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

GALE ANNE HURD, VALHALLA ENTERTAINMENT, INC., f/k/a Valhalla Motion Pictures, Inc., DAVID ALPERT, CIRCLE OF CONFUSION PRODUCTIONS, LLC, NEW CIRCLE OF CONFUSION PRODUCTIONS, INC., CHARLES EGLEE, and UNITED BONGO DRUM, INC.,

Plaintiffs,

v.

AMC FILM HOLDINGS, LLC, AMC NETWORK ENTERTAINMENT, LLC, AMC NETWORKS INC., STU SEGALL PRODUCTIONS, INC., FIVE MOONS PRODUCTIONS I LLC, and "DOES 1 THROUGH 40,"

Defendants.

SUMMONS

INDEX NO. ___________

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the attorneys for the plaintiffs within 20 days after the service of this summons, exclusive of the day of service (or within 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 appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial as at least one of the Defendants has its principal place of business in New York County and therefore resides in this County.

Dated: New York, New York
August 15, 2017

KISHNER & MILLER

By: ______________________
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SUPREME COURT OF THE STATE OF NEW YORK
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GALE ANNE HURD, VALHALLA ENTERTAINMENT, INC., f/k/a Valhalla Motion Pictures, Inc., DAVID ALPERT, CIRCLE OF CONFUSION PRODUCTIONS, LLC, NEW CIRCLE OF CONFUSION PRODUCTIONS, INC., CHARLES EGLEE, and UNITED BONGO DRUM, INC., Plaintiffs, v. AMC FILM HOLDINGS, LLC, AMC NETWORK ENTERTAINMENT, LLC, AMC NETWORKS INC., STU SEGALL PRODUCTIONS, INC., FIVE MOONS PRODUCTIONS I LLC, and "DOES 1 THROUGH 40," Defendants.	:	**<u>COMPLAINT</u>** **<u>INDEX NO</u>.** ___________

Plaintiffs Gale Anne Hurd, David Alpert, Charles Eglee, and their respective "loan-out" corporations Valhalla Entertainment, Inc., f/k/a Valhalla Motion Pictures, Inc.; Circle of Confusion Productions, LLC, New Circle of Confusion Productions, Inc.; and United Bongo Drum, Inc. (collectively, "Plaintiffs"), by their attorneys Kishner & Miller, for their complaint in this action, allege as follows:

I.

GENERAL INTRODUCTION

1. This case arises from a major entertainment conglomerate's failure to honor its contractual obligations to the creative people – the "talent," in industry jargon – behind the wildly successful, and hugely profitable, long-running television series "The Walking Dead" ("TWD"). (Only a few terms are defined in this section; all defined terms are identified in the glossary that is Exhibit A to this Complaint.) The defendant AMC Entities exploited their

vertically-integrated corporate structure to combine both the production and the exhibition of TWD, which allowed AMC to keep the lion's share of the series' enormous profits *for itself* and not share it with the Plaintiffs, as required by their contracts. Plaintiffs and the other talent behind TWD are the ones whose work to create, develop, write and produce the series has brought its huge success, but the fruits of that success have not been shared as they should be.

2. More specifically, TWD was owned by AMC Studios and aired on AMC Network, both of which are owned by the same public entity parent ("AMC Parent"). TWD is the most successful cable television series in history and, indeed, for most of its run on the AMC Network has been the highest-rated program in the coveted 18-49 demographic on both broadcast and cable television, with only Sunday Night Football rivaling it in popularity.

3. While AMC Network previously aired such popular shows as "Mad Men" and "Breaking Bad," the ratings of TWD – and the revenues that accompanied those ratings – have far exceeded the ratings and revenues from those series, and have catapulted AMC Parent, and its financial value, to a whole new level. But while the AMC Parent has been richly rewarded for the success of TWD (and from Fear the Walking Dead ("FTWD"), and the Talking Dead ("TTD"), both of which are also subjects of this lawsuit), AMC has used its vertically-integrated corporate structure to avoid sharing that financial success with the profit participants, including the Plaintiffs, who wrote, created and produced these programs.

4. In its contracts with Plaintiffs, AMC Studios agreed, if the series was successful, to pay Plaintiffs certain profits for TWD, a percentage of an amount known as modified adjusted gross receipts ("MAGR"). But while TWD has been wildly successful, AMC has not met its contractual obligations to share that success.

5. While the AMC Entities have breached their agreements with Plaintiffs in various ways, the most significant harm results from their self-dealing in related-party transactions.

Specifically, the measure of "profit," for the purposes of profit participation in a television series, is typically realized at the *production company* level – if the production company makes a profit, it has to share it with the participants. In contrast, the *network's* profit from exhibition typically is *not* shared with the participants -- the conglomerate can keep all those profits for itself. As a consequence, when the production company and the network are part of the same conglomerate, as AMC Studios and AMC Network are here, there is a powerful financial incentive to keep the lion's share of the profit at the network level and not pay a fair-market-value license fee to the production company – thereby depriving profit participants, like Plaintiffs, of their fair share of the series' profits.

6. For example, AMC Studios charged AMC Network *zero* for licensing the exhibition rights to AMC Network. Instead, AMC Studios "imputed" – and in this case also unilaterally declared – a wholly-inadequate, imputed license fee ("ILF") on Plaintiffs' TWD MAGR statements that was never agreed to by any of the Plaintiffs.

7. There can be no question that, if AMC Studios and AMC Network were not part of the same conglomerate, the story would be very different. As this case will show, if AMC Studios had properly imputed a fair market license fee as contractually required, or had otherwise been paid a fair market value license fee, TWD would have commanded a license fee far above the costs of production of the series over the long term, and certainly much above the *mere 68% of production costs* (including extra payments known as breakage) AMC Studios has given Plaintiffs credit for to date on their TWD MAGR statements through TWD's seventh season. As a result, Plaintiffs, who helped to bring the vision of the original comic books to television, have been denied their contractual rights to participate fairly with the AMC Entities in TWD's success.

8. In sharp contrast, when AMC Network negotiated license fees with the

independent production companies – not controlled by AMC – that produced "Mad Men," "Breaking Bad" and "Better Call Saul," the resulting amounts were substantially larger than the license fees for TWD in each of those series' first four seasons (either as a percentage of each series' production costs or in absolute dollars). Those substantial license fees for "Mad Men" and "Breaking Bad" continued in seasons five and beyond, even though their ratings were a fraction of TWD's. And while the AMC Network only obtained a limited number of playdates for those series as part of the comparatively-higher license fees it paid for them (both on television and its affiliated websites), the AMC Entities unilaterally took for themselves the right to run an unlimited number of runs of TWD in perpetuity on all AMC platforms.

9. The AMC Entities' efforts to minimize what it pays to the Plaintiffs goes well beyond setting an ILF in breach of Plaintiffs' TWD Agreements. As set forth below, AMC used various other means to deprive Plaintiffs of their fair share of TWD's profits. For example, although the agreements between AMC Studios and Plaintiffs provided that there would be no deductions for the payments AMC Studios paid to other TWD profit participants when determining each participant's share of TWD's profits, AMC Studios has nonetheless taken those improper deductions. This is just one of the many breaches by the AMC Entities outlined below.

10. AMC has also engaged in self-dealing and other wrongdoing in connection with both FTWD and TTD. For example, based on the success of TWD, before FTWD even aired its first episode, an unrelated third party offered to buy FTWD's international rights for an amount that would have immediately put (and kept) FTWD in profits. But the AMC Entities turned this offer down so that they could do a *related*-party deal for much less than the unrelated party offered, again keeping the profits at the conglomerate level and not passing them through to AMC Studios and the participants. Similarly, for TTD, which is properly viewed as part of

TWD or FTWD, Plaintiffs are informed and believe that AMC Studios charges AMC Network no license fee and does not intend to credit any revenue for it on Plaintiffs' TWD and FTWD profit statements, even though AMC makes substantial profits on TTD.

11. Plaintiffs tried diligently and in good faith to resolve these issues with the AMC Entities prior to filing this Complaint. Regrettably, those efforts did not succeed. Having exhausted those efforts, Plaintiffs therefore, of necessity, bring this action.

II.

PARTIES AND NON-PARTIES

A. Plaintiffs.

12. Plaintiff Gale Anne Hurd is a resident of the County of Los Angeles, State of California. She is an American film and television producer, and has produced multiple Academy-and Emmy Award-winning films and series, including *The Terminator* and *Aliens.* She has served as an executive producer of TWD since the show's inception. She is also a consulting producer on TTD and an executive producer on FTWD.

13. Plaintiff Valhalla Entertainment, Inc. ("Valhalla") (formerly known as Valhalla Motion Pictures, Inc.) is a corporation organized and existing under the laws of the State of California with its principal place of business in the State of California. Valhalla is in the business of furnishing the producing and related services of Gale Anne Hurd in connection with film and television projects, including her work on TWD, FTWD and TTD. Gale Anne Hurd and Valhalla are collectively referred to herein as "Hurd." As discussed in paragraph 45 below, because Hurd has an exclusive New York jurisdiction provision in her TWD Agreement, but not her FTWD and TTD Agreements, she brings her TWD claims in this Court at least in the first instance (and asserts her other claims in the California state court related action).

14. Plaintiff David Alpert is a resident of the County of Los Angeles, State of

California. He is an American television producer, and the longtime manager and business partner of Robert Kirkman, who (as set forth below) is the creator and writer of the comic books that became TWD. Alpert has served as an executive producer of TWD since its inception, and has also served as a consulting producer of TTD and an executive producer of FTWD.

15. Plaintiff Circle of Confusion Productions, LLC ("Circle") is a limited liability company organized and existing under the laws of the State of California with its principal place of business in the State of California. Circle of Confusion is in the business of furnishing the producing and related services of David Alpert in connection with television projects, including his work on TWD, TTD and FTWD.

