



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORFOLK COUNTY RETIREMENT)
SYSTEM, derivatively on behalf of all)
other similarly situated stockholders of)
CLEAR CHANNEL OUTDOOR)
HOLDINGS, INC.,) C.A. No. _____
Plaintiff,)
v.)
BLAIR E. HENDRIX, DOUGLAS L.)
JACOBS, DANIEL G. JONES,)
VICENTE PIEDRAHITA, ROBERT)
W. PITTMAN, OLIVIA SABINE,)
DALE W. TREMBLAY,)
IHEARTCOMMUNICATIONS, INC.,)
IHEARTMEDIA, INC., BAIN)
CAPITAL PARTNERS, LLC, and)
THOMAS H. LEE PARTNERS, L.P.,)
Defendants,)
-and-)
CLEAR CHANNEL OUTDOOR)
HOLDINGS, INC.,)
Nominal Defendant.)

VERIFIED DERIVATIVE COMPLAINT

Plaintiff Norfolk County Retirement System (“Plaintiff”) brings this Verified Derivative Complaint (the “Complaint”) derivatively on behalf of nominal defendant Clear Channel Outdoor Holdings, Inc. (“Clear Channel” or the “Company”) against: (a) Clear Channel’s controlling stockholder group consisting of iHeartCommunications, Inc. (“iHC”), iHeartMedia, Inc. (“iHM” and, together with iHC, “iHeart”), Bain Capital Partners, LLC (“Bain”) and Thomas H. Lee

Partners, L.P. (“THL,” and together with iHeart, iHM and Bain, the “Control Group Defendants”) and (b) Clear Channel’s board of directors (the “Board” or the “Individual Defendants,” and together with the Control Group Defendants, “Defendants”). The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the investigation of counsel, as to all other matters.

INTRODUCTION

1. This action challenges the Clear Channel Board’s November 2017 decision to continue lending greater than \$1 billion to Clear Channel’s controlling stockholder, iHeart, at far-below-market interest rates that come nowhere close to reflecting iHeart’s dire financial condition and lack of creditworthiness.

2. For years, Clear Channel has been bedeviled by its relationship with iHeart, which owns approximately 90% of Clear Channel’s outstanding stock and has stacked the Clear Channel Board with iHeart affiliates. Clear Channel was a wholly-owned subsidiary of iHeart before being taken public in 2005 and, in connection with its initial public offering (“IPO”), was saddled with a series of intercompany agreements governing its relationship with iHeart. Those agreements include a revolving promissory note (the “Revolving Note”) pursuant to which all of Clear Channel’s cash-on-hand is swept up to iHeart daily in return

for an increase in the amount owed to Clear Channel by iHeart under the Revolving Note.

3. At present, iHeart owes Clear Channel over \$1 billion. This creates a perilous situation for Clear Channel, because iHeart faces an imminent debt crisis stemming from a 2006 leveraged buyout (“LBO”) of iHeart organized by Bain and THL. As a result of the LBO, iHeart has greater than \$20 billion in debt and is teetering on the brink of insolvency. Indeed, iHeart has issued repeated “going concern” warnings, reporting just last month that there is “substantial doubt” as to its ability to survive another year. If iHeart were to become insolvent or file for bankruptcy protection, then Clear Channel would become just another unsecured creditor of iHeart unlikely to ever be repaid in full, if at all. Indeed, iHeart’s bankruptcy could cause Clear Channel to experience a severe liquidity shortfall of its own.

4. The Revolving Note was set to mature on December 15, 2017, at which time the full amount owed to Clear Channel by iHeart would have become due and payable. On November 29, 2017, however, Clear Channel announced that it had agreed to amend the Revolving Note to extend its maturity date from December 15, 2017 to May 15, 2019. Clear Channel agreed to continue lending to iHeart under the Revolving Note at far-below-market interest rates. Indeed, as

detailed below, Clear Channel agreed to amend the interest rate terms of the Revolving Note to be *more* favorable to iHeart than the pre-amendment terms.

