

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

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COMPASS PRODUCTIONS INTERNATIONAL LLC,

**SUMMONS**

Plaintiff,

-vs-

Index No.:

Date Index No. Purchased:

CHARTER COMMUNICATIONS, INC.,  
Defendant.

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TO THE ABOVE-NAMED DEFENDANT:

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** and

required to serve upon Plaintiff’s attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York.

**YOU ARE FURTHER NOTIFIED** should you fail to answer a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: Fresh Meadows, New York  
November 7, 2018

Jonathan E. Neuman/  
JONATHAN E. NEUMAN, ESQ.  
*Attorney for Plaintiff*  
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Fresh Meadows, New York 11366  
(347) 450-6710  
(718) 228-3689 *facsimile*  
jnesq@jenesqlaw.com

**Defendant’s Address:**

CHARTER COMMUNICATIONS, INC. c/o Corporation Service Company  
80 State Street  
Albany, New York 12207

**VENUE:** Plaintiff designates New York County as the place of trial. The basis of the venue designated is the address of Plaintiff: 520 8th Ave, 4th Floor, New York, New York 10018.

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

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COMPASS PRODUCTIONS INTERNATIONAL LLC,  
Plaintiff,

**VERIFIED COMPLAINT**

Index No.

-vs-

**JURY TRIAL DEMANDED**

CHARTER COMMUNICATIONS, INC.,  
Defendant,  
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Plaintiff, COMPASS PRODUCTIONS INTERNATIONAL LLC, by its attorney,  
JONATHAN E. NEUMAN, ESQ., as and for its Verified Complaint, alleges as follows:

1. Plaintiff COMPASS PRODUCTIONS INTERNATIONAL LLC (“COMPASS”) is a domestic limited liability company with a principal office and place of business at 520 8th Ave, 4th Floor, New York, New York 10018.

2. Defendant CHARTER COMMUNICATIONS, INC. (“CHARTER”) is a Delaware corporation, with a New York Department of State address for service of process at c/o Corporation Service Company, 80 State Street, Albany, New York, 12207-2543.

3. Upon information and belief, at all times hereinafter mentioned, CHARTER was and still is doing business in the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, CHARTER was and still is transacting business within the State of New York.

5. Venue is appropriate pursuant to CPLR §503, since Plaintiff is a resident of New York County.

## **FACTUAL BACKGROUND**

### **The Two Categories of Channels on Cable Television**

6. Generally, there are two types of channels that exist on cable television within the United States: Bundled channels and Premium channels.

7. Bundled channels are provided to all subscribers who make a basic payment required to obtain any cable television at all. These include ESPN, CNN, TBS, BET, Univision, etc.

8. Premium channels, however, require an additional monthly payment, a secondary purchase beyond the bundle, in order for individual subscribers to be allowed to view them.

9. The two channel categories have two very different payout structures for the companies that own the channels.

10. Premium channels are offered to individual subscribers at a certain additional subscription fee, with the channel owner receiving a percentage of the fee and the cable operator retaining the rest.

11. Bundled channels, on the other hand, receive a license fee from each cable operator each month, which can range from as low as a penny per month for the newer and more niche-oriented channels to as much as over \$6.00 per subscriber per month for the most-watched channel families, such as ESPN.

12. The vast majority of channels are Bundled channels that receive monthly license fees.

13. Almost all channels, whether premium or bundled, are Linear channels, which are channels that have a 24/7 stream of programming that is always available to watch by turning to that channel's number.

14. Within the category of Premium channels, there is a sub-category: Subscription Video On Demand channels, or SVOD.

15. SVOD channels are included in the group of Premium channels because they also require an additional monthly charge for viewing, but are different from other Premium channels in that SVOD channels only have their programming available in menus from which viewers must choose a specific program, rather than turning to a channel number and beginning to watch a program.

16. Because of the double barrier of paying an additional monthly charge and a cumbersome model for beginning to watch a program, there are very few SVOD channels, and yet fewer that have been able to become financially sustainable.

### **The Jewish Channel**

17. Plaintiff COMPASS is the owner of The Jewish Channel ("TJC"), an SVOD channel that provides Jewish programming catering toward the Jewish population within the United States.

18. TJC has been carried on most cable operators within the United States since in or about 2007.

19. TJC was developed in 2005 as a pluralistic and culture-based, non-denominational Jewish themed television channel, and presented to a number of cable operators for potential distribution.

20. While TJC was originally conceived as a Linear Premium channel, space constraints on then-existing analog systems made bandwidth scarce, and made it difficult for TJC to easily secure carriage as a Linear Premium channel.

21. As a result, Cablevision, one of the largest cable operators at the time, offered to carry TJC as an SVOD channel, which at the time was a relatively new type of channel that cable operators were offering.

22. Rather than waiting years for bandwidth to become available, TJC agreed with Cablevision to launch as an SVOD channel.

23. TJC originally launched on Cablevision in 2007, and on Verizon FIOS shortly thereafter, followed by RCN, Cox, and eventually Time Warner, Frontier, and Comcast.

24. These cable operators represented substantially all of the cable distribution in the major Jewish population areas throughout the United States.

25. All of these operators carried TJC as an SVOD channel.

26. The economic model was for the channel to be offered at a retail monthly price of \$5.99 or \$6.99 depending on the carrier, with TJC receiving 50% of the revenue and the cable operator the rest.

27. However, the model proved to be flawed and economically impractical for Plaintiff COMPASS.

28. As an SVOD channel, making content available to subscribers was prohibitively expensive. Sending content to cable operators required paying large fees to transport companies<sup>1</sup> at the same high rates as the mainstream licensed channels paid (the

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<sup>1</sup> Transport companies specialize in delivering video content to cable operators for fees.

transport companies are owned by the cable operators), adding significantly to TJC's cost basis.