16. Plaintiff New Circle of Confusion Productions, Inc. ("New Circle") is a corporation organized and existing under the laws of the State of California with its principal place of business in the State of California. New Circle is in the business of furnishing the producing and related services of David Alpert in connection with television projects, and is the successor-in-interest to Circle with respect to Alpert's executive producer services for FTWD. David Alpert, Circle and New Circle are collectively referred to herein as "Alpert." As discussed in paragraph 45 below, because Alpert has an exclusive New York jurisdiction provision in his TWD Agreement, but not his FTWD and TTD Agreements, he brings his TWD claims in this Court at least in the first instance (and asserts his other claims in the related action).

17. Plaintiff Charles Eglee is a resident of the County of Los Angeles, State of California. In addition to numerous industry award nominations, Mr. Eglee earned an Emmy Award for his work on NYPD Blue and a Peabody Award for his work on The Shield. Eglee served as a writer and executive producer of TWD during its highly successful first season.

18. Plaintiff United Bongo Drum, Inc. ("United Bongo Drum") is a limited liability

company organized and existing under the laws of the State of California with its principal place of business in the State of California. United Bongo Drum is in the business of furnishing the writing, producing and related services of Charles Eglee in connection with television projects, including his work on TWD. Charles Eglee and United Bongo Drum are collectively referred to herein as "Eglee." As discussed in paragraph 45 below, because Eglee has an exclusive New York jurisdiction provision in his TWD Agreement, he brings his TWD claims in this Court at least in the first instance.

B. Non-Parties

19. This action concerns Defendants' wrongdoing involving TWD, FTWD and TTD. The Non-Parties, other individual "talent" (and their loan-out corporations), have written agreements similar in some respects to Plaintiffs' TWD Agreements. More importantly, each of the Plaintiffs and Non-Parties has a "most favored nations" provision as to their MAGR definitions ("MFN") in his or her TWD Agreement. This means that if one of the Non-Parties has a better MAGR definition than one or more of the Plaintiffs, that Plaintiff gets the benefit of the better MFN definition. Therefore, the terms of the Non-Parties' TWD Agreements are pleaded here.

20. The Non-Parties have brought similar claims to those Plaintiffs assert here in a related lawsuit recently filed in Los Angeles Superior Court in Los Angeles, California, as described in paragraph 45 below. Because the wrongdoing of the AMC Entities addressed in both the California action and in this action affected them commonly, and because of the MFN provisions in their respective agreements, these other participants, although not plaintiffs here, are relevant non-parties, and their agreements are highly relevant to the adjudication of the Plaintiffs' claims here.

21. Non-Party Robert Kirkman is a resident of the County of Los Angeles, State of

California. An Eisner Award winner and *New York Times* best-selling author, he is an American comic book writer and television writer and producer. Kirkman created and continues to write the popular original comic book, "The Walking Dead," which was adapted into the hugely successful television series of the same name ("TWD") that is the subject of this lawsuit. Kirkman also is an executive producer of TWD and has written several episodes. Kirkman is the co-creator of *Fear the Walking Dead* ("FTWD"), a derivative series that is the subject of the related California action, for which he has also served as a writer and executive producer. Kirkman is a consulting producer of *The Talking Dead* ("TTD"), a television aftershow that is also at issue in this lawsuit and that is shown immediately after the initial airing of each episode of TWD or FTWD.

22. Non-Party Robert Kirkman, LLC ("RKLLC") is a limited liability company organized and existing under the laws of the State of Kentucky with its principal place of business in the State of California. RKLLC is in the business of furnishing the writing, producing and related services of Robert Kirkman in connection with television programs, including his work on TWD, TTD and FTWD. Robert Kirkman and RKLLC are collectively referred to herein as "Kirkman." Kirkman brings claims covering TWD, FTWD and TTD in the related action (set forth further below).

23. Non-Party Glen Mazzara is a resident of the County of Los Angeles, State of California. He is an American film and television producer and writer. He served as a writer for TWD during 2010, and served as executive producer and showrunner of TWD between 2011 and 2012.

24. Non-Party 44 Strong Productions, Inc. ("44 Strong") is a corporation organized and existing under the laws of the State of California with its principal place of business in the State of California. 44 Strong is in the business of furnishing the writing, producing and related

services of Glen Mazzara in connection with film and television projects, including his work on TWD. Glen Mazzara and 44 Strong are collectively referred to herein as "Mazzara." Mazzara brings claims covering TWD in the related action.

25. "Non-Parties" as used in this Complaint refers to Kirkman and Mazzara.

26. Because of the overlap and commonality of the relationships and matters involving TWD, FTD, and TTD among Plaintiffs, Defendants and the Non-Parties, the facts and circumstances involving the Non-Parties' dealings and contractual arrangements with Defendants are discussed below.

C. Plaintiffs' and Non-Parties' Agreements.

27. Hurd's, Alpert's, and Eglee's TWD Agreements, with the Non-Parties' TWD Agreements, which are each defined below, are together referred to herein as "Plaintiffs' TWD Agreements." Similarly, (a) Plaintiffs' TWD Agreements, (b) Hurd's, Alpert's and Kirkman's FTWD Agreements and (c) Hurd's, Alpert's and Kirkman's TTD Agreements, which are also defined below, are together referred to herein as "Plaintiffs' Agreements."

D. Defendants.

1. The AMC Entities' concealment of the identities of culpable parties.

28. Plaintiffs bring this action against numerous AMC entities (defined below as "the AMC Entities"), including parent, subsidiary and affiliate corporations, as well as others seemingly having contractual privity with AMC entities. Plaintiffs do so because the AMC Entities together, as a major corporate entertainment conglomerate, have obscured the identities of specific parties that hold interests and owe obligations or are liable to Plaintiffs pursuant to Plaintiffs' Agreements, which are defined further below.

29. In particular: (a) the AMC Entities have refused to be transparent about their conglomerate's structure; (b) certain of the AMC Entities purport to hold interests in Plaintiffs'

Agreements due to corporate mergers, name changes, acquisitions of interests, or legal succession as a matter of law; and (c) transfers of interests have purportedly occurred by "assignment" of the agreements from and to both AMC Entities and putative third parties where, as particularly pertinent, assumption of the obligations under the agreements (if any), the financial soundness of such assignees, and terms of the assignments has not been disclosed to Plaintiffs.

30. In fact, the AMC Entities have purposefully masked the identities of relevant parties. For example:

- documents available to Plaintiffs from the AMC Entities *make conflicting representations* about relationships among different AMC Entities and the interests held among them with respect to Plaintiffs' Agreements;
- over a substantial period of time, AMC Entities' representatives stated that one entity, AMC Film Holdings -- which they have defined as "*AMC Studios*" -- was the "successor-in-interest" to the initial owners of rights in Plaintiffs' TWD Agreements;
- *AMC Studios* also issued TWD MAGR participation statements to Plaintiffs and entered into ancillary agreements pertaining to Plaintiffs' TWD Agreements with Plaintiffs;
- however, in recent dealings with Plaintiffs, the AMC Entities refused to disclose whether "*AMC Film Holdings LLC*," is the same entity as "AMC Studios," and whether it is the successor-in-interest to Plaintiffs' TWD Agreements;
- in these recent dealings with Plaintiffs, the AMC Entities also refused to disclose any particulars concerning, or even to confirm the existence of, *transfers of interests or assumptions of obligations* by assignment transactions of Plaintiffs' TWD Agreements.

31. As a consequence, any misjoinder or lack of joinder here of culpable parties is the product of actions taken or omitted, and representations and misrepresentations made or purposefully not made, by the AMC Entities to conceal the identities of responsible parties.

32. Plaintiffs have conducted a thorough and diligent investigation, and have made a thorough and diligent inquiry, to learn the identities of all entities who are responsible for the

wrongdoing alleged in this action. Accordingly, Plaintiffs name as defendants all entities known, or which reasonably could be known, to be liable herein. Plaintiffs are informed and believe and thereupon allege that any entities presently unnamed due to Plaintiffs' inability to discover their identities are sufficiently related to the Named Defendants (defined below), either by corporate, business or contractual relationships, so as to know, or otherwise should know, that they would be included as named defendants but for Plaintiffs' lack of such knowledge at this time.

2. Specific named defendants in one or more of Plaintiffs' Causes of Action.

33. Defendant AMC Film Holdings, LLC ("AMC Studios") is a limited liability corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of New York. On information and belief, AMC Studios (a) is a directly or indirectly owned subsidiary or affiliate of Defendants AMC Parent and AMC Network (both defined below), (b) is the successor-in-interest to each of Plaintiffs' TWD Agreements and (c) has operated as the production company for TWD from its inception.

34. Defendant AMC Network Entertainment, LLC ("AMC Network") is a limited liability corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of New York. AMC Network was formerly known as "American Movie Classics Company, LLC." AMC Network exhibits television programming, including TWD, TTD and FTWD, and does so pursuant to transactions (or understandings/arrangements as the AMC Entities now prefer to call them) with AMC Studios and other AMC affiliated production companies. AMC Network is also the original contracting entity to several of Plaintiffs' TWD Agreements and as further alleged below, Plaintiffs are informed and believe that AMC Network exercised its control and authority over AMC production entities, including AMC Studios, to cause them to commit breaches of the Plaintiffs' Agreements, doing so by fraudulent and improper means and to protect and enhance its own

direct interests to the detriment of Plaintiffs.

35. Defendant AMC Networks Inc. ("AMC Parent") is a publicly-owned corporation organized and existing under the laws of the State of Delaware, having its principal place of business in the State of New York. AMC Parent indirectly owns and wholly controls AMC Studios and AMC Network. As alleged further below, Plaintiffs are informed and believe that AMC Parent exercised its control and authority over AMC Network and AMC production entities, including AMC Studios, to cause them to commit breaches of Plaintiffs' Agreements, doing so by fraudulent and improper means and to protect and enhance its own direct interests to the detriment of Plaintiffs.

