for the day.
>
> Disney expects to add "low single-digit millions" of streaming subscribers in the fourth quarter, Chapek said. Disney shares ended the session down 4.1% after Chapek's comments at the virtual Goldman Sachs Communacopia Conference.

> Chapek said "mobilizing partners" in Latin America to push Disney's new Star+ streaming service, the Covid-related suspension of the India Premier League – whose games air on Disney's Hotstar – and production delays from the delta variant have all hurt subscriber numbers in the fourth quarter.
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> "We are going to see a little bit more noise than maybe the Street projects quarter to quarter," Chapek said. "The resurgence of Covid and delta did impact some of our productions."
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> Chapek's forecast is significantly lower than some analyst estimates. Deutsche Bank analyst Bryan Kraft had projected Disney+ net adds of about 13 million in the quarter.
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> Global production delays will be "very short term," Chapek said. But he acknowledged there won't be as much new programming in the fourth quarter "than we might have expected," which will affect subscriber growth.
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> Disney has projected 230 million to 260 million Disney+ subscribers by 2024. Disney said in August it had 116 million Disney+ subscribers.
>
> Chapek cautioned investors that quarter-to-quarter growth "is not linear" and some choppiness is expected. Still, he remained confident in Disney's long-term growth outlook.

49. In response to the news, the price of Disney common stock closed down $7.44 per share, or more than 4%, from the prior day's close of $178.61 on September 20, 2021 on abnormally high volume of over 23 million shares traded. Despite these revelations, the price of Disney common stock remained artificially inflated because defendants failed to disclose the full truth. In addition, defendants continued to make materially false and misleading statements which continued to artificially inflate the price of Disney common stock. For example, during the

September 21, 2021 presentation, defendant Chapek stated: "***We're very confident about our long-term sub growth as we have been***."

50. After the market closed on November 10, 2021, Disney issued a press release, which was also filed with the SEC that day as an exhibit to a Form 8-K, reporting the Company's financial results for its fourth quarter and fiscal year ended October 2, 2021. Disney posted quarterly results that missed Wall Street's already diminished expectations as the Company saw a dramatic slowdown in Disney+ subscribers. The Company added just 2.1 million customers during the quarter (the smallest quarterly gain since the service's launch two years prior), revenue of $18.53 billion, and adjusted earnings per share of 37 cents – all of which were below consensus estimates of 119.6 million subscribers, $18.78 billion in revenues, and adjusted earnings per share of 49 cents, as compiled by *Bloomberg*.

51. In response to this news, the price of Disney common stock closed down $12.34 per share, or more than 7%, on November 11, 2021 on abnormally high volume of over 62 million shares traded. Despite these revelations, the price of Disney common stock remained artificially inflated because defendants failed to disclose the full truth. In addition, defendants continued to make materially false and misleading statements which continued to artificially inflate the price of Disney common stock as detailed below.

52. On the Company's earnings call after the market closed on November 10, 2021, defendant Chapek doubled-down on the Company's prior forecast that the streaming service would reach profitability and have between 230 million and 260 million paid global Disney+ subscribers by the end of fiscal 2024, stating in pertinent part as follows:

> I want to reiterate that we remain focused on managing our DTC business for the long term, not quarter-to-quarter, and ***we're confident we are on the right trajectory to achieve the guidance that we provided at last year's Investor Day, reaching between 230 million and 260***

> ***million paid Disney+ subscribers globally by the end of fiscal year 2024, and with Disney+ achieving profitability that same year***.

53. Defendant McCarthy also reiterated the Company's prior subscriber growth and profitability forecast, stating in pertinent part as follows:

> As Bob mentioned, we are increasing our overall long-term content expense for Disney+, and ***we are well positioned to achieve the subscriber target of 230 million to 260 million by fiscal 2024 that we laid out at last year's Investor's Day. And we also remain confident in our expectation that Disney+ will achieve profitability in fiscal 2024***.

54. On August 10, 2022, Disney issued a press release, which was also filed with the SEC as an exhibit to a Form 8-K, reporting the Company's results for the third fiscal quarter of 2022 ended July 2, 2022. Disney also held an earnings call to discuss its results at that time. During the call, defendant McCarthy lowered the Company's 2024 guidance for Disney+ by ***only 15 million*** on both the low end and high end – still far above the actual performance of the platform – and reaffirmed the 2024 profitability estimate, stating in relevant part as follows:

> ***Finally, before we move to Q&A, I want to spend some time sharing a few updates on our fiscal 2024 guidance for Disney+. We are providing more detail on subscriber targets by separating our guidance into 2 categories: core Disney+ and Disney+ Hotstar. Excluding the impact of any significant future macro headwinds, our core Disney+ subscriber target range is 135 million to 165 million by the end of fiscal 2024, largely consistent with previously provided guidance that non-Hotstar Disney+ subscribers in 2024 would approximate 60% to 70% of the expected 230 million to 260 million total subscriber base***.