29. In addition to these distribution fees, TJC also had to pay to produce original content as well as licensing fees for its non-original content, in addition to its costs for marketing to potential consumers as a result of the channel being an SVOD channel.

30. Marketing fees were particularly onerous in that agreements with the operators prohibited contacting or targeting subscribers directly, which is necessary due to the standard "churn factor"<sup>2</sup> in the industry of 1-2% per month, which means that in any given year, a channel that relies solely on subscription revenues might lose between 12-24% of its subscribers, thus necessitating constant marketing efforts. General, non-targeted marketing efforts were prohibitively expensive for a channel operating on this economic model.

31. Any marketing efforts were made even more difficult and expensive by virtue of the fact that cable operators fiercely guard information about their subscribers, and any direct contact with subscribers would result in a breach of contract by the channel programmers, thus requiring TJC to engage in general marketing to potential future and former subscribers without knowing who the subscribers were or how to reach them.

32. These subscriber acquisition efforts were made yet more difficult by the cumbersome nature of the SVOD viewing experience. Many of TJC's viewers were

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<sup>2</sup> Churn factor is the rate of subscribers who opt to turn the service off in any given month and/or unsubscribe from the service.

older, and or less technically able to learn how to navigate the several screens of menu pages necessary to watch any one particular television program.

33. As mentioned above, most channels, on the other hand, do not have to market to individual subscribers, but rather are included in cable bundles and packages and receive a monthly license fee from each cable operator, and almost no channels have the double barrier of also being an SVOD channel.

34. Advertising was difficult to sell because the ‘walled garden’ model of pay TV prevented sufficient number of viewers and the lower numbers made the advertising model unable to generate significant revenue.

#### **COMPASS Begins Its Efforts to Shift TJC to a Linear Bundled Model**

35. Under the stress of an unsustainable business model, in or around 2012, Plaintiff COMPASS began pushing for a Linear format for TJC and a Bundled license fee just like the vast majority of channels, including those channels that lead categories for other ethnic groups in the United States, like BET, Univision, etc.

36. As the provider of programming for a minority group in the United States, Plaintiff COMPASS’s goal was to make available mainstream Jewish programming directed toward the Jewish population in the United States as part of the Linear Bundle, just as there exist Linear Bundle channels for other major minorities such as the African American and Hispanic populations.

37. As part of its efforts, Plaintiff COMPASS reached out to Jewish communal and political leaders for assistance.

38. Several joint letters signed by local and national politicians and leaders helped initiate conversations with a number of cable operators; however, no cable operators were willing to offer TJC a linear carriage deal, or were open-ended about timing. Several operators indicated they would only offer TJC a linear carriage deal if and when they were forced to by regulators or if they were otherwise pressured.

39. The Federal Communications Commission (“FCC”) is an independent agency of the United States government, created by Congressional statute to regulate interstate communications by radio, television, wire, satellite, and cable within the United States, the District of Columbia and U.S. territories.

40. Before a company may be granted the right to merge with or acquire another company holding an FCC license, it must receive the FCC’s approval.

41. Accordingly, Plaintiff COMPASS was advised to wait until a merger of two major cable operators, at which point Plaintiff COMPASS could approach the FCC for help in mandating an increase that would foster more Jewish programming or channels, similar to what it has done for several other communities.

42. There was historical precedent for major niche cable channels getting their start in such fashion.

43. For example, when Comcast purchased NBCUniversal in 2011, the FCC’s approval for the merger was conditioned on Comcast launching 10 independent, minority-owned ethnic channels aimed at the Hispanic and African American communities.

44. One of the Hispanic channels launched was a channel called BabyFirst, which as a result of its successes is now carried as part of the Linear Bundle in over 52



million U.S. homes and in over 80 million households worldwide. Accordingly, Plaintiff COMPASS followed this advice and waited for an opportunity at the next potential cable operator merger.

45. In or about 2014, it was announced that Comcast was attempting to buy Time Warner Cable (“TWC”).

46. As a result, Plaintiff COMPASS approached Comcast directly, and began talks about launching TJC as a Linear Bundled channel following the merger; the FCC and the Justice Department eventually blocked the merger and the talks ended.

47. A few months later, in or about early Spring 2015, it was announced that Defendant CHARTER was making a bid to acquire TWC, and CHARTER had begun the early stages of securing FCC approval.

48. At the time, TWC was the second largest cable operator in the United States.

49. Also, at the time, CHARTER was among the smaller cable operators in the United States, and in particular had a very small Jewish audience (which is concentrated mostly in urban areas in the United States, where Charter typically did not have a large footprint).

50. If the merger were approved, together, the combined company would serve more than 25 million subscribers all over the United States and likely more than half of the Jewish population in the United States.

51. At the urging of Jewish communal leaders, Plaintiff COMPASS asked its political contacts to reach out to the FCC to make a case, as a condition of the merger, for requiring Jewish Linear Bundled programming for channels such as TJC.

52. In or about April 2015, Plaintiff COMPASS had conversations with Howard Friedman (“Friedman”), the Chairman of the Board and President Emeritus of The American Israel Public Affairs Committee (“AIPAC”) and Chairman of the Board of the UJA-Federation of Greater Maryland, along with a number of other Jewish communal leaders about the importance of securing a Linear Bundled Jewish channel.

53. For nearly ten years, TJC had been struggling under the flawed SVOD model, and two other Jewish channels, while Linear channels, were being offered without either a license fee as part of the Bundle, or the opportunity to charge as Premium channels, and thus it was imperative to launch a Linear Bundled Jewish channel in order to ensure the continued viability of cable programming for the American Jewish community.