36. Defendant Stu Segall Productions, Inc. ("Stu Segall") is a corporation organized and existing under the laws of the State of California, having its principal place of business, on information and belief, in the State of California. Stu Segall entered into written agreements with several of the Plaintiffs in connection with their participation in TWD, including their right to a share of MAGR from TWD. Plaintiffs are informed and believe that Stu Segall is a production services company that acted at all times as an agent of the AMC Entities in connection with TWD. Stu Segall is a signatory to one or more of the Guild agreements, which contain the comparable sales provision discussed in paragraph 69(b)(iii) below.

37. Defendant Five Moons Productions I LLC ("Five Moons") is on information and belief a limited liability corporation organized and existing under the laws of the State of Delaware, having its principal place of business in New York. Five Moons serves as the production company for Hurd's, Alpert's and Kirkman's TTD Agreements.

38. Unless otherwise stated, all of the foregoing Defendants are referred hereinafter, collectively, as the "Named Defendants" and AMC Studios, AMC Network, AMC Parent and Five Moons are referred hereinafter, collectively, as the "AMC Entities."

3. Presently unidentified defendants.

39. Although Plaintiffs have made every effort to identify the relevant and correct defendants, based on the claims for breach of contract, tort and statutory violations set forth below, the corporate structure of the AMC Entities is complicated and the AMC Entities have refused to clarify it. Furthermore, various contracting entities have either been renamed, or assigned their interests, or both during the times since the relevant contracts were entered into, and various documents from the AMC Entities do not always agree in identifying relevant entities. Accordingly, to the extent that any entity that is related to the AMC Entities that properly should be named a party has not been, notice is hereby given that Plaintiffs will amend their complaint to add such party upon learning of the proper identity of such party.

40. Plaintiffs do not know the true names and capacities of the defendants named herein as Does 1 through 40 and therefore sue these defendants under such fictitious names. Plaintiffs will amend this complaint to show the true names, capacities, and conduct of Does 1 through 40 when and as Plaintiffs ascertain the same.

41. Plaintiffs are informed and believe that the defendants, and each of them, including the Named Defendants and Does 1 through 40 (sometimes collectively referred to herein as the "Defendants"), are and at all material times have been the agents and servants of, and acted in concert with, one another with respect to the acts and conduct herein alleged, and are responsible for and liable to Plaintiffs for the damages and losses arising out of such acts and conduct.

42. In that capacity, each of the Doe defendants is liable for the breaches of Plaintiffs' Agreements and other causes of action that are asserted against the Named Defendants, as alleged below. By virtue of the transactions and resulting relationships, the Doe defendants share the same interests as the Named Defendants, and any Doe defendant therefore is united in

interest with the Named Defendants. In particular, a Doe defendant, on information and belief, will have liability that depends on, or results vicariously from, the relationship with one of more Named Defendant, deriving (for example) from agency, authority, control, decision-making or alter ego between the Doe defendant and a Named Defendant. As such, any Doe defendant will not be prejudiced by lack of notice of this action at this juncture.

III.

JURISDICTION AND VENUE

43. Personal jurisdiction exists over each of the Defendants either because (a) in a written agreement upon which a Plaintiff asserts claims in this action, the Defendant consented to exclusive jurisdiction of a New York court; (b) the Defendant has its principal place of business in and is a resident of New York State; or (c) the Defendant is bound as a successor-in-interest to the original contracting party or by separate contract to the provision prescribing exclusive New York State jurisdiction.

44. Venue is proper in this Court because at least one of the Defendants has its principal place of business in New York County and therefore resides in this County.

IV.

RELATED CASES

45. Non-Parties Kirkman and Mazzara, together with Plaintiffs Hurd and Alpert on claims not asserted here, have commenced a parallel California State court lawsuit in Superior Court of the State of California County of Los Angeles, Central District asserting claims related to Plaintiffs' claims here, captioned "Robert Kirkman, an individual; Robert Kirkman, LLC, a Kentucky limited liability company; Glen Mazzara, an individual; 44 Strong Productions, Inc., a California corporation; David Alpert, an individual; Circle of Confusion Productions, LLC, a California limited liability company; New Circle of Confusion Productions, Inc., a California

corporation; Gale Anne Hurd, an individual; and Valhalla Entertainment, Inc. f/k/a Valhalla Motion Pictures, Inc., a California corporation v. AMC Film Holdings, LLC, a Delaware limited liability corporation; AMC Network Entertainment, LLC, a Delaware limited liability corporation; AMC Networks Inc., a Delaware corporation; Stu Segall Productions, Inc., a California corporation; Stalwart Films, LLC, a Delaware limited liability corporation; TWD Productions LLC, a Delaware limited liability corporation; Striker Entertainment, LLC, a California limited liability corporation; Five Moons Productions I LLC, a Delaware limited liability corporation; AMC TV Studios, LLC, a Delaware limited liability corporation, f/k/a AMC Television Productions LLC; Crossed Pens Development LLC, a Delaware limited liability corporation; and "DOES 1 through 10" and DOES 1 through 40, and DOES 1 through 40, Case No. BC672124, filed on August 14, 2017. In the TWD Agreements at issue here, Plaintiffs Hurd and Alpert (as well as Eglee, who is not a California plaintiff) agreed to exclusive jurisdiction in New York State. (Hurd and Alpert do not have exclusive New York jurisdiction provisions in their FTWD or TTD Agreements; they are also named plaintiffs in the California action in connection with claims relating to those programs. Each of the Plaintiffs and Non-Parties is a California resident, Plaintiffs' and the Non-Parties' contracts were largely entered into and performed in California, the majority of percipient and likely expert witnesses are in Los Angeles, and counsel for both sides are largely based in Los Angeles. In the interests of efficiency and the conservation of judicial resources, Plaintiffs have requested that Defendants waive the exclusive New York jurisdiction contractual provision and agree that the claims asserted in this action may be asserted in the preceding California action. In that event, Plaintiffs will consent to dismissal without prejudice of this action and assert their claims in the California action.

46. This case is also related to another New York state court case, "Frank Darabont,

Ferenc, Inc., Darkwoods Productions, Inc., and Creative Artists Agency, LLC, Plaintiffs against AMC Network Entertainment LLC, AMC Film Holdings LLC, AMC Networks Inc., Stu Segall Productions, Inc., and Does 1 through 10," Defendants, Index No. 654328/2013, filed in December 2013 and currently pending in the Supreme Court of New York, County of New York ("Darabont/CAA proceeding"). While there are many differences between this case and the Darabont/CAA proceeding, Frank Darabont and CAA each also have a contingent compensation interest in TWD and they assert, among other things, that the AMC defendants breached their contractual obligations in connection with AMC Network's exhibition of TWD. Percipient and expert discovery has concluded in the Darabont/CAA proceeding and the parties have filed cross-summary judgment motions ("MSJs"), which are set for hearing on August 24, 2017.

V.

GENERAL DESCRIPTION OF THE PROGRAMS AT ISSUE

A. TWD.

47. TWD premiered on October 31, 2010 on the AMC Network. Having run for seven seasons, its eighth season is set to premiere on October 22, 2017.

48. TWD has been incredibly successful. TWD's premiere was the highest rated premiere in the AMC Network's history and the highest rated debut of any cable series in 2010. From its third season onwards, viewers per episode have consistently averaged above ten million. TWD has the highest total viewership of any series in cable television history, including its third through sixth seasons, during which it averaged the most 18- to 49-year-old viewers of all cable or broadcast television shows. The AMC Parent's 2016 10K states "The network's series The Walking Dead is the highest-rated series in cable history and the number one show on television among adults 18-49 for the last five years." TWD regularly competes with NFL Sunday Night Football for the top primetime program in the coveted 18-49 demographic in the

United States. TWD also ranks among the top rated programs internationally.

49. TWD has also received tremendous critical acclaim and has been nominated for and won numerous awards and recognized as one of the best shows on television. Among its many nominations are a Golden Globe nomination for Best Television Series – Drama, Primetime Emmy nominations for Outstanding Makeup, Outstanding Special Visual Effects, and Outstanding Sound Editing. Among its many wins are Saturn Awards for Best Horror Television Series, Best Presentation on Television and Best Syndicated/ Cable Television Series by the Academy of Science Fiction, Fantasy & Horror Films for multiple years.

50. TWD has spawned three web series, "Torn Apart," "Cold Storage" and "The Oath."

B. FTWD.

51. FTWD is a derivative series of TWD. It premiered in the United States on August 23, 2015 exclusively on the AMC Network. Its third season premiere was exhibited on June 4, 2017. AMC has already renewed FTWD for a fourth season.

52. The FTWD series premiere attracted 10.1 million total U.S. viewers, with 6.3 million in the 18-to-49-year-old demographic, both cable television records for a series premiere. The first season averaged 11.2 million viewers in "live plus-3" ratings to become the highest-rated first season of any series in basic cable history.

53. FTWD has also generated two web series, "Fear the Walking Dead: Flight 462" and "Fear the Walking Dead: Passage."

C. TTD.

54. TTD is a regularly scheduled television aftershow, which has an announced time period in the AMC Network's schedule, that follows immediately after the initial airing of each episode of TWD and FTWD. Each TTD episode includes guests to recap and discuss the latest

episode. Segments on TTD include an "In Memoriam" highlighting the deaths from the episode, an online poll, episode trivia, behind-the-scenes footage, and questions from fans via phone, from the audience, Facebook, Twitter, or from the official TTD website. After the on-air episode ends, a bonus segment continues online.

55. TTD premiered on the AMC Network on October 16, 2011, following the encore presentation of the second-season premiere of TWD. It originally began with a 30-minute format but, on February 10, 2013, expanded to a 60-minute format. In Season 5 (2015-16), it expanded to include episodes following Season Two of FTWD and has subsequently aired after the broadcasts of that series as well. TTD has achieved high ratings in the key 18-to-49 demographic.

D. The Enormous Value of TWD, FTWD and TTD to AMC.

56. Not only have TWD, FTWD and TTD (and their related programming in the form of web series, specials, etc.) been hugely popular and generated tremendous interest at a cultural level, they have also been tremendously lucrative for the AMC Entities. AMC Network's primary revenue streams are (a) distribution revenue, the largest component of which are subscription or affiliate fees paid by Multichannel Video Programming Distributors ("MVPDs"), such as multiple system operators (MSOs) on cable television, satellite operators and telecos, and (b) national advertising revenues.