5. As amended, the vast majority of the balance on the Revolving Note will incur interest at a per annum rate of 9.3%, and no part of the balance will ever incur interest at a rate higher than 20%. Meanwhile, on the public markets, iHeart's debt is trading at exorbitant rates that reflect its true lack of creditworthiness. For example, as of the date of the filing of this complaint, iHeart's 6.875% Senior Debentures maturing on June 15, 2018 are trading at prices reflecting a yield-to-maturity of **316.678%**.

6. The terms of the November 2017 amendment (defined below as the "Third Amendment") are not merely commercially unreasonable. They are commercially unconscionable. Clear Channel's agreement to the Third Amendment can only be explained by the Control Group Defendants' domination of the Clear Channel Board and continued use of Clear Channel as a lifeline, without regard for the best interests of Clear Channel or its minority, unaffiliated stockholders.

7. Plaintiff brings this action to remedy the harm incurred by Clear Channel as a result of the Clear Channel Board and the Control Group Defendants' faithless conduct in connection with the Third Amendment, which causes Clear Channel to lend to iHeart on patently unfair terms.

THE PARTIES

8. Plaintiff Norfolk County Retirement System is currently a Class A stockholder of Clear Channel and has been a Class A stockholder of Clear Channel at all times relevant to the claims asserted herein.

9. Nominal Defendant Clear Channel is among the largest providers of outdoor advertising in the United States and throughout the world. Clear Channel is incorporated under the laws of the State of Delaware, with its principal executive offices located at 20880 Stone Oak Pkwy, San Antonio, Texas 78258. The Company is publicly-traded on the New York Stock Exchange under the ticker symbol “CCO.”

10. Defendant Blair E. Hendrix (“Hendrix”) has served as a member of the Clear Channel Board since 2008. Hendrix is a Managing Director of Bain and the head of the firm’s operationally-focused Portfolio Group for North America. Hendrix joined Bain in 2000. Hendrix also currently serves as a director of iHC and iHM and as a member of the board of managers of iHeartMedia Capital I, LLC (“iHeartMedia Capital”).

11. Defendant Douglas L. Jacobs has served as a member of the Clear Channel Board since 2010.

12. Defendant Daniel G. Jones (“Jones”) has served as a member of the Clear Channel Board since 2008. Jones is a Managing Director at THL and is part

of the firm's Strategic Resources Group, which works in collaboration with senior management and THL investment professionals to drive value at portfolio companies.

13. Defendant Vicente Piedrahita ("Piedrahita") has served as a member of the Clear Channel Board since 2014. Piedrahita joined THL in March 2012 and is currently a Principal in the firm's Strategic Resources Group. Prior to joining THL, Piedrahita worked at Clear Channel as Director of Strategic Projects and Initiatives from August 2010 until March 2012.

14. Defendant Robert W. Pittman ("Pittman") was appointed as Clear Channel's Chairman and Chief Executive Officer ("CEO") in March 2015. Additionally, Pittman was appointed Executive Chairman and a director of Clear Channel and as CEO and a director of iHM and iHC in October 2011, and in May 2013 was appointed Chairman of iHM and iHC. Pittman also was appointed as Chairman and CEO and a member of the board of managers of iHeartMedia Capital, a subsidiary of iHM and iHC, in April 2013.

15. Defendant Olivia Sabine ("Sabine") has served as a member of the Clear Channel Board since 2015. Sabine is an Executive Vice President at Bain.

16. Defendant Dale W. Tremblay has served as a member of the Clear Channel Board since 2005.

17. The defendants listed in paragraphs 10 to 16 are collectively referred to herein as the “Board” or “Individual Defendants.”

18. Defendant iHM is a Delaware corporation engaged in the mass media industry. Through its subsidiaries, iHM owns and operates more than 850 radio stations throughout the United States, making it the largest owner and operator of radio stations in the nation.