> ***We are, however, updating subscriber guidance for Disney+ Hotstar to up to 80 million subscribers by the end of fiscal 2024***. We intend to refine this target over time as subscriber visibility in India will be clearer once the ICC and BCCI cricket rights sales processes are completed. As you may know, we recently made the disciplined decision to not proceed with the Indian Premier League digital rights, and we'll evaluate these rights with that same discipline.
>
> ***As we sit here today, we remain confident that Disney+ will achieve profitability in fiscal 2024*** and look forward to several upcoming catalysts, including reaching a steady state of tentpole original content releases, delivery of premium general entertainment and international local originals and the upcoming launch of our ad-supported tier, alongside the new pricing structure announced earlier today.

55. The statements referenced in ¶¶49 and 52-54 above were materially false and misleading when made because they failed to disclose the following adverse facts pertaining to the Company's business, operations, and financial condition, which were known to or recklessly disregarded by defendants as follows:

(a) that Disney+ was suffering decelerating subscriber growth, losses, and cost overruns;

(b) that the true costs incurred in connection with Disney+ had been concealed by Disney executives by debuting certain content intended for Disney+ initially on Disney's legacy distribution channels and then making the shows available on Disney+ thereafter in order to improperly shift costs out of the Disney+ segment;

(c) that DMED had made platform distribution decisions based not on consumer preference, consumer behavior, or the desire to maximize the size of the audience for the content as represented, but based on the desire to hide the full costs of building Disney+'s content library;

(d) that the Company was not on track to achieve even the reduced 2024 Disney+ paid global subscriber and profitability targets, that such targets were not achievable, and that such estimates lacked a reasonable basis in fact; and

(e) that, as a result of (a)-(d) above, defendants had materially misrepresented the actual performance of Disney+, the sustainability of Disney+'s historical growth trends, the profitability of Disney+, and the likelihood that Disney could achieve its 2024 Disney+ subscriber and profitability targets.

56. Then, on November 8, 2022, Disney issued a press release reporting the Company's financial results for its fourth quarter and fiscal year ended October 1, 2022. Disney missed analyst estimates by wide margins on both the top and bottom lines. Revenue in the quarter grew just 9% to $20.15 billion, below estimates at $21.36 billion. Sales, at $20.2 billion, fell about $1 billion short of analysts' projections. Earnings, excluding certain items, fell to 30 cents share, missing the average estimate of 51 cents from analysts surveyed by *Bloomberg*. The Company's DTC segment, which includes streaming services Disney+, ESPN+, Hulu, and Hotstar, reported a monumental operating loss of ***$1.47 billion*** compared to a $630 million loss in the same quarter the year prior. Revenue in the segment increased just 8% to $4.9 billion. The Company also reported a decline in its average revenue per Disney+ subscriber, as more customers subscribed through a discounted bundle with the Company's other services. Notably, the bundled offering made up about 40% of domestic subscribers, confirming that Disney was relying on short-term promotional efforts to boost subscriber growth while impairing the platform's long-term profitability.

57. In response to this news, the price of Disney common stock collapsed $13.15 per share, or more than 13%, in a single day on November 9, 2022 on abnormally high volume of over 62 million shares traded.

58. Less than two weeks later, and only five months after the Board voted to extend Chapek's employment contract, the Company announced on November 20, 2022 that the Board had terminated Chapek and replaced him with Iger. Defendant Daniel was let go within 24 hours thereafter.

59. On November 21, 2022, *The Wall Street Journal* reported on some of the behind-the-scenes disputes and issues that ultimately led to Chapek's dismissal, whose position at the Company had reportedly "been shaky for months." Significantly, the report also included information concerning a previously undisclosed cost-shifting scheme employed by defendants to hide certain expenses that should have been attributed to Disney+ so that the streaming service would appear closer to profitability than in fact was the case. Not only did the Individual Defendants know about this strategy and intentionally employ it to deceive investors, but reportedly defendant McCarthy had internally expressed her concerns about its propriety. The report stated in pertinent part as follows:

> Disney is moving some shows that were supposed to be Disney+ originals and air them first on other networks including the Disney Channel, people familiar with the matter said. By doing so, the costs of production and marketing of the shows – which included mystery show "The Mysterious Benedict Society" and medical drama "Doogie Kameāloha, M.D." – would be shifted away from the streaming service, making its financial performance look better, they said.
>
> Ms. McCarthy was concerned about this strategy, the people said.