57. The tremendous success of TWD and its progeny has given the AMC Entities leverage to increase these revenue streams. For example, in its 10-K for the period ending December 31, 2013, the AMC Parent discussed advertising revenue increases and stated the largest increase was attributable to AMC Network, resulting from higher pricing per unit sold, "led by *The Walking Dead*." Subsequent AMC Parent 10-Ks paraphrase this statement, indicating that AMC Network had the largest increase of advertising revenues across all of the

company's networks, resulting from higher pricing per unit sold due to an increased demand for programming by advertisers, led by TWD. TWD's and its progenies' success has also lead to AMC Network receiving larger subscription and affiliate fees from the MVPDs and MSOs.

VI.

NATURE OF THE TELEVISION INDUSTRY, AND THE RESULTING CONTRACTUAL RELATIONSHIPS BETWEEN TALENT AND THE ENTERTAINMENT CONGLOMERATES

A. The Unfairness To Talent Caused By The "Vertical Integration" Of The Entertainment Conglomerates

1. Fin-Syn era and its sunset.

58. In 1970, the Federal Communications Commission adopted rules, known as "the Financial Interest and Syndication Rules" or the "Fin-Syn Rules," designed to prevent the then-big three broadcast television networks from monopolizing the television landscape by preventing them from owning any of the programming that they aired on their networks in prime time. The Fin Syn Rules also prohibited networks from airing or distributing programming in which they had a financial interest. In general, the Fin-Syn Rules restricted the harms, as described further below, flowing from vertical integration and related party transactions in the television industry. The Fin-Syn Rules sunset in the 1990s.

2. The rise of vertical integration.

59. Since the sunset of the Fin-Syn Rules, the television industry has seen the establishment of a number of large vertically-integrated entertainment conglomerates. A vertically-integrated entertainment conglomerate might own, among other things, (a) production companies/studios that make and own television series; (b) production companies or other affiliated distributors that license these series to related and unrelated television networks, *e.g.*,

premium pay and international; and (c) television networks that license these series from production companies to air on their networks. While not as large as some of the other vertically integrated entertainment conglomerates, AMC has become one of these conglomerates.

60. Creators of television programs, showrunners and executive producers, often referred to as "artists" or "talent," like the individual Plaintiffs here, are another major player in the television industry. For example, a production company, like AMC Studios, may employ a writer/creator to create and write the pilot for a television series and agree to pay the writer/creator fixed compensation and a percentage of the profits (or contingent compensation, as the production companies now prefer to call it), denominated, *e.g.*, as adjusted gross receipts ("AGR"), modified adjusted gross receipts ("MAGR") or "net profits," of the series that are received by the production company. The contract between the production company and talent participant usually makes clear, however, that the participant does not share in the profits of the production company's affiliated networks that license the programs, *e.g.*, the advertising revenues and/or the subscriber fees received by the networks. (As discussed below, however, what a network earns (or expects to earn) on a program will inform the fair market value of the license fee for the program.) The talent participants only generally share in the production company's contractually-defined MAGR or other form of profits.

61. Before the sunset of the Fin-Syn Rules and the widespread vertical integration in the television industry, the economic interests of the production company for a television series and its profit participants were aligned when it came to the production company's licensing of the series to what was, as required by the Fin-Syn Rules, an unrelated network. The production company and the profit participants each had the economic interest to obtain the highest possible license fee from the network. The production company and the profit participants would then share the "profits" according to the type, e.g., MAGR, and amount of participation negotiated.

62. Vertical integration, however, created the opposite incentive. A vertically-integrated entertainment conglomerate, which both produces a television series and airs it on its affiliated network, makes more money if the license fees paid by the network to the production company are below fair market value, i.e., what would be the result of an arm's length negotiation between unrelated entities. Under vertical integration, while the production company makes less, because the lower license fees reduce its revenue, the affiliated network makes more money because it pays lower license fees. While this income shifting is a wash if there were no profit participants and the only players were the related studio and network, it is not a wash when the participants' interests are also considered. Simply put, if the production company has less profit, it pays less to its participants, and the vertically integrated conglomerate makes more since the affiliated network does not have to share its profits with the participants.

63. Prior to the sunset of the Fin-Syn Rules, and in many instances still today, particularly in the case of transactions between an unrelated production company and network, the initial license fee agreement for a television series covered up to four to six seasons, *i.e.*, the network had, in addition to its first season order, four or five one-year options on the series. This time period is generally referred to as the "initial term." The AMC Network's transactions with the independent production companies for "Mad Men," "Breaking Bad" and "Better Call Saul," which are discussed in paragraphs 105-115 below, are an example of this.

64. Under this model, it was common (but not universal) that the costs of producing a scripted television series during the first four seasons of the initial term exceeded the license fees the network paid the production company for those seasons. However, there were limits to what an unrelated production company – which negotiated with the network at arm's length – would agree to "deficit finance" the programs, *i.e.*, "go in the red" for those seasons, since, among other things, there was no assurance that its losses would ever be recouped. The difference between

the production costs and the license fees paid by a television network during the initial term is commonly referred to as the "initial term deficit."

65. If a scripted television series, however, is successful enough to survive past its initial term (and only a fraction of series do) and the network wants to renew it for additional seasons there would be, in the historical model, a new negotiation between the production company and the network resulting (if the negotiation was successful) in a new license fee agreement for the "extended term." During the extended term license fee negotiations (and there can be more than one for a series depending on how many seasons beyond the initial term new episodes of the series are produced) the production company often has considerable leverage (since the underlying series is a proven success at this point) to insist on at least some combination of full reimbursement of any initial term deficit, payment of all production costs of the series going forward and additional premium payments.

66. Therefore, while deficits are common during the early seasons of the initial term, they are unusual for the extended term. Instead, under the historical model, the typical result of an arm's length negotiation between a production company and an unrelated network for a successful series was, and in many cases remains, that the network paid some combination of all of the production costs of the series going forward, *i.e.*, it was "clean off the network" and, depending on the success of the series, paid the initial term deficit and additional premium payments.

67. As a result, since the end of the Fin-Syn Rules, vertically integrated entertainment companies like the AMC Entities have increasingly tried to own the television series that they broadcast so that they make money on the programming both at the network level and from licensing the program in all domestic and foreign distribution channels. This increased vertical integration involving related-party transactions creates strong economic incentives for the

conglomerate to cause its network companies to pay its related production companies less than fair market value for the series. Consequently, over the past 20 years or so, talent brought numerous "profit participation" lawsuits challenging these transactions as unlawful self-dealing.

B. The Conglomerates' Prevailing Arrangements Designed To Address Vertical Integration.

68. As a result of this "profit participation" litigation, the vertically integrated entertainment conglomerates increasingly have expressly addressed the related-party/vertical integration issue in their contracts with the talent participants. The conglomerates' approaches to do so, however, have evolved over time and often vary. In the first ten years or so after the sunset of the Fin-Syn Rules, the following models, among others, were employed by the conglomerates to address the related party transaction issue:

a. **Direct Internal Negotiations.** Some production companies provided in their participation agreements that they would negotiate directly with their affiliated networks and enter into license fee agreements with them at fair market value. For example, the operative agreements between several of the profit participants and NBC Studios ("NBCS") in the *Will & Grace* television series, which were entered into in 1996 and 1999, provided that "with respect to agreements between NBCS, on the one part, and affiliated entities of NBCS or NBC, on the other part, such will be at fair market value." Such agreements were "[to] be negotiated in good faith at arm's length with the intent that all compensation paid to [NBCS] for the Program shall be at fair market value." Provisions like these gave the participants the contractual right to prove fair market value by the "comparable sales method" and/or the "income method," the two primary ways fair market value is determined in this context.

b. **Direct Talent-Network Negotiations.** Sometimes, instead of a production company negotiating directly with its affiliated network at "arm's length," often an impossible task for related entities, the production company offered to let representatives of one or more of the participants negotiate directly with the network for a license fee for the extended term of the series, including making the threat to take the hit series to another network if it refused to pay fair market value for the extended term license fee. This approach recognized that talent, unlike the vertical integrated production company, was conflict free and only had the interest to maximize the value of the license fee to the production company.

69. Increasingly in the last 10 years or so, production companies that are part of a vertically-integrated entertainment company have tried to further limit their obligations to participants from related party transactions as provisions like the *Will & Grace* contractual provisions discussed above spawned costly litigation. Therefore, the models the vertically integrated entertainment conglomerates use to address the related party transaction issue have further evolved. The following models, among others, have commonly been employed by them over the past ten years or so to address the related-party issue:

a. **"Imputed" License Fee.** Some production companies that expect to do related-party transactions now provide in their participants' contracts that there will be no license fee negotiation between it and the related network entity and no "out-of-pocket" license fees paid by the network to the production company. Instead an amount will be put on – or "imputed" – on the participants' participation statements as a stand-in for actually paid license fees. These deemed or imputed license fees are generally referred to as an "ILF."

i. The precise terms of the ILF are almost always set forth in the participant's contract and therefore the ILF terms are known to the participant, and they are at least in theory subject to negotiation by the participant at the time that he or she begins rendering services on the program.

ii. Most ILFs, even if its term is perpetual i.e., for the life of the series, have built in provisions for success if the series goes beyond the traditional four to six seasons initial term. For example, an ILF in a participant's contract may provide that the ILF during the first four seasons will be less than the production costs for the series, *i.e.*, there will be an initial term deficit for those seasons, but, that if the series is successful and renewed for a fifth and/or sixth year, the ILF will also include some combination of reimbursement of all or some of the initial term deficits (often depending on the success of the series in its initial term as measured by ratings or some other objective measure), payment of 100% of the production costs going forward and in some cases (again often depending on the success of the series) additional premium payments. ILFs will also commonly provide for the payment of 100% of the production costs in later seasons as well as premium payments.