19. Defendant iHC, formerly known as Clear Channel Communications, Inc., is a Texas corporation and an indirect wholly-owned subsidiary of iHM. iHC owns approximately 90% of Clear Channel’s outstanding shares, including more than 10 million shares of Class A common stock and 315 million shares of Class B common stock, representing approximately 99% of the total voting power of Clear Channel stockholders.¹

20. Defendant Bain is a private equity fund structured as a Massachusetts limited liability company.

21. Defendant THL is a private equity fund structured as a Delaware limited partnership.

¹ As of April 6, 2017, Bain and THL together owned 65.6% of iHM’s outstanding common stock on an as converted basis and controlled iHC with the power to seat all but two of iHC’s directors and to appoint iHC’s management.

I. SUBSTANTIVE ALLEGATIONS

A. iHEART AND CLEAR CHANNEL ENTER THE INTERCOMPANY LOAN

22. On November 11, 2005, Clear Channel became a publicly-traded company through an IPO in which the Company sold 10%, or 35 million shares, of its Class A common stock. Prior to the IPO, Clear Channel was an indirect, wholly-owned subsidiary of iHeart.

23. Following the IPO, iHeart retained—and as of the date of this Complaint continues to own—a majority stake in Clear Channel through its ownership of approximately 90% of all Clear Channel outstanding shares, constituting approximately 99% of the Company’s voting power.²

24. In connection with the IPO, iHeart and Clear Channel entered into various agreements designed to perpetuate iHeart’s control and influence over Clear Channel. One such agreement was a cash management program with iHeart, pursuant to which all cash generated from Clear Channel’s operations remaining

² Clear Channel concedes in its public filings that iHeart controls the Company. *See, e.g.*, Clear Channel’s Form 10-K filed with the U.S. Securities and Exchange Commission (the “SEC”) on February 23, 2017 (“[iHeart] owns shares of our common stock representing more than 50% of the total voting power of our common stock and, as a result, we have elected to be treated as a ‘controlled company’ under the NYSE corporate governance standards.”); Clear Channel’s proxy statement filed with the SEC on April 19, 2017 (“Because [iHeart] controls more than 50% of the voting power of [Clear Channel], we have elected to be treated as a ‘controlled company’ under the NYSE Corporate Governance Standards.”).

after Clear Channel pays its accounts payable and payroll is transferred daily to iHeart in exchange for a receivable in the form of a revolving promissory note, *i.e.*, the Revolving Note.

25. As originally structured, the Revolving Note had an expiration date of August 10, 2010 and required iHeart to pay Clear Channel interest at a rate equal to the average one-month generic Treasury bill rate. Any borrowings evidenced by the Revolving Note would be unsecured and the holder would be treated as a general unsecured creditor of the borrower in the event of bankruptcy.

B. AFTER BAIN AND THL TAKE iHC PRIVATE, iHEART STRUGGLES UNDER MASSIVE DEBT LOAD AND THE BALANCE ON THE REVOLVING NOTE BALLOONS

26. In November 2006, the iHC board of directors agreed to sell iHC for \$18.7 billion, or \$37.60 per share, in a LBO led by a consortium of private equity firms that included Bain and THL. The offer price increased twice and, in September 2007, the iHC stockholders approved the LBO at \$39.20 per share.

27. Before the LBO could close, however, the global financial markets fell into crisis, credit seized up, and the banks that had committed to finance the transaction refused to honor their commitments. After a lengthy legal battle, the parties settled on a revised buyout price of \$36 per share, for a total transaction price of \$17.9 billion. iHC completed its merger with a subsidiary of iHM in July 2008.

28. As a result of the LBO, iHeart took on more than \$18 billion in debt, an amount that has since grown to over \$20.8 billion. This debt load quickly led to concern in the market regarding iHeart's ability to service its debt obligations. In May 2009, the New York Post reported that iHeart was speaking with lenders about restructuring its debt, including through a pre-packaged bankruptcy.

29. Rumors of impending bankruptcy made it increasingly difficult, if not impossible, for iHeart to issue debt in the public market or through arms-length negotiations. As a result, iHeart depended more heavily than ever upon the cash management sweep arrangement and the Revolving Note with Clear Channel, which provided iHeart desperately needed cash flow. Indeed, the Revolving Note became iHeart's principal source of liquidity.