54. For too long the cable operators had been neglecting the Jewish community in the United States, forcing these three Jewish channels to spend millions of unnecessary dollars and thousands of unnecessary human hours to provide programming for the Jewish population in the United States in financially-unsustainable models that were different from almost all other ethnic and non-ethnic channels.

55. Unlike the Jewish community, nearly every other minority group, including the African American, Hispanic, and LGBTQ communities, had at least one Linear Bundled channel.

56. The Jewish communal leaders with whom Plaintiff COMPASS spoke agreed that this was an important issue, and that the programming and general quality of TJC warranted the assistance of the major Jewish organizations to plead the case to the

FCC that there should be a Linear Bundled Jewish channel receiving a licensing fee just like all other channels in standard cable Bundles and packages.

57. During discussions with Jewish leaders, TJC was lauded for its award-winning news coverage (including several national breaking news stories) and groundbreaking programming (such as a special on Jews of Color) that spoke to unique and otherwise poorly covered areas of Jewish life. Its long-running women's issue show, produced in conjunction with the Forward, convinced many that TJC had already produced and would continue to produce quality programming that enhanced Jewish life and culture in the US.

58. Accordingly, Friedman and other Jewish leaders agreed that they would reach out to their government contacts on behalf of TJC and seek their assistance in securing the future of Jewish television in the United States with a viable Linear economic model.

59. After numerous discussions and meetings with senior Senate and House of Representative staffers and elected officials it was agreed that the case should be brought directly to the attention of the FCC, which at the time was still reviewing and considering the Charter-Time Warner merger.

60. However, prior to the meeting with the FCC, Friedman was called by Waldo McMillan ("McMillan"), an employee of Defendant CHARTER, who handled their government relations/affairs.

61. McMillan begged Friedman not to go to the FCC, because the merger was close to approval and any discussions with the FCC could potentially delay the approval process and cost Charter millions.

62. Instead, McMillan got Friedman to agree that Plaintiff COMPASS would speak about the issue privately with Defendant CHARTER before going to the FCC, and that only if the parties could not reach a mutually agreeable arrangement would Plaintiff COMPASS go speak to the FCC directly.

63. Friedman was soon directed by McMillan to have Plaintiff COMPASS reach out to Defendant CHARTER in order to arrange for a presentation of TJC.

64. Plaintiff COMPASS thereafter reached out to Defendant CHARTER's Senior Vice President of Programming, Allan Singer ("Singer"), and scheduled a date for a presentation in November 2015.

65. The presentation was attended by Singer and Jonathan Hargis ("Hargis"), CHARTER's Executive Vice President and Chief Marketing Officer, representing Charter, and Eliezer (Elliot) Singer ("Elliot"), the Chief Executive Officer of Plaintiff COMPASS, along with two senior members of COMPASS, representing COMPASS.

66. Hargis' presence as a member of senior management of CHARTER was a very reassuring sign for Plaintiff COMPASS that Defendant CHARTER was taking the matter seriously.

67. Defendant CHARTER was very encouraging, but did not provide any clear commitment for specific timing for a launch of TJC as a Linear Bundled channel. The general sentiment conveyed by the two executives present was complimentary of the presentation, with Singer saying "we can do this" but indicated that timing would require that it wait several months until after the merger was completed.

68. Pressed for more specificity, Singer stated that he could not give specific timing because the first few months post-merger would be very hectic, and that

CHARTER would be “drinking from the fire hydrant for the first few months” if the acquisition closed, but that Plaintiff COMPASS should wait for some follow-up from Defendant CHARTER.

69. After several weeks with no further communication from Defendant CHARTER, and fearing that the window of opportunity was narrowing, several of the political and Jewish leaders again began reaching out to their contacts, stating that there was a feeling that CHARTER was not demonstrating sufficient commitment to the subject of Jewish programming and so there was no recourse but to speak with the FCC while there was still an opportunity to do so.

#### **The Agreement Between Compass and Charter**

70. Shortly thereafter, on or about December 21, 2015, Singer reached out to Elliot, the Chief Executive Officer of Plaintiff COMPASS, and asked that Elliot call Singer back on his cell phone.

71. When they spoke, Singer began the conversation by stating “Okay, let’s get this shakedown over with.”

72. Taken aback, Elliot stated that he took umbrage at the characterization of the conversation, and that Elliot was told that Singer wanted Elliot to call him.

73. Singer did not dispute that he had been expecting the call, but then stated, “Well, what do you want?”

74. Again, Elliot stated that he had been told that Singer had requested that Elliot call him, that Elliot was now returning his call, that he had heard back from his political and Jewish contacts that according to McMillan, and there would be a call

happening with Defendant CHARTER regarding the terms of a Linear Bundle launch of TJC on the Charter/TWC systems if the merger was approved.

75. In response, Singer then said, “So let me get this straight, if we don’t give you a channel, your Jewish Mafia is going to block our merger? Is that what’s going to happen?”

76. Taken even more aback, Elliot responded that he was very offended by the unfair characterizations and language being used, and that that wasn’t the situation at all.

77. Elliot proceeded to explain that a strong contingent of Jewish leadership was eager to see an economically viable and supported Jewish channel on cable television, just like those available to every other minority community in the United States; to that end, these leaders had reached out to friendly staffers and elected representatives in Congress who would be sympathetic to the issue, in order to enlist their help in getting the FCC to consider the importance of securing a viable future for Jewish programming, but that to Elliot’s knowledge there had never been any threats made by anyone about attempting to block the merger, and that it had been Defendant CHARTER who had initiated the original contact and reached out to Plaintiff COMPASS about not talking to the FCC.

78. Singer seemed to calm down after this explanation and asked what Plaintiff COMPASS would want from Defendant CHARTER.