iii. Even where a production company and participant agree to an ILF with no "out of pocket" license fees paid by the network to its related production company, a "transaction" occurs between them because the production company owns the rights to the series and must still authorize the network to exhibit it.

b. **Express Contractual Limitations.** Some production companies that expect to engage in related-party transactions still negotiate license fee agreements with related networks and get paid license fees by them instead of using the ILF approach. They often agree to give participants protection for related-party transactions while at the same time giving some protections to the conglomerate. One such common provision seeks to prohibit the participant from objecting to any particular related party transaction ("subject transaction") provided that the subject transaction is "on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs."

i. A contractual term like this is a form of "comparable sales" provision used to determine fair market value. While the provision does not use the term "fair market value," its requirements, *e.g.*, "similar transactions" with "unrelated third parties," are synonymous with fair market value because unrelated parties are presumed to negotiate at "arm's length" and achieve "fair market" value. The provision's terms, however, do not require the related production company and network to actually negotiate a license fee at "arm's length;" as explained previously, this is often an impossibility for related entities.

ii. In addition, unlike a traditional comparable sales test, the provision does not look at the entire market of unrelated transactions, e.g., those entered into by Sony Pictures Television ("Sony") with the ABC television network, but only at a subset of those transactions, namely those entered into by entities within the conglomerate with unrelated third parties, e.g., Sony with AMC Network. Therefore, the conglomerate has within its power the ability to limit the universe of fair market transactions considered, at least in the first instance, to ones that it entered into and knows about.

iii. If the production company can establish each requirement of the comparable sales provision for a particular subject transaction, per the terms of the provision, the participant cannot successfully object to it and has no claim. (But the proposed "similar transactions" must be bona fide and cannot be a sham negotiation as the one discussed in paragraphs 103-104 below.) Per the terms of the provision, only if the production company cannot prove each requirement of the comparable sales provision can the participant object and proceed with a claim.

70. There has developed over the past ten years or so a custom and practice in the television industry for production companies that are part of a vertically-integrated entertainment conglomerate, and that expect to do related party transactions to expressly set forth the standard for how these transactions will be accounted for on the participants' profit statements. This is

true even though the methods and standards employed to do so vary as set forth in the prior paragraphs above.

71. This current industry custom and practice is not confined to agreements entered into between production companies and their participants. For example, in 2008, the Directors Guild of America ("DGA"), the Writers Guild of America ("WGA") and the Screen Writers Guild – American Federation of Television and Radio Artists ("SAG-AFTRA"), on the one hand (together the "Guilds"), and production companies, on the other hand, entered into new collective bargaining agreements, which continue today, that set forth the following standard for how "gross receipts" from related party transactions are accounted for for guild purposes (because the guilds receive a percentage of the gross receipts from such transactions):

> When the 'Employer's gross' derived from such exploitation is received from a related or affiliated entity that acts as the Distributor or exhibitor of the program, then the 'Employer's gross' received by the Employer from the licensing of such rights shall be measured by the Distributor/exhibitor's payments to unrelated and unaffiliated entities in arms' length transactions for comparable programs, or, if none, then the amounts received by the Employer from unrelated and unaffiliated Distributors/exhibitors in arms' length transactions for comparable programs or series, or, if none, a comparable Distributor/exhibitor's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable programs or series.

72. The Guilds' standard mirrors the comparable sales provision discussed in paragraph 69(b)(iii) above. It expressly provides that the distributor/exhibitor's own transactions with unrelated parties are looked at first for comparable programs/similar transactions and, if there are none, then the general market place of comparable programs/similar transactions between unrelated parties is looked at. It also makes express what is implied in the comparable sales provision set forth in paragraph 69(b)(iii): If the conglomerate that entered into a particular subject transaction does not itself have bona fide comparable programs/similar transactions with

unrelated third parties on comparable monetary terms, the participant can object and prove fair market value otherwise, *e.g.*, based on the entire marketplace of comparable programs/similar transactions.

73. As discussed above, over the past ten years or so, a vertically-integrated entertainment conglomerate will typically set forth the precise standard under which its related-party transactions will be evaluated in its production companies' agreements with participants, including the precise terms of their ILFs if that is the method the conglomerate chooses to use. Accordingly, where no such standards exist in an agreement, *e.g.*, the production company is newly created and does not yet have its own standard (as was the case with the AMC Entities at the time of TWD's creation as alleged below), there is a mutual understanding to imply as a term of that agreement that the production company will obtain license fees from its related party transactions or use an ILF, like the Guild agreements discussed in paragraph 71, equal to fair market value. This is particularly true where, as here, the participants began rendering services on the program before the production company set forth the standard under which its related-party transactions would be evaluated in the participants' contract, *e.g.*, put in the precise terms of its ILF in the participants' contract.

C. Most Favored Nations ("MFN") Provisions.

74. While practices vary by production company, production companies sometimes put most favored nations provisions ("MFNs") in their participation agreements with talent.

75. While the precise terms of an MFN can vary, the most common type essentially provides that if another participant in the program receives a better profit definition overall in the program than the participant who has the MFN, the participant who has the MFN will receive the benefit of the better definition. For example, assume that participant A and participant B each have 5% MAGR in a series and they each have this type of MFN. If participant A is due $10 on

his definition and participant B is due $20 on her definition, participant A gets the benefit of the $20 by virtue of his MFN.

76. As discussed in the next sections, each of the Plaintiffs and Non-Parties has an MFN in his or her TWD and FTWD Agreements. This means that each Plaintiff and Non-Party receives the benefit of the better of (a) his or her own definition or (b) the better definition that another participant in the program has.

VII.

PLAINTIFFS' TWD AGREEMENTS WITH AMC

77. While each Plaintiffs' TWD Agreement contains different specific terms and conditions, each Plaintiff is entitled to receive a share of TWD's MAGR as profit participation compensation. A significant component of revenue for purposes of calculating MAGR is the license fee paid (or that should have been paid) by AMC Network to AMC Studios and/or license fee imputed on Plaintiffs' MAGR statements. The AMC Entities' breach of their obligations to Plaintiffs for these gross receipts give rise to the most substantial injury to Plaintiffs and the most significant damages sought by them. Because of the MFNs in the Plaintiffs' and the Non-Parties' TWD Agreements, the Non-Parties' TWD Agreements are described in the allegations below.

A. Kirkman's TWD Agreement.

78. Since Kirkman owned the underlying rights in "The Walking Dead" comic books, AMC decided to enter into an agreement with him before any of the other participants' TWD Agreements. Plaintiffs are informed and believe and thereupon allege that Kirkman's TWD Agreement was the first talent agreement with participation terms entered into by the AMC Entities where it was contemplated that an AMC production entity would be the production company for the life of the series. Kirkman's TWD Agreement was entered into in 2009, while

the others were entered into in 2010 or later.

79. Kirkman and AMC Network entered into a "Literary Purchase Option Purchase Agreement" for TWD dated November 30, 2009 ("Kirkman's November 2009 TWD Agreement"). A redacted copy of Kirkman's November 2009 TWD Agreement, including the terms material to this dispute, is attached as Exhibit 1 hereto.

80. Following Kirkman's November 2009 TWD Agreement, Kirkman and various AMC-affiliated entities entered into a number of amendments, none of which are material to the disputes set forth in this Complaint. (The Kirkman November 2009 TWD Agreement together with these amendments constitute "Kirkman's TWD Agreement.")

81. The material terms of Kirkman's TWD Agreement include:

a. Certain series royalty rights in Section 10 of Kirkman's November 2009 TWD Agreement, including AMC's obligation to pay a royalty to Kirkman for each new TWD episode and for each of the first 5 re-runs of an episode in U.S. broadcast territory.

b. A grant of "5% of 100%" MAGR in TWD to Kirkman, which has now fully vested, in Sections 11(a) and 11(c) of Kirkman's November 2009 TWD Agreement. Plaintiffs are informed and believe and thereupon allege that the reference to a particular percentage of participation, here "5% of 100%," signifies that the production company cannot deduct the advances and participations it pays to other participants when it determines the participation owed. For example, AMC Studios cannot deduct the MAGR advances and payments that it makes to Alpert when determining Kirkman's MAGR in TWD.

c. A MAGR definition in Section 11(b) of Kirkman's November 2009 Agreement covering both (i) the situation where the AMC Entities did not produce TWD itself, *i.e.*, they licensed it ("laid it off" in industry parlance) to a non-related third party production company, and (ii) as indicated in the italicized language below, the situation where the AMC Entities produced TWD in-house:

> "MAGR shall be defined, computed, accounted for and paid in accordance with the standard definition thereof used by the third party supplier producer/deficit financier, subject to good faith negotiation (including as to distribution fee and overhead) within the usual parameters of such supplier producer/deficit financier (*or of AMC if there is no third party supplier producer/deficit financier*) consistent with Author's stature." (Emphasis added.)

d. The MAGR definition in Section 11(b) of Kirkman's 2009 TWD Agreement also provides that:

i. If the AMC Network exhibits TWD, it would pay actual license fees to an AMC production company entity for that right. While ILFs were well known in the television industry in 2009, there was no mention of an ILF in Kirkman's TWD Agreement. Indeed, the last sentence of Section 11.b. states: "No network sales fee shall be charged regarding AMC's *initial license fee*." (Emphasis added.) (In the case of certain other participants in TWD where the AMC Entities chose to provide for an ILF in their TWD Agreements (albeit one with no terms), the comparable sentence provides "no television distribution fees shall be charged with respect to the Gross Receipts attributed to *such imputed license fee*.") (Emphasis added.)

ii. "MAGR shall include home video/DVD and merchandising" and there is no mention of the AMC Entities accounting on a royalty basis on these revenue streams. (In the case of certain other participants in TWD, AMC provided in their TWD Agreements for accounting on a royalty basis on these revenue streams: "gross receipts shall include revenue from home video and merchandising *on a royalty basis* as further defined in AMC's MAGR definition.") (Emphasis added.)