30. By December 2008, the balance on the Revolving Note had reached \$431.6 million. By the end of 2009, the maturity date on the Revolving Note was approaching and iHeart still had not restructured its debt obligations from the LBO.

31. To ensure iHeart retained its ability to tap Clear Channel for cash, iHeart compelled Clear Channel to amend-and-extend the terms of the intercompany loan. The Clear Channel Board, composed almost exclusively of Bain and THL executives and members of the Mays family (which founded iHC and sold the Company to Bain and THL), agreed.

32. The amended Revolving Note, dated December 23, 2009, extended the term of the agreement from August 10, 2010 until December 15, 2017 (the “First Amendment”). The applicable rate of interest was also increased from the one-month Treasury bill rate to a flat 9.25%.

33. While the 9.25% interest rate represented an increase in the applicable interest rate, it was still substantially below the then-current market rate. In December 2009, around the same time that the term of the Revolving Note was extended, Standard & Poor’s downgraded iHeart’s debt to a “CCC-” rating. According to data supplied by the Bank of America Merrill Lynch Global Index System, accessed via the Bloomberg Professional Terminal, the average yield on “CCC” or worse credit for the month of December 2009 was 12.75814%.

34. Over the next few years, the outstanding balance on the Revolving Note continued to grow. As of the quarter ending March 31, 2012, the balance on the Revolving Note had reached \$702 million. As the balance on the note escalated, iHeart’s performance only deteriorated. In 2011, iHeart reported a consolidated net loss of \$302 million. In 2012, that figure fell further to a loss of \$424 million.

C. CLEAR CHANNEL ENTERS INTO A SETTLEMENT TO RESOLVE A STOCKHOLDER DERIVATIVE CLAIM RELATING TO THE REVOLVING NOTE AND ENTERS A SECOND AMENDMENT

35. In May 2012, concerned by the escalating balance on the Revolving Note and iHeart's deteriorating financial condition, minority stockholders of Clear Channel filed derivative litigation in the Court of Chancery alleging that the Clear Channel Board breached its fiduciary duties by: (a) agreeing to extend the terms of the Revolving Note on commercially-unreasonable terms, and (b) failing to demand repayment on the Revolving Note as its balance escalated. That litigation was captioned *In re Clear Channel Outdoor Holdings Inc. Derivative Litigation*, C.A. No. 7315-C (Del. Ch.) (the "2012 Litigation").

36. The 2012 Litigation caused the Clear Channel Board to form a Special Litigation Committee ("SLC") composed of two purportedly independent directors, with independent counsel from Covington & Burling LLP and Potter Anderson & Corroon LLP. After an eight-month investigation, the SLC brokered a comprehensive settlement that was founded on the premise that the Company's Revolving Note with iHeart was essentially unfair, but that the Clear Channel Board lacked the practical ability to exit the Company's binding agreements, and intertwined relationship, with iHeart.

37. Under the terms of the settlement agreement brokered by the SLC to resolve the 2012 Litigation, the Clear Channel Board was required to: (a) make a

\$200 million repayment demand on the Revolving Note and to declare a simultaneous \$200 million dividend to Clear Channel stockholders, (b) enact corporate governance reforms to address the balance of the Revolving Note going forward, and (c) modify the applicable rate of interest on the Revolving Note.

38. The increase in the applicable rate of interest was achieved through a Second Amendment to the Revolving Note (the “Second Amendment”), entered between Clear Channel and iHeart on October 23, 2013.

39. Pursuant to the Second Amendment, the default rate of interest on the first \$1 billion outstanding on the Revolving Note would be a variable per annum rate of interest equal to the weighted-average interest rate on two outstanding notes issued by a subsidiary of Clear Channel—the “Clear Channel Worldwide Holdings, Inc. 6.50% Series A Senior Notes due 2022” and the “Clear Channel Worldwide Holdings, Inc. 6.50% Series B Senior Notes due 2022” (the “CCWH Senior Notes”)—and any term loans or debt securities issued to refinance a significant portion of those notes. At the time of the Second Amendment, the default rate on the first \$1 billion outstanding on the Revolving Note was 6.5%.