60. Other news outlets thereafter similarly reported that "Disney Discovered Bob Chapek Was 'Cooking the Books' to Hide Massive Losses in Revenue," and that "Bob Chapek Shifted Budgets to Disguise Disney+'s Massive Monetary Losses."

61. On February 8, 2023, the Company reported financial results for its first quarter fiscal year 2023, ended December 31, 2022. Disney reported that ***Disney+ lost 2.4 million subscribers*** and the DTC business reported an increase in operating loss from $0.5 billion to $1.1 billion due in part to a higher loss at Disney+ which reflected higher programming and production costs.

62. On a conference call that same day to discuss the results, Iger announced a broad restructuring of the Company aimed at putting the Company's streaming business on a path to both profitability and growth, stating in relevant part as follows:

> In 2019, Disney+ launched, with nearly 500 films and 7,500 episodes of television from across the world of Disney. Three years later, its meteoric rise is considered one of the most successful results in the history of the media business.
>
> Now it's time for another transformation, one that rationalizes our enviable streaming business and puts it on a path to sustained growth and profitability while also reducing expenses to improve margins and returns and better positioning us to weather future disruption, increased competition and global economic challenges. We must also return creativity to the center of the company, increase accountability, improve results and ensure the quality of our content and experiences.

63. Iger made clear that an important component of restoring the Company's success was returning power to the Company's creative executives, including distribution decisions, which Chapek had taken away as part of his October 2020 restructuring, stating in relevant part as follows:

> Now the details. Our company is fueled by storytelling and creativity. And virtually every dollar we earn, every transaction, every interaction with our consumers emanates from something creative. I've

> always believed that the best way to spur great creativity is to make sure that people who are managing the creative process feel empowered.
>
> Therefore, our new structure is aimed at returning greater authority to our creative leaders and making them accountable for how their content performs financially. Our former structure severed that link, and it must be restored. Moving forward, our creative teams will determine what content we're making, how it is distributed and monetized and how it gets marketed.

64. Iger additionally announced that the Company would be reorganized into three core business segments from which creative executives would purportedly be able to maximize revenue and growth, stating in pertinent part as follows:

> Managing costs, maximizing revenue and driving growth from the content being produced will be their responsibility. Under our strategic reorganization, there will be 3 core business segments: Disney Entertainment, ESPN and Disney Parks, Experiences and Products.
>
> Alan Bergman and Dana Walden will be Co-Chairman of Disney Entertainment, which will include the company's full portfolio of entertainment, media and content businesses globally, including streaming. Jimmy Pitaro will continue to serve as Chairman of ESPN, which will include ESPN Networks, ESPN+ and our international sports channels. And Josh D'Amaro will continue to be Chairman of Disney Parks, Experiences and Products, which will include our theme parks, resort destinations and cruise line as well as Disney's consumer products, games and publishing businesses.
>
> These organizational changes will be implemented immediately, and we will begin reporting under the new business structure by the end of the fiscal year. This reorganization will result in a more cost-

> effective, coordinated and streamlined approach to our operations. And we are committed to running our businesses more efficiently, especially in a challenging economic environment.

65. Iger also provided important details regarding the Company's efforts to rein in costs, indicating that Disney would be cutting $5.5 billion in costs with $2.5 billion in non-content cuts (including 7,000 jobs) and $3 billion in content savings over the next few years, stating in relevant part as follows:

> In that regard, we are targeting $5.5 billion of cost savings across the company. First, reductions to our non-content costs will total roughly $2.5 billion, not adjusted for inflation. $1 billion in savings is already underway, and Christine will provide more details. But in general, the savings will come from reductions in SG&A and other operating costs across the company.
>
> To help achieve this, we will be reducing our workforce by approximately 7,000 jobs. While this is necessary to address the challenges we're facing today, I do not make this decision lightly. I have enormous respect and appreciation for the talent and dedication of our employees worldwide, and I'm mindful of the personal impact of these changes.
>
> On the content side, we expect to deliver approximately $3 billion in savings over the next few years, excluding sports. Christine will be providing more details during the call. Turning to our streaming businesses. I'm proud of what we've been able to achieve since the launch of Disney+ just 3 years ago. We are delivering more content with greater quality in more ways, in more places and to larger audiences.