iii. A most favored nations provision ("MFN") that provided: "In no event shall MAGR be defined, computed, or paid on a basis less favorable than for any other non-cast individual participant on the Series."

iv. The AMC Entities agreed not to charge their own sales or distribution fee unless they actually handled the underlying distribution: "AMC will not charge sales, distribution or similar fees unless it (or an affiliate company) actually handles distribution or licensing, in which case AMC will be entitled to the same distribution fees and overhead charge (without any double deduction thereof) as the third party distributor referenced above." (In the case of other participants in TWD, their TWD Agreements were either silent as to whether the AMC Entities could also take a sales or distribution fee when a third party handled the underlying distribution or in some cases provided that the combined fees allowed by the AMC Entities and the third party(s) actually doing the distribution were subject to specified caps.)

e. There is no provision anywhere in Kirkman's TWD Agreement indicating the amount of production overhead that the AMC Entities can charge.

f. A related-party provision in Section 24 of Kirkman's November 2009 Agreement that provides in material part:

> "Dealings with Affiliates: …[Kirkman] further acknowledges that AMC has informed [Kirkman] that AMC may elect to make use of Affiliated Companies in connection with its production, distribution and exploitation of the Pilot and Series, as, when and where AMC deems it appropriate to do so. [Kirkman] expressly waives any right to object to such production, distribution and exploitation of the Pilot and Series, or aspects thereof, or assert any claim that AMC should have offered the applicable production/distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies.) *In consideration thereof, AMC agrees that AMC's transactions with Affiliated Companies will be on monetary terms comparable with the terms on which AMC enters into similar transactions with unrelated third party distributors for comparable programs after arms-length negotiation….*" (Emphasis added.)

("Kirkman's Comparable Sales Provision"). Like the similar comparable sales provisions used by other entertainment conglomerates and the Guilds, as discussed in paragraphs 69(b) and 71 above, Kirkman's Comparable Sales Provision provides that AMC can engage in a particular related-party transaction without objection from Kirkman only if it can establish that each of the requirements in the "In consideration" sentence highlighted above are satisfied. Conversely, if AMC cannot establish that each of the requirements of the sentence are satisfied, Kirkman can object and in the litigation context sue.

i. Kirkman's Comparable Sales Provision has seven separate requirements: [1] the subject related party transaction, *e.g.* the license by AMC Studio of TWD to the AMC Network, must contain "monetary terms" [2] these monetary terms must be comparable with the monetary terms an AMC entity pays in [3] "similar transactions" [4] [that were close in time] with [5] "unrelated" parties for [6] "comparable programs" [7] after "an arm's length negotiation." Each of these requirements are express except for the fourth requirement, which is an implied term of any comparable sales test. The seventh requirement is also only in Kirkman's TWD Agreement and was included to emphasize the importance of an "arm's length" negotiation for any proposed comparable transaction because sometimes a particular agreement (or even a term in an agreement) is not negotiated even between unrelated entities at arm's length, *e.g.,* a packaging situation where a network agrees with an unrelated production company to lower license fees for series #1 in return for higher license fees for series #2.

g. An express reservation by Kirkman of all merchandising, videogame and theme park rights based on his original comic books (defined as "the Work"), in Section 5(b) of the Standard Terms and Conditions attached to Kirkman's November 2009 TWD Agreement:

> Owner also reserves all merchandising, videogame and theme park rights based on the Work (as opposed to merchandising, videogame and theme park rights based on the Series or any other production produced by AMC or its licensees, which

> merchandising, videogame and theme park rights [but specifically *excluding the right to use text or images from the Work not used in the Series*] are included in the Granted Rights.

82. In March 2011 approximately 16 months after the date of Kirkman's November 2009 TWD Agreement, Kirkman received proposed "long form" MAGR definitions from AMC Studios that stated that (a) AMC Studios was the successor-in-interest to Kirkman's TWD Agreement and (b) setting forth for the first time AMC Studios' proposed ILF, which is discussed in paragraphs 101-102 below. Since then, AMC Studios has sent Kirkman a number of revised proposed MAGR definitions. (Together these proposed MAGR definitions are referred to herein as "AMC's Proposed MAGR Definitions.") Kirkman and AMC Studios did not reach agreement on AMC's Proposed MAGR Definitions and they are not part of Kirkman's TWD Agreement.

B. Alpert's TWD Agreement.

83. As discussed above, Plaintiffs are informed and believe and thereupon allege that Kirkman's TWD Agreement was the first participation agreement an AMC entity entered into with talent where it contemplated acting as the production company for the series. By the time AMC came to negotiate participation agreements with other talent in the series, its "form" for such transactions had evolved.

84. Alpert and Stu Segall entered into a "Non-Writing Executive Producer Agreement" for TWD ("Alpert's July 2010 TWD Agreement") effective October 15, 2009 but entered into in or about July 2010. A copy of Alpert's July 2010 TWD Agreement is attached as Exhibit 2.

85. Following Alpert's July 2010 TWD Agreement, Alpert and various AMC Entities entered into a number of amendments, none of which are material to the disputes set forth in this Complaint. (Alpert's July 2010 TWD Agreement together with these amendments constitute

"Alpert's TWD Agreement.")

86. The material terms of Alpert's TWD Agreement include:

a. A grant, in Sections 4(a) and 4(c) of Alpert's July 2010 TWD Agreement, of "2.5% of 100%" MAGR in TWD to Alpert, which has now fully vested.

b. Unlike Kirkman's TWD Agreement, the AMC Entities chose, in Section 4(d) of Alpert's July 2010 TWD Agreement to have separate paragraphs covering (i) the situation where the AMC Entities did not produce TWD itself, *i.e.*, laid it off to a non-related third party production company, and (ii) the situation where the AMC Entities produced TWD in-house.

c. Unlike Kirkman's TWD Agreement, Section 4(d)(ii) of Alpert's July 2010 TWD Agreement covering an in-house production by the AMC Entities provided for an ILF, albeit an ILF with no terms:

> "If the Series is produced without any third-party supplying producer/deficit financier, MAGR shall be defined, computed and paid by American Movie Classics Company LLC ("AMC") in accordance with AMC's MAGR definition (which shall be furnished to Artist), which definition shall specify an imputed license fee in connection with AMC's license and rights to exhibit the Series on AMC and its related services to be included in the calculation of "Gross Receipts" in AMC's MAGR definition, but no television distribution fees shall be charged with respect to the Gross Receipts attributed to such imputed license fee.

Plaintiffs are informed and believe and thereupon allege that the ILF had no terms because, among other things, the AMC Entities had not yet formulated its proposed terms.

d. An affiliate transaction provision in Section 4(d)(iii) of Alpert's July 2010 TWD Agreement, which was identical to Kirkman's Affiliate Transaction Provision, except that it did not include the final "arm's length" language at the end of the "In consideration" sentence. Plaintiffs are informed and believe that (i) it was both an express term and an implied term of Alpert's TWD Agreement that the affiliate transaction provision in his TWD Agreement would apply to the ILF or (ii) assuming, *arguendo*, that the affiliate transaction provision does not apply to the ILF, it was an implied term of the ILF, particularly since Alpert began rendering services on TWD before AMC Studios sent him its proposed terms for the ILF, that the AMC Entities would put revenue on his TWD MAGR statements for AMC Network's exhibition of TWD at fair market value, namely the amount that would be obtained in an arm's length negotiation between unrelated parties.

e. An MFN in Section 4(d)(iv) of Alpert's July 2010 TWD Agreement. Pursuant to the terms of Alpert's MFN, if another participant is owed more point for point on his or her definition than Alpert is on his, Alpert gets the benefit of that definition.

87. In March 2011, Alpert received proposed long form MAGR definitions stating that AMC Studios was the successor-in-interest to the Alpert TWD Agreement and including for the first time AMC Studios' proposed ILF that is discussed in paragraphs 101-102 below. Since then, AMC Studios has sent Alpert a number of revised proposed MAGR definitions. (Together these proposed MAGR definitions are referred to herein as "AMC's Proposed MAGR Definitions.") Alpert and AMC Studios did not reach agreement on the AMC's Proposed MAGR Definitions and they are not part of the Alpert TWD Agreement.

C. Hurd's TWD Agreement

88. On or about June 10, 2010, Hurd and Stu Segall entered into a "Non-Writing Executive Producer Agreement" for TWD ("Hurd's June 2010 TWD Agreement"). A copy of Hurd's June 2010 TWD Agreement is attached as Exhibit 3.

89. Following Hurd's June 2010 TWD Agreement, Hurd and various AMC-affiliated entities entered into a number of amendments, none of which are material to the disputes set forth in this Complaint. (Hurd's June 2010 TWD Agreement together with these amendments constitute "Hurd's TWD Agreement.")

90. The material terms of Hurd's TWD Agreement include:

a. A grant of "7.5% of 100%" MAGR in TWD to Hurd, which has now fully vested, as set forth in Section 4(a) and 4(c) of Hurd's June 2010 TWD Agreement.

b. Unlike Kirkman's TWD Agreement and like Alpert's TWD Agreement, the AMC Entities chose, in Section 4(d) of Hurd's June 2010 TWD Agreement:

i. To have separate paragraphs covering both (i) the situation where AMC did not produce the TWD itself, *i.e.*, laid it off to a non-related third-party production company, as had been its historical practice, and (ii) the situation where AMC Network or an affiliate produced TWD in house.

ii. Provide for an ILF (again with no terms) instead of an actual license fee paid by AMC Network.

c. Unlike Kirkman's and Alpert's TWD Agreements, Hurd's TWD Agreement does not have an express provision dealing with related party transactions, *e.g.*, an affiliate transaction provision or an ILF with terms. Therefore, there is an implied term of Hurd's TWD Agreement, particularly since she began rendering services on TWD before AMC Studios sent her proposed terms for the ILF, that the AMC Entities would put revenues on her TWD MAGR statements for AMC Network's exhibition of TWD at fair market value, namely the amount that would have been obtained in an arm's length negotiation between unrelated parties for comparable programs.

d. An MFN in Section 4(d)(iii) of Hurd's June 2010 TWD Agreement.