40. The Second Amendment called for a different rate of interest (the “Average Yield-to-Maturity”) to be triggered in certain circumstances. Specifically, the Average Yield-to-Maturity rate would be applied to any excess balance on the Revolving Note over \$1 billion. It would also be applied to the

entirety of the outstanding balance on the Revolving Note in the event that iHeart's "liquidity ratio" fell below 2.0x.³

41. Calculating the Average Yield-to-Maturity rate requires first identifying which of four identified series of iHeart notes—iHeart's 5.5% Senior Notes Due 2015, 4.9% Senior Notes Due 2015, 5.5% Senior Notes Due 2016, and 6.875% Senior Debentures Due 2018 (the "Reference Notes")—is closest to maturity, ignoring any series with a maturity date less than 90 days from the date of measurement. The Average Yield-to-Maturity rate is then calculated as the sum of the yields to maturity of the last FINRA-reported trade on each trading day for the relevant note series during the calendar month, divided by the total number of trading days that month. The Second Amendment provided, however, that the Average Yield-to-Maturity rate could in no event be less than 6.5% per annum, nor greater than 20% per annum.

D. THE BALANCE ON THE INTERCOMPANY LOAN CONTINUES TO GROW AS IHEART TEETERS ON THE BRINK OF BANKRUPTCY

42. Since the settlement of the 2012 Litigation, iHeart's financial condition has continued to deteriorate and the balance on the Revolving Note has skyrocketed.

³ In general terms, the liquidity ratio is calculated by dividing iHC's liquidity by the amount of cash that would be payable to Clear Channel's public stockholders in the event that Clear Channel demanded full payment of the Revolving Note and issued a simultaneous dividend of the proceeds to Clear Channel stockholders.

43. iHeart reported consolidated net losses of more than \$606 million in 2013, \$793 million in 2014, \$754 million in 2015, and \$296 million in 2016. For the first nine months of 2017, iHeart has reported a consolidated net loss of more than \$771 million. As of the end of September 2017, iHeart's total long-term debt stood at approximately \$20 billion, with a staggering \$8.4 billion of that debt set to mature in 2019.

44. In view of its extreme debt and mounting losses, iHeart has been forced to issue repeated "going concern" warnings. Indeed, iHeart's quarterly report on Form 10-Q for the third quarter of 2017, filed with the SEC on November 8, 2017, reported that there is "substantial doubt" as to the company's ability to last another year without falling into bankruptcy.

45. In an attempt to stave off bankruptcy by restructuring its debt, iHeart has been engaged in desperate negotiations with its creditors. Thus far, however, iHeart's creditors have rejected the company's proposals. In November 2017, a large group of iHeart bond and loan holders led by Franklin Resources rejected an iHeart proposal that went so far as to offer the group a greater than 87% equity stake in both iHeart's radio business and iHeart's stake in Clear Channel in exchange for settling approximately \$7.7 billion of iHeart's debt.

46. In the meantime, iHeart has increased its reliance on the Revolving Note with Clear Channel. At the end of 2016, the balance on the Revolving Note

was approximately \$885 million. By the fourth quarter of 2017, it had grown to \$1.05 billion. The Clear Channel Board made small repayment demands in September and October of 2017 that resulted in just over \$5 million being returned to Clear Channel's public stockholders, but the total amount corresponding to the ownership interests of Clear Channel's minority, unaffiliated stockholders remains in excess of \$110 million.

47. iHeart's quarterly report for the third quarter of 2017 concedes that, were Clear Channel to demand repayment of the full balance of the Revolving Note and issue a corresponding dividend, it is uncertain whether iHeart would have sufficient cash to pay the \$110 million balance that would be owed to Clear Channel's non-iHeart stockholders. Indeed, in the same filing, iHeart disclosed that it had only \$64 million of cash and cash equivalents on its balance sheet (excluding \$222.4 million of cash and cash equivalents held by Clear Channel, but which iHeart reports on its balance sheet).