66. Additionally, Iger stated that the Company would no longer be providing long-term subscriber guidance for Disney+, stating in relevant part as follows:

> Like many of our peers, we will no longer be providing long-term subscriber guidance in order to move beyond an emphasis on short-term quarterly metrics, although we will provide color on relevant drivers. Instead, our priority is the enduring growth and profitability of our streaming business.

67. Then, on May 10, 2023, the Company reported financial results for its second quarter fiscal year 2023, ended April 1, 2023. Disney reported that Disney+ had lost subscribers for the second quarter in a row, further confirming that the 2024 Disney+ targets had never been achievable. During the quarter Disney+ had lost ***4 million paid subscribers*** from the prior quarter, which shocked analysts who had expected the service to ***add*** 1.7 million subscribers. Streaming revenue increased 12% from a year earlier in part due to recent price hikes necessitated by the streaming service's horrendous losses. On a conference call that same day to discuss the results, Iger again acknowledged that Disney's streaming business needed to rebalance its streaming business model in order to have a chance to reach profitability, stating that "it's critical we rationalize the volume of content we're creating and what we're spending to produce our content." He further announced that Disney was planning another price increase, at least for the Disney+ ad-free tier, risking even further subscriber losses.

68. In response to this news, the price of Disney common stock declined $8.83 per share, or more than 8% in a single day on May 11, 2023 on abnormally high volume of over 57 million shares traded.

69. As a result of defendants' wrongful acts and omissions, and the precipitous declines in the market value of Disney common stock, plaintiff and other

Class members (defined below) have suffered significant losses and damages for which they seek redress through this action.

ADDITIONAL SCIENTER ALLEGATIONS

70. As alleged herein, defendants acted with scienter in that defendants knew, or recklessly disregarded, that the public documents and statements they issued and disseminated to the investing public in the name of the Company, or in their own name, during the Class Period were materially false and misleading. Defendants knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements and documents as primary violations of the federal securities laws. Defendants, by virtue of their receipt of information reflecting the true facts regarding Disney, and their control over and/or receipt and/or modification of Disney's materially false and misleading statements, were active and culpable participants in the fraudulent scheme alleged herein.

71. Defendants knew and recklessly disregarded the false and misleading nature of the information they caused to be disseminated to the investing public. The fraudulent scheme described herein could not have been perpetuated during the Class Period without the knowledge and complicity of, or at least the reckless disregard by, personnel at the highest levels of the Company, including the Individual Defendants.

72. The Individual Defendants, because of their positions with Disney, controlled the contents of Disney's public statements during the Class Period. The Individual Defendants were each provided with or had access to the information alleged herein to be false and misleading prior to or shortly after its issuance and had the ability and opportunity to prevent its issuance or cause it to be corrected. Because of their positions and access to material, non-public information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations that were being made were false and misleading.

73. Furthermore, in order to effectuate defendants' fraudulent accounting scheme, defendant Chapek reorganized the Company in October 2020 by centralizing the distribution and commercialization of all of Disney's content into a new single reporting segment, DMED, and installing defendant Daniel, Chapek's long-time protégée, as DMED's Chairman and direct report. DMED became responsible for all monetization of all Disney content globally – both distribution and advertising sales – and oversaw the operations of the Company's streaming services. Critically, Daniel along with Chapek, were then able to determine which platform the Company's content would be released on, whether it be a streaming service, a cable television network, or in traditional movie theaters. These changes allowed Chapek and Daniel to effectuate the cost-shifting scheme described above, which was implemented almost from the beginning of the October 2020 reorganization.

74. Tellingly, the October 2020 reorganization represented a dramatic departure from Disney's historical reporting structure and was highly controversial within the Company because it took power away from creative executives in the film and television studios who felt their authority was slipping away as Chapek removed budgetary and distribution control from the heads of Disney's content groups.

75. As reported by *The Wall Street Journal*, defendant McCarthy was aware of and concerned about the Company's accounting. Notwithstanding, McCarthy filed signed certifications with the SEC on November 24, 2021 stating that the Form 10-K for the fiscal year ended October 2, 2021 ("2021 Form 10-K") did not contain any false or misleading statements of fact, fairly presented Disney's financial condition and results of operations, was the product of effective internal controls, and was free from any fraud, whether or not material. Defendant Chapek signed essentially identical certifications that were also included in the 2021 Form 10-K. These certifications corroborate the importance of the cost-shifting scheme to investors as well as defendants' intent to deceive investors about the scheme.

76. In short, defendants' fraudulent cost-shifting scheme was designed and overseen by defendants Chapek and Daniel, and permitted and furthered by defendant McCarthy, each of whom is liable as a result of the inherently deceptive nature of the scheme.