91. In March 2011, Hurd received proposed long form MAGR definitions stating that AMC Studios was the successor-in-interest to Hurd's TWD Agreement and including for the first time (as was the case with Kirkman and Alpert) AMC Studios' proposed ILF that is discussed in paragraphs 101-102 below. Since then, AMC Studios has sent Hurd a number of revised proposed MAGR definitions. (Together these proposed MAGR definitions are referred to herein as "AMC's Proposed MAGR Definitions.") Hurd and AMC Studios did not reach agreement on AMC's Proposed MAGR Definitions and they are not part of Hurd's TWD

Agreement.

Eglee's TWD Agreement.

92. On or about July 6, 2010, Eglee and Stu Segall entered into an agreement for TWD ("Eglee's TWD Agreement"). A copy of Eglee's TWD Agreement is attached as Exhibit 4.

93. The material terms of Eglee's TWD Agreement include:

a. A grant of MAGR in TWD to Eglee, which vested at 2.375% "of 100%" MAGR.

b. Unlike Kirkman's, Alpert's and Hurd's TWD Agreements, the only MAGR definition in Eglee's TWD Agreement was an MFN in Section 7(c) of Eglee's July 2010 TWD Agreement:

> "MAGR shall be defined, computed, and paid in accordance with the definition thereof applicable to Frank Darabont and Gale Anne Hurd in connection with the Series."

c. There was no other MAGR definition, no reference to actual license fees, no reference to an ILF and no express provision setting forth the standard for related-party transactions in Eglee's TWD Agreement. Therefore, an implied term of Eglee's TWD Agreement, particularly since he began rendering services on TWD before AMC Studios sent him proposed terms for the ILF, was that the AMC Entities would put revenue on his TWD MAGR statements for AMC Network's exhibition of TWD at fair market value.

94. In March 2011, Eglee received proposed long form MAGR definitions stating that AMC Studios was the successor-in-interest to the Eglee TWD Agreement and including for the first time AMC Studios' proposed ILF that is discussed in paragraphs 101-102 below. Since then, AMC Studios has sent Eglee a number of revised proposed MAGR definitions. (Together these proposed MAGR definitions are referred to herein as "AMC's Proposed MAGR Definitions.") Eglee and AMC Studios did not reach agreement on the AMC's Proposed MAGR

Definitions and they are not part of Eglee's TWD Agreement.

D. Mazzara's TWD Agreement.

95. Effective February 2, 2011, Mazzara and Stu Segall entered into an agreement concerning Mazzara's services on TWD that did not contain profit participation terms.

96. On or about December 20, 2012, Mazzara, on the one hand, and Stalwart Films, LLC, as successor-in-interest to Stu Segall, and AMC Network, on the other hand, entered into a new agreement covering TWD that did contain profit participation terms. ("Mazzara's December 2012 TWD Agreement"). (The February 2, 2011 agreement and the December 2012 Agreement together constitute "Mazzara's TWD Agreement.")

97. The material terms of Mazzara's TWD Agreement, all in Section 3(b) of the Mazzara's December 2012 TWD Agreement, include:

a. A grant of "1.5% of 100%" MAGR in TWD.

b. An MAGR definition that stated in pertinent part:

> "MAGR shall be defined, computed and paid in accordance the definition of MAGR applicable to the Series, which definition shall specify an imputed license fee…"

c. While AMC chose to put an ILF provision in Mazzara's December 2012 TWD Agreement, it did not set forth the terms of the ILF or provide an affiliate-transaction provision in Mazzara's TWD Agreement. Therefore, it is an implied term of Mazzara's TWD agreement that the AMC Entities would put revenue on his TWD MAGR statements for AMC Network's exhibition of TWD at fair market value.

d. An MFN that provided:

> "Notwithstanding the foregoing, on a non-precedential basis, in no event shall the MAGR participation hereunder be defined, calculated or accounted for (including the frequency of and information to be provided by accounting statements and the grant and scope of audit rights, regardless whether part of a MAGR definition) less favorably than the MAGR definition (and such accounting and audit provisions) accorded to

any other individual rendering services on the Series."

98. In May 2014, AMC Studios sent Mazzara its proposed MAGR definitions for the first time. Since then, AMC Studios has sent Mazzara at least one revised proposed MAGR definitions. (Together these proposed MAGR definitions are referred to herein as "AMC's Proposed MAGR Definitions.") Mazzara and AMC Studios never reached agreement on AMC's Proposed MAGR Definitions and they are not part of Mazzara's TWD Agreement.

VIII.

THE AMC ENTITIES FAILED TO ABIDE BY PLAINTIFFS' TWD AGREEMENTS

A. The AMC Entities Breached Their Payment Obligations Under Plaintiffs' TWD Agreements By Improperly Limiting The AMC Network's License Fee For TWD

99. Despite the foregoing provisions in each of Plaintiffs' TWD Agreements, AMC Studios has imposed a contractually inadequate ILF on the Plaintiffs' TWD MAGR profit statements (and, further, AMC Network has paid no license fee to AMC Studios for its exhibition of TWD as required by Kirkman's TWD Agreement).

1. The AMC Entities admit no license fees were paid by AMC Network to AMC Studios for TWD and even claim that there was no "transaction" between them.

100. AMC admitted in the Darabont/CAA proceeding that no license fees were paid by the AMC Network to AMC Studio in connection with AMC Network's exhibition of TWD and even asserted that there was no "transaction" between the two entities in connection with that exhibition. The former head of AMC Studios' business affairs testified in her deposition:

> "There is not a contractual agreement between those two entities with respect to the exhibition of the [Series] on the Network channel. There is an understanding that the Network is allowed to have certain rights…"

AMC argued in connection with the motions for summary judgment in the Darabont/CAA proceedings:

> "Even if the Court accepts Plaintiffs' argument that the term "transaction," as used in the Agreement, should be construed as any "arrangement," the "arrangement" between AMC Studios and AMC Network would still not be governed by the Affiliate Transaction Provision.
>
> * * *
>
> AMC Studios has never licensed rights in the The Walking Dead television series to AMC Network, and AMC Network has never rendered payment to AMC Studios in connection with rights to the Series.

2. AMC Studios' imposed and improper ILF

101. AMC Studios imputed on Plaintiffs' TWD MAGR statements through September 30, 2016 an ILF pursuant to the following formula:

> As the license fee payable for the right to broadcast the Program by means of Non-Standard Television in the Territory in perpetuity over any programming services of AMC or an AMC Affiliate, AMC shall be deemed to have received an amount (the "Imputed License Fee") equal to sixty-five percent (65%) of the Cost of Production of the Series *up to a cap of…[One Million Four Hundred Fifty Thousand Dollars ($1,450,000) for each episode of the Program of a one-hour series, subject to five percent (5%) annual, cumulative increases for each Series Year* following the first Series Year…(Emphasis added.)

102. Under the ILF set forth in the prior paragraph, AMC Network and other AMC Entities have the right to run an unlimited number of episodes of TWD in perpetuity on all AMC Entity-affiliated platforms, including video on demand ("VOD") and the web series discussed in paragraphs 50 and 53 above, and Plaintiffs will never (even in success) be credited with revenue on their TWD MAGR statements greater than *the lesser of* (a) 65% of TWD's production costs and (b) caps beginning at $1.45 million an episode and increasing 5% per season. As discussed in paragraphs 105-113 below, the license fees that AMC Network paid unrelated production companies for the right to broadcast "Mad Men," "Breaking Bad" and "Better Call Saul" for a limited number of runs were much greater than AMC's imposed ILF for TWD, even though

TWD's ratings were multiples of the ratings for those series.

103. In June 2017, AMC Studios informed Plaintiffs in connection with its delivery of new TWD MAGR statements for the period ending March 31, 2017 that (a) it had recently negotiated with another TWD profit participant to change the above ILF formula to a more favorable one from the participant's point of view retroactive to the inception of TWD, (b) Plaintiffs would get the benefit of this change by virtue of their MFNs and (c) that it would provide Plaintiffs with the precise terms of this new ILF "shortly." As of the date of the filing of this Complaint, some seven weeks later, AMC Studios has not sent Plaintiffs the terms of the new ILF. But pursuant to this change, whatever it is, per Plaintiffs' March 31, 2017 TWD MAGR statements, AMC Studios has now imputed a license fee, including additional payments known as breakage, of approximately 68% of TWD's production costs.

104. The AMC Entities stated in their summary judgment papers in the Darabont/CAA proceeding that the change in the ILF referenced in the prior paragraph was the result of a "negotiation" between AMC Studio and a participant in TWD. Plaintiffs are informed and believe, however, that the true facts are that there was no bono fide negotiation between AMC Studios and this participant. Rather, AMC Studios informed this participant, who had previously been requesting MAGR points in TWD, that it would give him points in TWD "as a gift" provided that he did not negotiate its imposed ILF definition and accepted it as AMC Studios presented it.

B. The AMC Network Acted Very Differently In Its License Fee Agreements With Unrelated Third Party Production Companies.

105. As discussed above, (a) AMC Network paid no license fees for TWD and (b) AMC Studios designed its imposed and contractually inadequate ILF so that the AMC Entities could unlawfully keep for themselves the lion's shares of TWD's profits.