48. Clear Channel's own quarterly report for the third quarter of 2017 also acknowledges the threat posed to Clear Channel by iHeart's debt crisis, recognizing that if iHeart were to become insolvent or file a bankruptcy petition, Clear Channel would become just another unsecured creditor of iHeart. The Company further acknowledged that, in addition to making it highly unlikely that

Clear Channel would ever be repaid in full, such an event could subject Clear Channel to “a liquidity shortfall” of its own.

E. THE CLEAR CHANNEL BOARD AGREES TO AMEND AND EXTEND THE INTERCOMPANY LOAN YET AGAIN, ON GROSSLY UNFAIR TERMS

49. As the December 15, 2017 maturity date on the Revolving Note approached, iHeart made clear its intention to extend the note, writing in its quarterly report for the third quarter of 2017 that “we intend to extend the maturity of the [Revolving Note] prior to its maturity.”

50. In view of iHeart’s debt crisis and its need for an extension of the Revolving Note, Clear Channel had significant leverage in negotiations with iHeart to ensure that any extension of the Revolving Note would be on terms fair to Clear Channel and its public stockholders.

51. In particular, Clear Channel had the ability and opportunity to ensure that any extension of the Revolving Note would be accompanied by an amendment that would render the Revolving Note’s interest rate provisions fair from the perspective of Clear Channel and its minority, unaffiliated stockholders.

52. As described in Section I.C, *supra*, the Second Amendment had tied the default interest rate on the first \$1.0 billion of the Revolving Note’s balance to the CCWH Senior Notes. A different rate, the Average Yield-to Maturity, applied to excess balance above \$1.0 billion (or to the entire balance in the event of iHeart’s failure to meet requisite liquidity standards) and was tied to the yield on

other, riskier, notes—but could not be lower than 6.5% or higher than 20% per annum.

53. As of late November 2017, the rate on the first \$1.0 billion outstanding on the Revolving Note had risen from 6.5% to 9.3%. The rate on the additional balance above \$1.0 billion was at the Average Yield-to-Maturity rate's cap of 20%. Were it not for the 20% cap, the Average Yield-to-Maturity rate would have been drastically higher. Since 2016, the relevant note for calculating the Average Yield-to-Maturity rate has been iHeart's 6.875% Senior Debentures Due 2018. In late November 2017, as a result of iHeart's debt crisis, that note was trading at rates reflecting a yield-to-maturity *in excess of 180%*. As of the filing of this Complaint, the note trades at rates reflecting a yield-to-maturity of **316.678%**.

54. Thus, as of late November 2017, iHeart was plainly receiving the benefit of below-market rates on the Revolving Note, and Clear Channel was suffering as a result. As Clear Channel has repeatedly disclosed in its public filings, if iHeart were to become illiquid or file a bankruptcy petition, Clear Channel would become a wholly unsecured creditor of iHeart, effectively standing in the back of the line for repayment. It therefore made no sense to tie the interest rate on the first \$1.0 billion owed under the Revolving Note to the relatively modest rates on the CCWH Senior Notes. Notably, those notes *are guaranteed by Clear Channel itself*, and therefore do not reflect iHeart's creditworthiness (or lack

thereof). Rather, iHeart's own various debt instruments presently trade at rates reflecting a per annum interest rate many times higher than the 9.3% default rate being paid under the Second Amendment. In view of iHeart's precarious financial condition, Clear Channel's unsecured position, and the sheer size of the debt outstanding on the Revolving Note, a fair interest rate on any part of the Revolving Note balance would have to be far in excess of the rate on the CCWH Senior Notes.

55. The Average Yield-to-Maturity rate provided for in the Second Amendment had also become unreasonably low in view of the 20% cap. As of late November 2017, as noted above, the yield-to-maturity on the relevant reference note was in excess of 180%.⁴ The same note traded at a yield-to-maturity of approximately 12% when the Second Amendment was entered. The astronomical rise in the note's yield reflects the market's recognition of iHeart's deteriorating financial condition, which has rendered the 20% cap in the Second Amendment irrational. The chart below depicts the rise in the yield-to-maturity on iHeart's 6.875% Senior Debentures due 2018 from the entry of the Second Amendment on

⁴ Indeed, now, in December 2017, it trades at approximately 316%.

October 23, 2013 to the December 29, 2017 date of this Complaint:



56. Any fair rate of interest on the outstanding balance over \$1 billion (or to be applied in the event of iHeart falling below the required liquidity ratio) would have to be far in excess of the 20% provided for in the Second Amendment.

57. Any properly functioning and independent board of directors would have seized the opportunity of the Revolving Note's approaching maturity date, and iHeart's need to extend the Revolving Note, to secure a fair interest rate and terms for Clear Channel and its minority, unaffiliated stockholders. The Clear Channel Board, however, wholly failed to leverage its bargaining position, instead agreeing to an extension of the Revolving Note on terms even more favorable to iHeart than under the Second Amendment.

58. On November 29, 2017, with the approval of the Clear Channel Board, the Company entered the Third Amendment to the Revolving Note,

extending the maturity date of the Revolving Note from December 15, 2017 to May 15, 2019. The Third Amendment altered the default rate on the first \$1 billion outstanding on the Revolving Note to a flat 9.3% per annum, effectively freezing in place the existing rate prior to the Third Amendment. Thus, not only did the Clear Channel Board fail to negotiate for the substantial increase in the default rate on the Revolving Note demanded by iHeart's continued financial deterioration, it actually agreed to lock the existing rate in place, denying Clear Channel the benefit of any further increases. The Third Amendment also preserved the pre-existing method of calculating the Average Yield-to-Maturity rate, including the 20% cap, despite the fact that the yield on the relevant 2018 reference note has grown completely out of proportion with the 20% cap. As noted above, the relevant 2018 reference note currently trades at a yield of greater than 316%.

59. Unsurprisingly, Clear Channel's announcement of the Third Amendment, filed on Form 8-K with the SEC on December 1, 2017, provides no indication that Clear Channel or the Board retained any independent advisors in connection with the Company's agreement to the Third Amendment. Indeed, the Company's public statements provide no indication that Clear Channel or the Board conducted any fresh analysis of iHeart's creditworthiness or took any other

steps to determine what would be a fair interest rate for the Revolving Note given iHeart's deteriorating financial condition.

60. In sum, the interest rates established by the Third Amendment are not merely commercially unreasonable and below what an independent bargaining party would accept in an arm's-length negotiation—they are commercially unconscionable. The Clear Channel Board's decision to enter the Third Amendment can only be explained as the result of the Board's domination by the Control Group Defendants, who are continuing to use iHeart's Revolving Note with Clear Channel as a source of cash to prop up iHeart, without regard for the interests of Clear Channel's unaffiliated public stockholders.

II. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

61. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of the breaches of fiduciary duties alleged herein.

62. Plaintiff has owned Clear Channel Class A common stock continuously during the wrongful course of conduct by the Control Group Defendants and the Individual Defendants alleged herein, and continues to hold Clear Channel Class A common stock.

63. Plaintiff will fairly and adequately represent the interests of Clear Channel and its stockholders in enforcing and prosecuting their rights and has retained counsel competent and experienced in stockholder derivative litigation.

64. Plaintiff has not made a demand on the Clear Channel Board to bring suit because any demand would be futile and is therefore excused.

65. As of the date of the filing of this Complaint, the Clear Channel Board consisted of seven directors. At least five of these directors suffer from conflicts of interest and divided loyalties with respect to evaluating whether to challenge a transaction like the Third Amendment, which directly inures to the benefit of iHeart.

- a. **Hendrix** is a Managing Director of Bain and also serves on the boards of iHC, iHM and iHeartMedia Capital. Bain, along with THL, control iHC, which is the direct beneficiary of the Third Amendment.
- b. **Jones** is a Managing Director at THL. THL, along with Bain, control IHC, which is the direct beneficiary of the Third Amendment.
- c. **Piedrahita** is a Principal at THL. Thus, Piedrahita suffers the same incapacitating conflict as his THL colleague Jones.
- d. **Pittman** is Executive Chairman and CEO of iHC, which is the direct beneficiary of the Third Amendment.
- e. **Sabine** is an Executive Vice President at Bain. Thus, Sabine suffers the same incapacitating conflict as her Bain colleague Hendrix.

66. Thus, a majority of the Clear Channel Board could not disinterestedly and independently consider a demand to prosecute the claims alleged herein.

67. Accordingly, demand on the Clear Channel Board is excused as futile.

COUNT I
DERIVATIVE CLAIM AGAINST THE CONTROL GROUP
DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

68. Plaintiff incorporates by reference and realleges each and every allegation above, as though fully set forth herein.

69. The Control Group Defendants (*i.e.*, iHC, iHM, Bain and THL), as Clear Channel's controlling stockholders, owe fiduciary duties to the Company and its stockholders. As such, the Control Group Defendants owe Clear Channel the highest duties of due care and loyalty.

70. The Control Group Defendants breached their fiduciary duties by exploiting their position of control to require Clear Channel to enter the Third Amendment on terms unfair to the Company.

71. As a result of the actions of the Control Group Defendants, the Company has been and will be damaged.

72. Plaintiff has no adequate remedy at law.

COUNT II
DERIVATIVE CLAIM AGAINST THE INDIVIDUAL DEFENDANTS
FOR BREACH OF FIDUCIARY DUTY

73. Plaintiff incorporates by reference and realleges each and every allegation above, as though fully set forth herein.

74. The Individual Defendants, as current directors of Clear Channel, are fiduciaries of the Company and its stockholders. As such, they owe the Company the highest duties of due care and loyalty.

75. The Individual Defendants have breached their duty of loyalty by approving the unfair Third Amendment and elevating the interests of iHC, iHM, Bain and THL over the interests of Clear Channel and the Company's minority, unaffiliated stockholders.

76. Among other things, as a result of the actions of the Individual Defendants described herein, Clear Channel has been and will be deprived of tens—if not hundreds—of millions of dollars in interest payments that would have been paid to the Company had the Third Amendment reflected commercially reasonable terms.

77. Also as a result of the actions of the Individual Defendants, the Company has been exposed to massive loss in the event iHeart declares bankruptcy or becomes insolvent.

78. Plaintiff has no adequate remedy at law.

COUNT III
DERIVATIVE CLAIM AGAINST THE INDIVIDUAL DEFENDANTS
FOR WASTE OF CORPORATE ASSETS

79. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

80. The unreasonably low interest rates established by the Third Amendment are tantamount to a disguised gift of corporate value from Clear Channel to iHeart.

81. The terms of the Third Amendment could not have been agreed to in good faith and represent a waste of corporate assets by the Individual Defendants.

82. As a result of these actions by the Individual Defendants, the Company has been and will be damaged.

83. Plaintiff has no adequate remedy at law.

COUNT IV
DERIVATIVE CLAIM AGAINST THE CONTROL GROUP
DEFENDANTS FOR UNJUST ENRICHMENT

84. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

85. The Control Group Defendants were and will continue to be unjustly enriched as a result of the unfairly favorable terms of the Third Amendment.

86. It would be unconscionable for the Control Group Defendants to retain the illicit benefits of the Third Amendment.

87. As a result of the actions of the Control Group Defendants, the Company has been and will continue to be damaged.

88. Plaintiff has no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- a) Declaring that a demand upon the Clear Channel Board would be futile and is therefore excused;
- b) Declaring that the Defendants breached their fiduciary duties to the Company;
- c) Modifying the Third Amendment to bear a commercially reasonable rate of interest;
- d) Ordering the immediate disgorgement of all profits, benefits and other compensation obtained by Defendants as a result of their breaches of fiduciary duties;
- e) Awarding damages, together with pre- and post-judgment interest;
- f) Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and
- g) Awarding such other and further relief as is just and equitable.

LABATON SUCHAROW LLP

/s/ Ned Weinberger

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