79. Elliot explained that Plaintiff COMPASS was interested in the broadest possible distribution that would be available.

80. Singer stated that Gold Tier (the broadest level of distribution in CHARTER’s Bundle) would be an impossibility, but if the merger was approved, he

could give TJC carriage on the Silver Tier, which was expected to be in some eight million homes (with the possibility of even more subscribers in the future). Singer asked Elliot if that was acceptable, to which Elliot said yes.

81. Singer then asked what Plaintiff COMPASS wanted in terms of a license fee, and Elliot replied that he would be reasonable and was not looking for anything exorbitant. Elliot noted that he wasn't looking for a protracted negotiation that would likely be delayed by the upcoming holidays, and that he wasn't expecting anything more than the smallest reasonable license fee, commensurate with the percentage of Jewish households in the general population.

82. In response, Singer offered an initial license fee of one nickel per subscriber per month, with the understanding there would be industry-standard increases in the fee in the years thereafter.

83. Elliot agreed, not even pushing back for a higher amount, and asked Singer to confirm that they were agreed on Silver Tier at an initial license fee of five cents per subscriber per month.

84. Singer responded that they were in agreement, and that while a formal contract would have to wait until after the merger's approval – when CHARTER would actually control TWC's distribution – they were agreed on all but the non-essential specifics.

85. Elliot requested that he be sent a standard contract form to begin the process of reviewing it with his lawyers, but was told that that could not or would not be done until after the merger, and that the deal they had was contingent upon the successful

completion of the merger. Singer reiterated that the deal would be done only if and when the merger closed.

86. Singer and Elliot also discussed a few other matters. For example, Singer provided some publicly unavailable details on the expected closing date of the merger—which would now be later than previously hoped, but it was expected that approval would likely be granted at the end of the 1<sup>st</sup> quarter of 2016. At that point, the issue of timing for a launch of the channel came up. Singer stated that launching 30 days after the merger was an impossibility because of the notification guidelines for consumers, and that 60-90 days was a practical impossibility, and asked that Plaintiff COMPASS be sensitive to the fact that the post-merger period would be extremely busy and that COMPASS would need to wait a few months after the merger for a launch.

87. Singer then asked Elliot to provide him with a rate card, which is a standard document in the industry that contains a summary of the essential terms of a contract, to memorialize the terms of their agreement.

88. Elliot responded that he would send one shortly.

89. The next day, on December 22, 2015, Elliot sent a rate card to Singer in writing via email, pursuant to their conversation and Singer's request, confirming the terms of their agreement: that Defendant CHARTER would launch Plaintiff COMPASS's programming on all of its systems at the Silver Tier for five years no later than 120 days after the closing of the merger, with an initial license fee of \$0.05 in 2016 (assuming a minimum of 8 million+ subscribers as had been conveyed by Singer), and standard increases every year thereafter.



90. Elliot also left a voicemail to let Singer know that he had sent the rate card as requested by Singer.

91. On December 23, 2015, Singer sent an email back to Elliot stating: “Elliot, I received this and your voice mail message today. To clarify, I believe you understand it does not actually reflect all the points we discussed, but thank you very much nonetheless. Yours, Allan Singer”

92. On December 24, 2015, Elliot responded by email stating:

Allan,

Thank you for your response.

I really tried to draft the document to incorporate the main points of our conversation, and I thought I did. I can only think of two things you could be referring to.

One was the MFN<sup>3</sup>, but I assumed that would be something you'd put in a contract rather than a rate card. As I said in our conversation, I'd have no issue with having one. I'd be happy to resend it with an MFN reference.

The second was the timing. I put it in at 120 because you said 60 and 90 days weren't possible.

If there's something else I've forgotten, please let me know what I've missed and I'll revise and resend.

Happy holidays,

Elie

93. Singer did not respond, which Elliot interpreted as his having addressed Singer's concerns sufficiently, otherwise Singer would have responded in an email or call, and so Elliot did not initiate any further communication to Singer or Defendant CHARTER, and instead waited as Singer had requested.

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<sup>3</sup> MFN stands for “most favored nation” and is a standard clause employed by cable operators to ensure that programmers are prevented from offering more favorable terms to competitor operators.

94. The merger between Defendant CHARTER and Time Warner was approved on or about May 6, 2016, and the deal closed on or about May 18, 2016

**Charter Breaks the Agreement and Does Not Launch a Linear TJC Channel**

95. As had been requested by Singer, Plaintiff COMPASS waited patiently during the initial months after the merger and waited to hear from Defendant CHARTER, but did not hear anything.

96. During this period of nearly seven months, Elliot waited to contact CHARTER, and did not intend to do so until a few months after the merger closed in May of 2016, as he had agreed to during the call with Singer. Elliot did attempt to carefully reach out to other cable operators to inform them of his deal with Charter and request that they too negotiate similar terms, but was very cautious, and thus limited about relaying specifics to other cable operators for fear that a verification call to CHARTER by one of the other operators might anger CHARTER that Elliot was discussing the agreement with others before CHARTER was prepared to publicly announce the agreement. (One such call was made to the head of programming of Cablevision, Tom Montemagno, who coincidentally today is the head of programming at CHARTER.)

97. In the summer of 2016, Elliot tried to reach out to Singer, but was unable. Elliot then learned that Singer was no longer the head of programming at Defendant CHARTER. Howard Friedman had run into Waldo McMillan the offices of a US Senator, and McMillan informed Friedman that Singer was no longer head of programming, and suggested that Elliot should now reach out to Tom Montemagno the

newly tapped head of programming for CHARTER (whom Elliot knew well), to implement the deal.

98. (It was soon reported in the media that Singer was terminated for using racial language directed at African American protestors, as described in a pending \$10 billion lawsuit filed against Singer and CHARTER by Byron Allen, head of an African American media company, claiming racial discrimination against African American-owned channels, case name National Association of African-American Owned Media et al. v. Charter Communications Inc. et al., case number 2:16-cv-00609, pending in the United States District Court for the Central District of California).

99. Shortly after this contact, in or about Fall 2016, Eric Goldberg (“Goldberg”), a former Senior Director of Programming at TWC who had stayed with Defendant CHARTER following the merger, reached out to Plaintiff COMPASS.

100. Goldberg had reached out to Elliot on several different instances during the merger on several social media platforms seemingly just to say hello. Elliot assumed Goldberg had been told to contact him regarding the subject of TJC, as Goldberg had negotiated the TJC deal at Time Warner Cable several years before, and was generally responsible for what Time Warner Cable had previously referred to as their ‘Ethnic Channels’.

101. When Elliot finally spoke to Goldberg Elliot told him that he was trying to get launch dates for the deal, and assumed that was why Goldberg had reached out to him. Goldberg did not state why he was calling, but instead stated that he had not been made aware of any specific deal involving Plaintiff COMPASS or TJC, but that CHARTER would absolutely keep all its promises and commitments made during the

merger process and that Elliot should come in to discuss launching TJC as a Linear channel. He stressed that Elliot shouldn't wait until the following January (it was late October 2016 at the time), but that he should set up a meeting for November or December 2016, but definitely should not wait until after the new year.

102. Goldberg added, that he hoped that TJC didn't think that it would be "receiving a blank check."

103. Elliot responded that he did not think that, and that in fact the numbers had already been agreed to previously by Singer, which Elliot proceeded to recount.

104. Upon hearing that, Goldberg became irritable and said that in his opinion the amount Elliot cited was equivalent to a "blank check." Goldberg further implied that he was personally charged with making sure "nothing like that happened", saying "that's my job here".

105. Goldberg strongly suggested that Elliot set up a meeting with him, and again specified that it be as soon as possible and that Elliot not wait until after the new year in January.

106. An in-person meeting was set up shortly thereafter.

107. In or about December 2016, Goldberg met with Elliot and a senior TJC staffer at CHARTER's headquarters in Stamford, Connecticut.

108. During the meeting, Goldberg stated that he had checked with senior managers and "all the people who promised such things during the merger period", and that there was no promised deal between Defendant CHARTER and Plaintiff COMPASS and that no alternative deal was going to be offered at all. Goldberg seemed almost gleeful to report the news, saying something along the lines of "I told you this wasn't

going to happen.” Goldberg then coyly stated that he wasn’t even certain that he was interested in carrying TJC without a license fee on its Silver Tier, and that he’d have to see.

109. Goldberg stated that no conversation about a deal had ever taken place and nobody at Defendant CHARTER had made any commitments, and that even if they had, no one working there anymore would ever admit to having agreed to it and that there would be “absolutely no offer” to pay a license fee anymore, but that maybe, if Plaintiff COMPASS “behaved,” Defendant CHARTER would agree to launch a Linear TJC channel on the Silver Tier for free as a consolation (*i.e.*, that Defendant CHARTER would not pay any license fee), but that would be dependent upon how far they chose to push the issue of any commitment that was made.

110. Goldberg added that perhaps TJC should have “wised up” and been “smart enough to play the game” and offer to testify before the FCC in support of the merger such as JLTV, one of the other Jewish channels, had done. Goldberg said that in exchange for their public support, JLTV was promised increased distribution after the merger, and now they were just expanded to the coveted gold tier.

111. TJC’s staff responded that they would have been happy to do so if that had been asked of them, but they were told that it would have been illegal to do so or even to suggest a *quid pro quo* of that kind. Goldberg scowled and told Elliot to “grow up” and that “you know the way the world works” and that “the big companies always win”.

112. The meeting with Goldberg was unusually long, lasting several hours, and Goldberg seemed reluctant to be the one to end the meeting, despite the late hour. It

seemed as if Goldberg was waiting to see if COMPASS would attempt to push the issue any further, or if his stated intention of shutting this down was successful.

113. The meeting ended shortly thereafter when COMPASS staff got up to leave. Goldberg promised to follow up with a phone conversation after checking again. While in the men's room, Elliot had run into John Hargus, a member of senior management at Charter who had been at the initial presentation and had said hello to him in the hall. Hargus remembered Elliot and responded warmly. When Elliot recounted this to Goldberg in the meeting, Goldberg became irritable and said that he didn't care what Hargus had said. Goldberg was the one doing the communicating now. Goldberg reiterated his stance that nobody in Defendant CHARTER's programming department ever had come to a deal or had any intention of honoring any deal made with TJC or Plaintiff COMPASS and implied that COMPASS had been "dealt with just as it deserved". Goldberg further implied that this was what happened when small companies tried to push big ones for more than they deserved. Goldberg said "you get nothing."

114. Following this meeting, Plaintiff COMPASS again reached out to update Jewish leaders and political supporters, but by then it was already too late to talk to the FCC as the merger had already been approved and had gone through.

115. In the final phone conversation between Plaintiff COMPASS and Goldberg, Goldberg expressed irritation that Jewish leaders were now calling Defendant CHARTER's Government and Public Affairs staff to complain that CHARTER was renegeing on its promise, and that now he had no interest or inclination to deal with the subject at all, and he suggested that Plaintiff COMPASS should file a lawsuit or try to

put more pressure on CHARTER's public affairs or marketing department if they had anything further to say. Goldberg refused to discuss the matter any further with Elliot and hung up abruptly. Throughout the following months, various parties tried to raise the subject of the contract with CHARTER repeatedly, but all attempts to raise the subject were either shunted from one department to another, or ignored entirely.

116. After repeated failures to take seriously multiple communications by national Jewish leaders on the subject of the deal, COMPASS had begun meeting with counsel and drafted a complaint, which was shared with Defendant CHARTER. During the last couple of months of 2017, various influential Jewish communal figures wrote final letters to the management of CHARTER in attempts to get CHARTER to honor its agreement with COMPASS for the benefit of the Jewish community that would stand to gain with more Jewish programming. All attempts proved fruitless.

117. In the interim, Plaintiff COMPASS attempted to resolve the matter directly between counsel without resorting to court intervention. With the involvement of counsel, Defendant CHARTER led Plaintiff COMPASS to believe for several months that it might take the matter seriously, but this too eventually proved fruitless.

118. As this was transpiring, in late February of 2018, Goldberg reached out to COMPASS by email on a Saturday evening to complain about a lack of new content on the Channel. Elliot promised to check into the situation immediately. Within minutes, Elliot determined that a technical error had caused the much of TJC's programming to be erased off of Defendant CHARTER'S servers.

119. While not a common occurrence, because of the SVOD model under which Plaintiff COMPASS was forced to operate, technical errors with files occur with some level of frequency.

120. Elliot promised to resolve the situation immediately. Working with the transport company, Elliot ensured that all of the content was electronically resubmitted to Defendant CHARTER and the other cable providers. Despite repeated calls and emails, it took Defendant CHARTER over a week and a half to restore the content. Though Plaintiff COMPASS and Elliot were in daily contact with Defendant CHARTER technical staff, Defendant CHARTER was allegedly unable to fix the problem immediately, unlike every other cable provider who had resolved the issue immediately. Instead, Defendant CHARTER left the Channel bare for over a week and a half, claiming various technical difficulties. It seemed almost as if someone at Defendant CHARTER had made the decision to punish Plaintiff COMPASS for not dropping the issue of the agreement. Goldberg who had made such a big issue of the matter, was thereafter entirely unresponsive and passed it over to technical guys who just couldn't (or more likely wouldn't) get the issue resolved.

121. Eventually, the content was restored and things were fine until Elliot raised the subject of the agreement one more time. Shortly thereafter, Defendant CHARTER sent an email via Goldberg informing that content was mysteriously missing again, and that because of the technical problem, Defendant CHARTER was providing notice that they were terminating carriage and, accordingly, their agreement with Plaintiff COMPASS. Elliot immediately called Goldberg, but the ferocity of Goldberg's response was shocking. Goldberg was rambling and cursing, using all manner of extremely



offensive and discriminatory language, and he repeatedly demeaned the Channel, its professionalism and competence (statements that were categorically untrue, as TJC has long had award-winning, high quality content). Goldberg further told Elliot that he had heard about the legal approach Plaintiff COMPASS had decided to take and said “why don’t you just go with that since I’m already hearing you’re going that route. Good luck with that”. Elliot told Goldberg that the technical error was not due to any fault of Plaintiff COMPASS but rather due to an error on the part of the transport company—a third party called CMC (Comcast Media Center) —and immediately sent Goldberg an email from CMC confirming that the error was not due to any action or inaction of Plaintiff COMPASS and that all of the missing content had been replaced almost immediately. Despite all of Elliot’s efforts, Goldberg sent another email confirming Defendant CHARTER’s intent to terminate.

122. Based on the timing of this event and CHARTER’s response, it seemed as if Defendant CHARTER had given an order to pull content down, which it could then use as an excuse to terminate the relationship, as a punishment for Plaintiff COMPASS’ attempts to enforce the agreement between the parties.

123. In their final conversation, Goldberg told Elliot to “go ahead and file your fucking stupid lawsuit since it seems like you’re going to do that anyway”.

124. On or about August 15, 2018, TJC subscribers were mailed a postcard claiming that TJC would no longer be available as of September 25, 2018, because “[a]s of 6/22/2018 The Jewish Channel ceased providing full video content to Spectrum.” This was a blatant untruth relating to TJC’s business. Plaintiff COMPASS began receiving complaints from a number of subscribers as to why it was shutting down. Upon

information and belief, countless other subscribers (whom Plaintiff COMPASS has no ability to reach for the reasons specified above) now believe that TJC no longer exists.

125. Accordingly, Plaintiff COMPASS now brings the instant action.

**AS AND FOR A FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

126. Plaintiff COMPASS repeats and realleges each and every allegation contained in paragraphs “1” through “125” inclusive, as if more fully set forth herein at length.

127. Defendant CHARTER agreed to give Plaintiff COMPASS five years of Silver Tier distribution for TJC with an initial license fee of \$0.05 per subscriber per month.

128. These terms were confirmed in writing and acknowledged by Defendant CHARTER.

129. As consideration for this agreement, Plaintiff COMPASS agreed not to lobby before the FCC to require the launch of a Linear TJC channel as a condition of approval for the merger between Defendant CHARTER and TWC.

130. Ample precedent existed for the FCC requiring programming directed toward minority groups in the United States as a condition of approval for a merger between cable providers. The Jewish community is one of the only groups that has not yet and did not receive any support from the FCC, and TJC had built up significant political and communal momentum prepared to persuade the FCC.

131. Had Plaintiff COMPASS lobbied before the FCC as it had originally intended, approval for the merger would likely have been delayed to consider adding

conditions, such as requiring a launch of a Linear Bundled TJC channel, which would have been detrimental to Defendant CHARTER's goals of getting the merger approved as quickly as possible.

132. Defendant CHARTER sought to avoid any delays in the approval process for the merger, and accordingly agreed to launch TJC as a Linear Bundled channel with the above-described licensing fee without Plaintiff COMPASS having to go to the FCC.

133. As a result of Plaintiff COMPASS not speaking with the FCC, the merger between Defendant CHARTER and TWC was approved without any delay that would have been caused by Plaintiff COMPASS speaking with the FCC, and without any requirement that as a condition of merger approval, Defendant CHARTER agree to add a licensed channel directed toward the Jewish community such as TJC.

134. The merger added millions of subscribers to Defendant CHARTER and Defendant CHARTER has profited greatly from the approval of the merger, and would have lost out on substantial profit had the merger been delayed or denied by the FCC.

135. A valid and binding agreement existed between Plaintiff COMPASS and Defendant CHARTER.

136. Plaintiff COMPASS was at all times ready, willing, and able to do everything that the agreement required.

137. Defendant CHARTER failed to keep its commitments under the agreement.

138. Defendant CHARTER has failed to launch TJC as a Linear Bundled channel, and has further stated that it has no intention to do so.

139. Defendant CHARTER thereby materially breached the agreement with Plaintiff COMPASS.

140. Furthermore, CHARTER's breach has had a ripple effect, and as a result of not being launched as a Linear Bundled channel by CHARTER (about whom TJC advised other cable operators it had an agreement with), TJC continues to exist solely as an SVOD channel, and was prevented from making the transition into a Linear Bundled channel by other cable and satellite providers such as Cablevision, Verizon FIOS, Comcast and DirecTV, who presumably would have followed CHARTER's example and made TJC a Linear Bundled channel as it became more widely available and known.

141. TJC has likewise lost out on years of development and exposure to the millions of viewers that it would have reached had Defendant CHARTER kept its promises, resulting in further loss of profit that could have been obtained from these subscribers, through the sale of additional advertising on TJC, staging live events, and other additional sources of revenue that are standard in the industry.

142. As a direct result of Defendant CHARTER's breach of contract, Plaintiff COMPASS has suffered and continues to suffer extreme economic harm, including *inter alia*: loss of anticipated revenue and future profits and loss of anticipated renown amongst millions of potential subscribers, leading to a loss of the profit opportunities resulting therefrom.

143. Because Plaintiff's damages are compounded every day for which Defendant CHARTER does not honor its agreement with Plaintiff COMPASS, Plaintiff COMPASS seeks specific performance of the contract at the tier and rate agreed to by CHARTER.

144. However, in the event the Court declines to award specific performance, Defendant CHARTER's material breach thereby directly and proximately damaged Plaintiff COMPASS in an amount to be proven at trial but believed to be no less than \$30,000,000.

145. Plaintiff is entitled to interest thereon at the statutory rate from September 18, 2016, the earliest date of breach.

**AS AND FOR A SECOND CAUSE OF ACTION: PROMISSORY ESTOPPEL**

146. Plaintiff COMPASS repeats and realleges each and every allegation contained in paragraphs "1" through "145" inclusive, as if more fully set forth herein at length.

147. Defendant CHARTER made a clear and unambiguous promise to Plaintiff COMPASS that if COMPASS did not talk directly with the FCC about conditioning approval of the merger between CHARTER and TWC on the distribution of Linear Bundled Jewish channels such as TJC, then CHARTER would give COMPASS a Linear channel at the Silver Tier (*i.e.*, more than 8 million subscribers) at an initial rate of \$0.05 per subscriber per month. Plaintiff COMPASS reasonably and foreseeably relied on this promise, and did not engage in communication with the FCC regarding the CHARTER and TWC merger.

148. As a result, the FCC approved the merger between Defendant CHARTER and TWC without any requirement of Linear Jewish channels such as TJC, and Plaintiff COMPASS lost out on its opportunity to lobby the FCC to condition approval of the

merger on CHARTER's agreement to distribute Linear Bundled Jewish channels such as TJC.

149. As a result of Plaintiff COMPASS's reasonable and foreseeable reliance on Defendant CHARTER's promise, COMPASS lost out on its unique opportunity to lobby the FCC to condition approval of the merger on the distribution of a Linear TJC.

150. It may be many years before another such opportunity arises.

151. Because Plaintiff's damages are compounded every day for which Defendant CHARTER does not honor its agreement with Plaintiff COMPASS, Plaintiff seeks specific performance of Defendant CHARTER's promises.

152. However, in the event the Court declines to award specific performance, Defendant CHARTER's material breach thereby directly and proximately damaged Plaintiff COMPASS in an amount to be proven at trial but believed to be no less than \$30,000,000.

153. Plaintiff is entitled to interest thereon at the statutory rate from September 18, 2016, the earliest date of breach.

**AS AND FOR A THIRD CAUSE OF ACTION: FRAUDULENT INDUCEMENT**

154. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "153" inclusive, as if more fully set forth herein at length.

155. In order to stop Plaintiff COMPASS, and the Jewish and political leaders acting on COMPASS's behalf, from lobbying to the FCC to condition approval of Defendant CHARTER's merger with TWC on CHARTER's agreement to distribute Linear Jewish channels such as TJC, Defendant CHARTER promised COMPASS that

upon approval of the merger, CHARTER would launch TJC as a Linear Bundled channel on the Silver Tier at a starting license fee of \$0.05 per subscriber per month.

156. Plaintiff COMPASS specifically asked Defendant CHARTER if the two were agreed, and CHARTER's executive and agent, Allan Singer, answered yes, that they were agreed.

157. Defendant CHARTER now states that there was never any agreement and no terms were ever promised.

158. Defendant CHARTER hence fraudulently induced Plaintiff into entering into a contract that Defendant CHARTER now claims does not exist.

159. Upon information and belief, at the time of Defendant CHARTER's material, false representation, Defendant CHARTER had no intention of launching a Linear TJC.

160. Defendant CHARTER intended to defraud Plaintiff COMPASS with this fraud so that CHARTER's proposed merger with TWC would not be delayed or conditioned by the FCC.

161. Defendant CHARTER made such material, false representation in order to induce Plaintiff COMPASS to rely on the promise and not speak with the FCC.

162. Plaintiff COMPASS justifiably relied on Defendant CHARTER's misrepresentation, and did not engage in communication with the FCC.

163. As a result, Plaintiff COMPASS lost out on its unique opportunity to lobby the FCC to condition approval of the merger on the distribution of a Linear TJC.

164. Had Defendant CHARTER not stated that there was an agreement, Plaintiff COMPASS, and its Jewish communal and political contacts, would have lobbied

the FCC to condition approval of the merger on CHARTER's agreement to distribute a Linear TJC channel.

165. Because of Defendant CHARTER's fraud, however, Plaintiff ceased all of its efforts and did not communicate with the FCC regarding the CHARTER and TWC merger.

166. Additionally, because Plaintiff COMPASS believed that it had an agreement with Defendant CHARTER and did not want to anger Defendant CHARTER by disclosing specific terms before CHARTER was ready to disclose the agreement publicly, COMPASS did not engage in anything more than tentative discussions with any other cable provider, and did not engage in substantive discussions.

167. As a result, Plaintiff COMPASS has lost out on at least 15 months of revenue as a linear channel that could have been obtained in the interim from another cable provider.

168. Defendant CHARTER's fraud thereby directly and proximately damaged Plaintiff COMPASS in an amount to be proven at trial.

169. Defendant CHARTER's actions were deliberate, with knowledge of Plaintiff's rights, and with intent to interfere with those rights.

170. Defendant CHARTER's actions were wanton, willful, and malicious.

171. Defendant CHARTER profited immensely from its fraud while Plaintiff COMPASS has suffered tremendously.

172. Accordingly, punitive damages should therefore be awarded against Defendant CHARTER in addition to damages.



173. Additionally, attorneys' fees should be awarded against Defendant CHARTER and in favor of Plaintiff COMPASS.

**AS AND FOR A FOURTH CAUSE OF ACTION: DEFAMATION**

174. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "173" inclusive, as if more fully set forth herein at length.

175. On or about August 15, 2018, Defendant CHARTER sent out a written statement to all of its TJC subscribers stating that TJC would no longer be available because TJC had stopped providing content to Defendant.

176. This statement was untrue, and stated false facts that would tend to injure Plaintiff in its business and trade.

177. Defendant's untrue statement implied and conveyed falsely that Plaintiff was shutting down and no longer providing content.

178. This was untrue, as Plaintiff would continue to provide content, only not with Defendant because of Defendant's bad faith actions as described above.

179. Defendant knew or should have known that such statement would tend to cause people to believe that TJC was no longer going to exist, and that they therefore would not seek out a new subscription to TJC (e.g. by switching cable providers).

180. Defendant was aware that Plaintiff would not be able to know who its subscribers were or how to reach them.

181. Defendant's statements were libelous *per se*.

182. Defendant's libelous statement was at a minimum negligently made. However, more likely, based on the facts enumerated above, Defendant's libelous statement was maliciously made, driven by ill-will and spite.

183. Accordingly, Defendant is liable for Plaintiff's actual damages, compensatory damages, and punitive damages in an amount to be proven at trial.

**WHEREFORE**, Plaintiff demands that a judgment be entered against Defendant:

- 1) Specifically enforcing the agreement entered into between Plaintiff and Defendant; or alternatively, in the event the Court declines to award specific performance, awarding damages on Plaintiff's first and/or second cause of action in an amount to be proven at trial but believed to be no less than \$30,000,000 together with pre- and post-judgment interest thereon at the statutory rate from the earliest date of breach; and
- 2) Awarding damages on Plaintiff's third cause of action in an amount to be proven at trial, together with punitive damages and pre- and post-judgment interest thereon;
- 3) Awarding damages on Plaintiff's fourth cause of action in an amount to be proven at trial, together with punitive damages and pre- and post-judgment interest thereon
- 4) together with attorneys' fees, the costs and disbursements of the within action, and such other, further and different relief which this Court deems just and proper.

Dated: Fresh Meadows, New York  
October 10, 2018

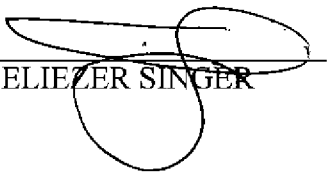
/Jonathan E. Neuman/  
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STATE OF NEW YORK )  
 ) ss.: VERIFICATION  
COUNTY OF NEW YORK )

ELIEZER SINGER, being duly sworn, deposes and says:

I am the Chief Executive Officer of COMPASS PRODUCTIONS INTERNATIONAL LLC, Plaintiff in the above-entitled action, which is a limited liability companies created under and by virtue of the laws of the State of New York; that I have read the foregoing Complaint and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

  
ELIEZER SINGER

Sworn to before me on the  
11<sup>th</sup> day of October, 2018

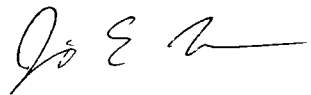
  
\_\_\_\_\_  
Notary Public

JONATHAN ELLERY NEUMAN,  
Notary Public, State of New York  
No. 02NE024000  
Qualified in Queens County  
Commission Expires 8/15/19

**ATTORNEY CERTIFICATION**

I, JONATHAN E. NEUMAN, ESQ., an attorney, hereby certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within papers or the contentions therein are not frivolous within the meaning of 22 NYCRR § 130.1.1(c).

Dated: Fresh Meadows, NY  
October 11, 2018

  
\_\_\_\_\_  
JONATHAN E. NEUMAN, ESQ.