77. Additionally, given the Individual Defendants' positions at the Company and their roles in the fraud, knowledge of the facts underlying the fraud can be imputed to the Individual Defendants because the fraud relates to Disney's core operations. As detailed herein, defendants repeatedly emphasized that Disney was shifting the Company's focus to its DTC streaming service Disney+. Indeed, Chapek reorganized the Company in October 2020 specifically in order to accelerate and advance the Company's transition to its new DTC-focused strategy centered around Disney+.

78. Lastly, the termination of Chapek and Daniel soon after the problems in the Disney+ platform were revealed in November 2022 further bolsters a compelling inference of scienter.

NO SAFE HARBOR

79. Disney's "Safe Harbor" warnings accompanying its reportedly forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability. To the extent that projected revenues and earnings were included in the Company's financial reports prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), including those filed with the SEC on Form 8-K, they are excluded from the protection of the statutory Safe Harbor. 15 U.S.C. §78u-5(b)(2)(A).

80. Defendants are also liable for any false or misleading FLS pled because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and approved by an executive officer of Disney who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection, or

statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

APPLICATION OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET

81. At all relevant times, the market for Disney common stock was an efficient market for the following reasons, among others:

(a) Disney common stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) according to the Company's Form 10-K for the fiscal year ended October 2, 2021, Disney had more than 1.8 billion shares of common stock outstanding as of November 17, 2021;

(c) as a regulated issuer, Disney filed periodic public reports with the SEC;

(d) Disney regularly communicated with public investors via established market communication mechanisms, including the regular dissemination of press releases on national circuits of major newswire services, the internet, and other wide-ranging public disclosures; and

(e) unexpected material news about Disney was rapidly reflected in and incorporated into the price for the Company's common stock during the Class Period.

82. As a result of the foregoing, the market for Disney common stock promptly digested current information regarding Disney from publicly available sources and reflected such information in the price of Disney common stock. Under these circumstances, all purchasers of Disney common stock during the Class Period

suffered similar injury through their purchases of Disney common stock at artificially inflated prices, and a presumption of reliance applies.

83. A presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because plaintiff's claims are based, in significant part, on defendants' material omissions. Because this action involves defendants' failure to disclose material adverse information regarding Disney's business, operations, and guidance, positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of defendants' material misstatements and omissions set forth above, that requirement is satisfied here.

LOSS CAUSATION/ECONOMIC LOSS

84. During the Class Period, as detailed herein, defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Disney common stock and operated as a fraud or deceit on Class Period purchasers of Disney common stock by misrepresenting the value of the Company's business and prospects by concealing negative aspects of the Company's streaming businesses. As defendants' misrepresentations and fraudulent conduct became apparent to the market, the price of the Company's common stock fell precipitously as the prior artificial inflation came out of the stock's price. As a result of their purchases of Disney common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

CLASS ACTION ALLEGATIONS

85. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all purchasers of the common stock of Disney during the Class Period (the "Class"). Excluded from

the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

86. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Disney common stock was actively traded on the NYSE. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there could be hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Disney or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

87. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful statements and conduct in violation of federal law that is complained of herein.

88. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

89. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the Exchange Act was violated by defendants as alleged herein;

(b) whether statements made by defendants misrepresented material facts about the business, operations, and prospects of Disney;

(c) whether defendants acted with scienter; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

90. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

For Violation of §10(b) of the Exchange Act and SEC Rule 10b-5 Against All Defendants

91. Plaintiff incorporates ¶¶1-90 by reference.

92. During the Class Period, defendants disseminated or approved the statements specified above, which they knew or deliberately disregarded were false and misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

93. Defendants violated §10(b) of the Exchange Act and SEC Rule 10b-5 in that they:

(a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Disney common stock during the Class Period.

94. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Disney common

stock. Plaintiff and the Class would not have purchased Disney common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' false and misleading statements and fraudulent scheme.

COUNT II

For Violation of §20(a) of the Exchange Act Against Disney, Chapek, and McCarthy

95. Plaintiff incorporates ¶¶1-94 by reference.

96. Defendants Chapek and McCarthy acted as controlling persons of the Company within the meaning of §20(a) of the Exchange Act. By reason of their positions with the Company and/or ownership of Disney stock, these Individual Defendants had the power and authority to cause the Company to engage in the wrongful conduct complained of herein. The Company controlled the Individual Defendants and all of its employees. By reason of such conduct, the defendants named herein are liable pursuant to §20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Awarding such equitable, injunctive, or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: