

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

CAYUGA NATION and CLINT HALFTOWN,

Plaintiffs,

SUMMONS

v.

Index No. _____

SHOWTIME NETWORKS INC.,
BRIAN KOPPELMAN, ANDREW ROSS
SORKIN, and DAVID LEVIEN,

Defendants.

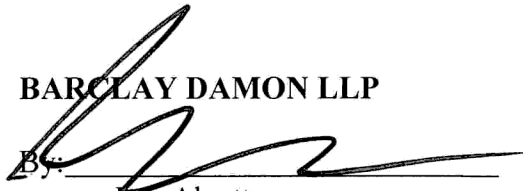
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue in the County of New York is proper pursuant to CPLR § 503 because Defendants reside in this County.

DATED: August 9, 2019

BARCLAY DAMON LLP



By: _____
Lee Alcott
David G. Burch, Jr.
Attorneys for Plaintiffs,
Cayuga Nation and Clint Halftown
Office and Post Office Address
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Tel: (315) 425-2700
Email: lalcott@barclaydamon.com
dburch@barclaydamon.com

TO:
Showtime Networks, Inc.: 51 West 52nd Street, New York, New York 10019
Brian Koppelman: 333 W. End Apt. 11B, New York, New York 10023
Andrew Ross Sorkin: 161 W. 86th Street, Apt. 6A, New York New York 10024
David Levien: 36 Fairway Lane, Greenwich, Connecticut 06830

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Attorneys for Plaintiffs,
Cayuga Nation and Clint Halftown
Office and Post Office Address
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Tel: (315) 425-2700
Email: lalcott@barclaydamon.com
dburch@barclaydamon.com

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

CAYUGA NATION and CLINT HALFTOWN,

Plaintiffs,

COMPLAINT

v.

Index No. _____

SHOWTIME NETWORKS INC.,
BRIAN KOPPELMAN, ANDREW ROSS
SORKIN, and DAVID LEVIEN,

Defendants.

Plaintiffs Cayuga Nation (“Cayuga Nation” or “Nation”) and Clint Halftown (“Mr. Halftown”) (together, “Plaintiffs”), by and through their attorneys, Barclay Damon LLP, as and for their Complaint against Defendants Showtime Networks Inc., Brian Koppelman, David Levien, and Andrew Ross Sorkin (collectively, “Defendants”) allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs have been required to file this action to right the wrongs caused by the offensive and defamatory portrayal of the Cayuga Nation and Mr. Halftown in an episode of the popular Showtime television series *Billions*.

2. Plaintiff Cayuga Nation is a sovereign Indian nation recognized by both the United States and the State of New York. The Nation is one of the six Indian nations known as the Haudenosaunee, an affiliated group of Indian nations that once owned and occupied vast tracts of land in what is today New York State, each with its own governing body, economy, history, and culture. The Nation is governed by the five-member Cayuga Nation Council, which,

based on the Nation's sovereign status, enjoys a direct government-to-government relationship with the federal government. Mr. Halftown is a member of the Cayuga Nation Council and is also the Nation's federal representative.

3. In 1794, the Nation and the United States entered into the Treaty of Canandaigua, 7 Stat. 44, under which the United States confirmed lands reserved for the Nation under various New York State treaties. The Nation's 64,015-acre reservation has continuously existed for over 200 years and exists to this day.

3. The Nation's status as a sovereign nation predates the arrival of Europeans in North America. As the Supreme Court explained nearly two centuries ago, "[t]he Indian nations ha[ve] always been considered distinct, independent political communities, retaining their natural rights, as undisputed possessors of the soil from time immemorial[.]" *Worcester v. Georgia*, 31 U.S. 515, 559 (1832).

4. Along with other commercial enterprises, revenues from which are used to fund the Nation's tribal programs and promote its self-sufficiency, the Nation has operated two Class II gaming facilities on lands within its reservation—both of which are tribally and federally regulated. Unlike many of the other New York tribes, the Nation does not operate "casinos," as that term is defined in federal law, and as it is commonly understood.

5. In the episode of *Billions* that is the subject of this lawsuit, the Defendants did little service to the Nation's rich history, and even less to Mr. Halftown. Indeed, the Defendants, using the exact names "Cayuga" and "Halftown," chose instead to portray the Nation and Mr. Halftown as being involved in unscrupulous dealings and even criminal conduct.

6. On May 5, 2019, almost one million viewers tuned in to Season 4, Episode 8, of *Billions* and, since its original air date, the episode has steadily reached wider audiences after it was made available on multiple streaming platforms, such as Amazon Prime Video and Hulu.

7. What these one million viewers—and now countless others—have seen (and may very well continue to see, absent some corrective action by the Defendants or this Court) in this episode of *Billions* is a deliberate and intentional resort to an offensive stereotype of Native Americans as irresponsible, corruptible, and even criminal, thereby exposing the Cayuga Nation and Mr. Halftown to public contempt, aversion, and disgrace.

8. As set forth more fully herein, among the offensive and defamatory characterizations of the Cayuga Nation and Mr. Halftown put forth in this episode of *Billions* are: an illegal casino land deal, participation in bribery of a public official, and a resort to blackmail, all of which are patently offensive and defamatory.

9. Defendants did not obtain Plaintiffs' permission to use the Cayuga Nation's or Clint Halftown's name or likeness in their television show, nor did they even communicate any intention to do so in advance of producing or airing the episode. Moreover, Defendants could have easily settled upon fictitious names for the characters in this show but, instead, chose to use Plaintiffs' actual names.

10. Plaintiffs only learned of the misappropriation of their identities and the defamatory characterizations of them after the episode of *Billions* was broadcast over national television.

11. The offense and reputational damage to the Nation and Mr. Halftown caused by the Defendants, whose sole goal was to earn millions at the Plaintiffs' expense, forms the basis for this action.

PARTIES

12. The Nation is a federally recognized Indian tribe. *See* 77 Fed. Reg. 47,868 (Aug. 10, 2012).

13. Mr. Halftown is a male citizen of the Nation and is the Nation's federal representative, as well as a member of the Nation's governing body, the Cayuga Nation Council, recognized by the U.S. Department of the Interior. *See Cayuga Nation v. Bernhardt*, No. CV 17-1923 (CKK), 2019 WL 1130445, at *1 (D.D.C. Mar. 12, 2019).

14. Defendant Showtime Networks Inc. ("Showtime") is a wholly-owned subsidiary of CBS Corporation incorporated under the laws of the State of Delaware. At all times relevant to this action, Showtime maintained its principal place of business at 51 West 52nd Street, New York, New York 10019.

15. Defendant Brian Koppelman ("Koppelman") is an individual who, upon information and belief, resides in New York, New York, and is employed in New York, New York. Koppelman is the co-creator, "showrunner," and executive producer of *Billions*.

16. Defendant Andrew Ross Sorkin ("Sorkin") is an individual who, upon information and belief, resides at 161 West 86th Street, New York, New York 10024, and is employed in New York, New York. Sorkin is the co-creator and writer for *Billions*.

17. Defendant David Levien ("Levien") is an individual who, upon information and belief, resides in Greenwich, Connecticut, and is employed in New York, New York. Levien is a writer and producer for *Billions*.

JURISDICTION AND VENUE

18. The amount in controversy in this action meets the jurisdictional threshold of this Court.

19. This Court has jurisdiction over this matter pursuant to CPLR § 301.

20. Venue in this Court is proper pursuant to CPLR § 503, as Defendants Showtime, Koppelman, and Sorkin are residents of New York County.

FACTS

THE NATION'S ELECTRONIC GAMING FACILITIES

21. Since 2004, the Nation has operated two Class II electronic gaming facilities known as Lakeside Entertainment, located at 271 Cayuga Street, Union Springs, New York and 2552 New York Route 89, Seneca Falls, New York. (These two facilities are hereinafter referred to collectively as the “Lakeside Entertainment facilities.”)

22. In furtherance of the federal policy of Indian economic self-sufficiency, Congress enacted the Indian Gaming Regulatory Act (“IGRA”) in 1988 to explicitly allow, and to provide a comprehensive scheme for the regulation of, certain Indian gaming activities. 25 U.S.C. §§ 2701–02.

23. IGRA divides Indian gaming into three Classes:

(I) Class I gaming consists of traditional and social games played for no significant financial stakes. 25 U.S.C. § 2703(6). Indian nations maintain exclusive control over Class I gaming. *Id.* § 2710(a)(1).

(II) Class II gaming includes “the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)” and similar games if played in the same location. *Id.* § 2703(7)(A)(i). Class II gaming is regulated by Indian nations pursuant to tribal ordinances approved by the National Indian Gaming Commission (“NIGC”), an independent federal regulatory commission located within the Department of the

Interior. *Id.* §§ 2704 and 2710(a)(2) and (b). Both of the Nation’s Lakeside Entertainment facilities are Class II gaming facilities, regulated by the Nation and the NIGC.

(III) Class III is a residual category, consisting of any games not included in Classes I and II. Class III gaming includes casino-style games, slot machines, and lotteries, 25 U.S.C. § 2703(8), and must be conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State. 25 U.S.C. § 2710(d)(1)(C); 25 CFR § 502.4.

24. The Nation does not have, and has never had, a “Tribal-State compact” with the State of New York and, thus, may not operate Class III, or “casino-style games” or “slot machines.” Indeed, the Nation does not operate and has never operated a “casino” gaming facility, as that term is defined under federal law.

25. The Nation has applied to the federal government to place its land into trust, and that application is currently pending. Critical to that review is a confirmation that the application accurately described the Nation’s business operations. Thus, a false statement regarding the nature and type of the Nation’s gaming operations may be injurious, and perhaps even fatal, to the application.

26. Additionally, the Nation has not and cannot enter into “land deals” or gaming revenue sharing arrangements with outsiders.

SHOWTIME’S TELEVISION DRAMA SERIES *BILLIONS*

27. Defendants Koppelman, Sorkin, and Levien created the American television drama series *Billions*, which premiered on Showtime on January 17, 2016. Upon information and belief, all individual Defendants produce or write for the show.

28. The *Billions* storyline unfolds in the world of New York City high finance, pitting the fictionalized character Charles “Chuck” Rhoades (“Rhoades”), identified initially as the U.S.

Attorney for the Southern District of New York, against a fictionalized hedge fund manager identified as Bobby “Axe” Axelrod.

29. Upon information and belief, the plot of *Billions* is widely considered to be modeled after the life of billionaire and hedge fund manager Steven Cohen of SAC Capital Advisors, who was embroiled in a years-long insider trading investigation by then United States Attorney for the Southern District of New York Preet Bharara.

30. The *Billions* series debut garnered the most viewership among any of Showtime’s original series, for a total of 2.99 million views, making *Billions* one of Showtime’s most-watched shows. Prior to the January 17, 2016 premiere, *Billions* was sampled across various platforms, delivering 1.6 million views. Then, on the night of the *Billions* premiere, an additional 1.4 million viewers tuned in on the network.

31. To date, Showtime has aired seasons one, two, three, and four of *Billions*, and it has also renewed the series for a fifth season.

32. As aforesaid, the *Billions* series has been released to streaming platforms, such as Amazon Prime Video and Hulu.

33. Upon information and belief, according to Showtime, the series averages 4.2 million viewers per episode in multi-platform viewing.

34. A disclaimer plays during the rolling credits at the end of each *Billions* episode. The disclaimer reads: “The events and characters depicted in this motion picture are fictitious. Any similarity to actual persons, living or dead, or to actual events, is purely coincidental.”

35. Upon information and belief, other than those characters representing the Plaintiffs, as depicted in the show, every character in *Billions* is given a fictitious name;

however, and inexplicably, both the Cayuga Nation and Mr. Halftown are referred to precisely by their actual names in the show.

THE DEFENDANTS' PORTRAYAL OF THE CAYUGA NATION AND MR. HALFTOWN IN *BILLIONS*

36. On May 5, 2019, Season 4, Episode 8, of *Billions* aired on Showtime to some 761,000 viewers.

37. The dialogue in Episode 8 makes reference to “council member Halftown” and the “Cayuga Iroquois.” Mr. Halftown, as aforesaid, is a member of the Cayuga Nation’s Council and “Iroquois” is a common term used by non-Natives in identifying the Haudenosaunee people.

38. Defendants did not obtain Plaintiffs’ permission to reference the Cayuga Nation or Clint Halftown’s name or likeness.

39. Indeed, Plaintiffs did not learn of the references to them in Episode 8 until after it was aired.

40. In Episode 8, the aforesaid Rhoades is depicted as supporting a process identified by the show’s creators as “blockchain-based mobile voting,” and proposes a pilot program to test the efficacy of this mobile voting for elections in New York.

41. In furtherance of this mobile voting pilot program, Rhoades solicits help from his father, Chuck Rhoades, Sr. (“Rhoades, Sr.”), to seek an introduction to an Indian tribe identified in the episode as the “Cayuga Iroquois.” Episode 8 further depicts Rhoades, Sr. as having worked with this Indian nation and having established connections to it, thereby implying Rhoades, Sr. can lend his and the “Cayuga Iroquois’s” influence to the mobile voting pilot program.

THE DEFENDANTS' SPECIFIC REFERENCES TO THE CAYUGA NATION IN EPISODE 8

42. From 20:37 to 21:45 in Episode 8, Rhoades asks his father, Rhoades, Sr., to “juice me in with the tribe,” which he then immediately identifies as “the Cayuga Iroquois,” and which Rhoades, Sr. then refers to as “[m]y casino Indians.” Later in this exchange, Rhoades, Sr., again refers to the Cayuga as “my Indians,” thereby implying that the Cayuga are subject to his influence and even control.

43. From 31:19 to 33:31 in Episode 8, Rhoades has a conversation with a character identified in the show as “council member Jane Halftown” (“Council Member Halftown”). While Council Member Halftown is portrayed in the episode as a female, the Defendants utilized both Mr. Halftown’s exact and unique surname and also took pains to identify the character as a “council member,” as is Mr. Halftown. Thus, the Council Member Halftown character is effectively intended as a substitute for Mr. Halftown. In this particular scene, the following statements are made:

- a. **Council Member Halftown:** “Mr. Rhoades, you want me to lobby the elections board for you. Why would I do that for the people who chiseled us on the land deal surrounding the casino?”
- b. **Rhoades:** “Chiseled? I thought partnership was more –“
- c. **Council Member Halftown:** “Your father has tasted the fruits of our tribe in a way that makes us disinclined to trust either him or you.”
- d. **Rhoades:** “My father will sweeten your piece on Kingsford to what you feel is fair.”
- e. **Rhoades, Sr.:** “Fine. Whatever my overly generous son needs.”

44. Not merely implicit but explicit in this exchange among these characters, including Council Member Halftown, is the false and defamatory narrative that the Nation and

Council Member Halftown had previously been engaged in a casino land deal and an illegal revenue-sharing arrangement.

45. These false statements made by the Defendants in Episode 8 regarding the nature of the Nation's gaming operations, and the allegations of an illegal revenue-sharing arrangement with a non-Nation member, have a real and substantial impact on the Nation's interests.

46. From 35:09 to 36:21 in Episode 8, Halftown, Rhoades, and Rhoades, Sr. meet with Hap Halloran, the commissioner of the electoral board ("Commissioner Halloran") to persuade him to launch the mobile voting pilot program.

47. During this scene, Council Member Halftown convinces Commissioner Halloran to approve the mobile voting pilot program by making the following comment: "Don't make me have my people put these [headdresses] on. Thirty of my compatriots in full regalia. Don't make me give interviews about how you are refusing us the vote. Don't make me stage a sit-in at your office."

48. During this scene, and with Council Member Halftown present, Rhoades then hands Commissioner Halloran an envelope with expenses paid airline tickets and hotel reservations for a vacation to Aruba for Commissioner Halloran and his wife.

49. As depicted in this episode, the tendering of these substantial gifts in the form of airline tickets and hotel accommodations to Commissioner Halloran, a public official, constitutes the commission of no less than three crimes under the New York Penal Law and the United States Code.

50. Under New York Penal Law § 135.60, a person is guilty of coercion in the second degree when he or she compels or induces a person to engage in conduct which the latter

has a legal right to abstain from engaging in by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

- a. Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties in such a manner as to affect some person adversely; or
- b. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

51. Coercion in the second degree is a class A misdemeanor in New York.

52. Under New York Penal Law § 200.35, a public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

53. Receiving unlawful gratuities is a class A misdemeanor in New York.

54. Therefore, Council Member Halftown's participation in the activities depicted in Episode 8 by the Defendants attributes criminal conduct to Mr. Halftown under both New York Penal Law § 135.60 and § 200.35.

55. In addition, honest services fraud is a crime defined in 18 USC § 1346, which states "the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services." Indeed, this criminal statute has been applied in numerous federal prosecutions of public corruption in fact patterns substantial similar to those depicted in Episode 8.

56. Therefore, Council Member Halftown's participation in the activities depicted in Episode 8 by Defendants also attributes criminal conduct to Mr. Halftown him under 18 USC § 1346.

57. As a result, Episode 8's depiction of Council Member Halftown's participation in the bribery of a public official attributes criminal activity to Mr. Halftown within the definition of the New York Penal Law and the United States Criminal Code, all of which constitute defamation per se.

58. To right these wrongs, Showtime and the remaining Defendants should be barred from referring to Plaintiffs in upcoming *Billions* episodes, and should compensate the Nation and Mr. Halftown for the damage to their reputations and the public disgrace they have suffered by the repugnant and defamatory characterizations of them put forth by the Defendants in *Billions*.

AS AND FOR A FIRST CAUSE OF ACTION
(DEFAMATION PER SE)

59. Plaintiffs repeat and reallege each of the allegations set forth above as if set forth in full.

60. Defendants defamed the Cayuga Nation and Mr. Halftown during the scene in which Halftown threatens Commissioner Halloran to approve the mobile voting pilot program. Council Member Halftown's actions towards Commissioner Halloran, as depicted by Defendants in this *Billions* episode, amount to coercion and the giving of unlawful gratuities on the part of Mr. Halftown in violation of the New York Penal Law, as well as honest services fraud under the United States Code.

61. Defendants broadcasted *Billions*, Season 4, Episode 8 on Showtime without privilege or authorization from Plaintiffs, and in doing so, reached millions of viewers.

62. As the writers and producers of *Billions*, Defendants have complete control over the content of each episode. Yet, Defendants knowingly referenced Plaintiffs—using the exact names, “Halftown” and “Cayuga,” as well as exact title “council member”—while making no effort to contact Plaintiffs, or to ascertain the history of the Cayuga Nation and its current

commercial enterprises. Having undertaken no effort to avoid the depictions of criminal behavior, and no effort to take even minimal precautions to cloak Plaintiffs' recognizable names, these actions, taken together, demonstrate that Defendants made the aforesaid statements with knowledge or reckless disregard of their falsity.

63. As a direct result of these false statements, Plaintiffs have been damaged in an amount to be determined by this Court.

AS AND FOR A SECOND CAUSE OF ACTION
(DEFAMATION)

64. Plaintiffs repeat and reallege each of the allegations set forth above as if set forth in full.

65. Defendants falsely stated in Episode 8 that the Cayuga Nation owns casino land, even though the Nation does not own a casino or casino land.

66. Defendants broadcasted *Billions*, Season 4, Episode 8 on Showtime without privilege or authorization from Plaintiffs, and in doing so, reached millions of viewers.

67. As the writers and producers of *Billions*, the individual Defendants have complete control over the content of each episode. Yet, the Defendants knowingly referenced the Nation and Mr. Halftown—using their exact names and title—as having participated in an illegal casino land deal. As Plaintiffs' Class II gaming activities at the Lakeside Entertainment facilities is verifiable information available to Defendants, Defendants made the statement with at least reckless disregard of its falsity.

68. As a direct result of the false statement, Plaintiffs have been damaged in an amount to be determined by this Court.

AS AND FOR A THIRD CAUSE OF ACTION
(MISAPPROPRIATION OF LIKENESS)

69. Plaintiffs repeat and reallege each of the allegations set forth above as if set forth in full.

70. The Defendants use of the likenesses of the Nation and Mr. Halftown in Episode 8, as aforesaid, constitutes misappropriation of likeness.

71. Episode 8 aired on Showtime, which includes broadcasts within the State of New York.

72. Defendants did not obtain written consent prior to the Episode 8 air date of May 5, 2019.

73. References to Plaintiffs were essential to the development of the plot, and thus the Defendants' depictions were profit-oriented and necessary for the marketability of *Billions*.

74. As a result of the foregoing, Plaintiffs have been damaged in an amount to be determined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand Judgment:

- a.) On the First Cause of Action, damages in an amount to be determined at trial;
- b.) On the Second Cause of Action, damages in an amount to be determined at trial;
- c.) On the Third Cause of Action, damages in an amount to be determined at trial; and
- d.) Such other and further relief as the Court deems just, fair and proper.

DATED: August 8, 2019

BARCLAY DAMON LLP

By: 

Lee Alcott

David G. Burch, Jr.

Attorneys for Plaintiffs

Cayuga Nation and Clint Halftown

Office and Post Office Address

Barclay Damon Tower

125 East Jefferson Street

Syracuse, New York 13202

Tel: (315) 425-2700

Email: lalcott@barclaydamon.com

dburch@barclaydamon.com