106. Prior to TWD, the AMC Entities did not act as the production company for the television series that AMC Network aired. For example, for its two most successful television series prior to TWD, "Mad Men" and "Breaking Bad," AMC Network (a) acquired the rights to what became "Mad Men," laid the production rights off to Lionsgate Television ("Lionsgate"), and licensed the series back from Lionsgate, and (b) licensed "Breaking Bad" from Sony, which owned the underlying rights to the series. Following the historical model, which, as discussed above, is still used regularly for unrelated-party transactions, AMC Network licensed the two series as follows:

107. As for "Mad Men:"

a. In 2006, AMC Network entered into an initial-term license fee agreement with Lionsgate for "Mad Men" covering its first season and four successive one-year options, which AMC Network later exercised. AMC Network was entitled to a finite number of exhibitions unless it negotiated with Lionsgate to pay for more. The first season's license fees (even before breakage) were projected to be 77% of "Mad Men's" production costs. Plaintiffs are informed and believe that this basic pattern of license fees as a percentage of production continued for the first four seasons of "Mad Men."

b. In 2011, AMC Network entered into an extended term license fee agreement with Lionsgate for "Mad Men" covering its fifth through seventh seasons. (The fifth season was a renegotiation, as it was also covered by the initial term license fee agreement.) Plaintiffs are informed and believe that the Season 5 license fee was at least equal to the production costs for that season and that the Seasons 6 and 7 license fees included a premium over the series' production costs for those seasons.

108. In 2008, AMC entered into an initial-term license fee agreement with Sony for "Breaking Bad" covering the first season and four successive one-year options, which AMC

Network exercised. Like "Mad Men," AMC Network was entitled to a finite number of playdates for the series unless it negotiated with Sony to pay for more runs. Plaintiffs are informed and believe and thereupon allege that the seasons 1-4 license fees covered over 85% of the series production costs in those seasons and the Season 5 license fee, "Breaking Bad's" last season, covered 100% of the production costs of the series.

109. Plaintiffs are informed and believe that after the "Mad Men" and "Breaking Bad" experiences, the AMC Entities decided to produce TWD in-house so that it would make money on TWD not only at the network level, but from licensing the program in all markets, *e.g.*, off other AMC-owned platforms and in foreign markets. Josh Sapan, AMC's CEO, stated on September 12, 2012, during a transcribed telephone call with investment analysts:

> "[T]he standard rule in TV is if the show is successful, [the network will] pay more. If you are the studio, then you're paying yourself in many cases. So it's why we have such a strong bias toward owning [content]…So if you own, your costs will go up, but you're not going to negotiate with yourself."

110. Plaintiffs are informed and believe that:

a. While the ratings of "Mad Men" and "Breaking Bad," and the advertising dollars they generated did not compare to TWD, the license fees paid by AMC Network for "Mad Men" and "Breaking Bad" were more than the ILFs for TWD both in absolute dollars and as a percentage of production costs on a season-by-season basis. AMC Network's own documents show that:

i. AMC Network projected advertising revenue for TWD for calendar year 2014 (just one year) greatly exceeding all advertising revenue from the entire runs of "Breaking Bad" and "Mad Men" through January 12, 2015.

ii. In Season 4, typically the most important season considered during the renegotiation of license fees (or an ILF that has built-in provisions for success), TWD obtained adults 18-49 ratings that were eight times the ratings of "Breaking Bad."

iii. For the 2014-15 broadcast season, TWD's fifth season, another critical season for determining the value of an extended-term license fee, TWD drew greater audiences than all of the top-ranked programs on the regular broadcast and cable networks. Other than TWD, only NBC's Sunday Night Football, the next highest rated program, generated ratings in excess of 7% of the total television population of adults 18 – 49.

b. When the AMC Entities compared TWD to other programs for the purpose of selling advertising or in the negotiations with the MVPDs and MSOs that carried the AMC Network, they did not compare TWD to "Mad Men" and "Breaking Bad," but instead to the top programs on the broadcast networks and the top NFL games as its ratings competitors. Joel Stillerman, an executive at AMC Network, testified in his deposition in the Darabont/CAA proceeding that AMC Network regularly compares TWD to NFL football broadcasts "for the purpose of illustrating the strength of the ratings."

111. AMC Network also broadcasts numerous reruns of TWD. The average rating for TWD reruns has historically been nearly triple the typical audience for non-rerun AMC programming and about 68% of "Mad Men" originals. AMC Studios, however, is imputing no extra value for these reruns on Plaintiffs' TWD MAGR statements since, unlike the "Mad Men" and "Breaking Bad" license fee agreements that limited AMC Network to a finite number of playdates, AMC Studios' imposed ILF allows AMC Network to take an unlimited number of runs.

112. Plaintiffs are informed and believe that AMC Studios' imposed ILF for TWD is also not comparable to what AMC has done since the premiere of TWD with unrelated production companies. For example, in connection with the "Better Call Saul" television series, a spinoff of "Breaking Bad," AMC Network entered into an initial term license fee agreement with Sony in 2013 covering the first season and five successive one-year options. (The series

will begin its fourth season in 2018.) Sony projected some 83% of the first season's production costs would be covered by that season's license fee. Plaintiffs are informed and believe that this basic percentage of license fees as a percentage of production costs continued for the first four seasons of "Better Call Saul." The license fees, however, increase to 100% of "Better Call Saul's" cost of production in its fifth and sixth seasons, the last two years of the initial term. AMC Network is also only entitled to a finite number of playdates for "Better Call Saul" unless it negotiates with Sony to pay for more runs. If the series goes to an extended term, like "Mad Men" did, the AMC Network will have to negotiate new license fees with Sony for its extended term.

113. The ILF that AMC has sought to impose on Plaintiffs for TWD does not even come close to fair market value and what TWD would have received in its (a) initial term or (b) extended term, had it been licensed to an unrelated network in an arm's length transaction.

C. The AMC Entities Have Effectively Admitted Their Failure To Abide By Plaintiffs' TWD Agreements As To The AMC Network License Fee Issue.

1. Kirkman's TWD Agreement.

114. Kirkman's TWD Agreement requires AMC Studios to negotiate, and for AMC Network to pay, actual license fees in connection with the AMC's Network's exhibition of TWD; it contains no provision permitting, and has no reference to, an ILF. For that reason alone, the AMC Entities' failure to pay any license fee is a breach of Kirkman's TWD Agreement.

115. Kirkman's TWD Agreement also contains Kirkman's Comparable Sales Provision setting forth a fair-market standard for related-party transactions. The AMC Entities have admitted in the Darabont/CAA proceeding that they also breached this obligation to Kirkman and cannot meet multiple elements of its seven part test. For example, the AMC

Entities take the position or admit that:

a. There was no "transaction," but only an "understanding" or "arrangement" between AMC Studios and AMC Network in connection with the AMC Network's exhibition of TWD.

b. The subject "non-transaction" between AMC Studios and AMC Network allowing AMC Network to broadcast TWD does not contain "monetary terms."

c. The zero monetary terms of AMC Studios' "non-transaction" with AMC Network for TWD is not "comparable" to the substantial monetary terms that AMC Network paid independent production companies for "Mad Men," "Breaking Bad" and "Better Call Saul" (even leaving aside that these programs are not "comparable" to TWD within the meaning of Kirkman's Comparable Sales Provision).

d. AMC Network's "non-transaction" with AMC Studios is not a "similar transaction" to those AMC Network did with independent production companies (like those for "Mad Men," "Breaking Bad" and "Better Call Saul"):

> "Indeed, a plain reading of the Affiliate Transaction Provision reveals that it does not apply to any type of "transaction," but rather only to "similar transactions" that involve "monetary terms." Because the "arrangement" that Plaintiffs allege between AMC affiliates was not "similar" to any third party dealings in that, among other things, "no money changed hands between AMC affiliates for the rights to TWD," The Affiliate Transaction Provision could not possibly apply here."

116. Plaintiffs are informed and believe that the AMC Entities cannot meet their burden to show that they entered into transactions with unrelated parties that meet each of the seven requirements of Kirkman's Comparable Sales Provision. Therefore, Kirkman can object to the subject transaction(s) and prove fair market value in any other legally permissible way.

2. Plaintiffs' TWD Agreements.

117. In the case of the Plaintiffs' TWD Agreements, while the AMC Entities could use

an ILF as a stand-in for license fees paid by AMC Network to AMC Studios, the ILF in Plaintiffs' TWD Agreements had no terms. Therefore, pursuant to the industry custom and practice discussed above, it was an implied term of these TWD Agreements that the ILF be at fair market value. Alpert also had an affiliate transaction provision in his TWD Agreement that applied to the ILF, and AMC Studios cannot meet its burden under that provision for the same reasons it cannot meet its burden as to Kirkman's Comparable Sales Provision, as discussed in paragraph 115 above.

D. The AMC Parent And AMC Network Tortiously Interfered With Plaintiffs' TWD Agreements And Induced AMC Studios To Breach Those Agreements.

118. Plaintiffs are informed and believe, and on that basis allege, that the AMC Parent and AMC Network induced AMC Studios to breach Plaintiffs' TWD Agreements, by causing AMC Studios to license TWD to the AMC Network for nothing and to impute an ILF on Plaintiffs' TWD MAGR statements that is far below fair market in connection with AMC's Network's exhibition of TWD. In doing so, the AMC Parent and AMC Network were not acting to protect the interest of AMC Studios but, rather, to further the direct interests of the AMC Parent and AMC Network, so that they can use the AMC Entities' vertically-integrated model to keep vast amounts of TWD profits for themselves, instead of paying Plaintiffs their fair share of TWD's MAGR.

IX.

OTHER BREACHES BY THE AMC ENTITIES OF THEIR TWD OBLIGATIONS

119. Plaintiffs and Non-Parties conducted an audit of the TWD MAGR statements that they received from AMC Studios through September 30, 2014 ("TWD Audit Through September 30, 2014").

120. The TWD Audit Through September 30, 2014 revealed numerous other breaches

of Plaintiffs' TWD Agreements in addition to the breaches concerning AMC Network's license fee and/or AMC Studios' ILF relating to AMC Network's exhibition of TWD discussed above, including but not limited to the following:

a. AMC Studios has deducted participations and advances paid to other participants in TWD on Plaintiffs' TWD MAGR statements. What AMC Studios has done here is to make Kirkman, for example, who was promised "5% of 100%" MAGR, receive less than 5% of TWD's MAGR. These deductions are not allowed by the terms of Plaintiffs' TWD Agreements. Plaintiffs' TWD Agreement each state that their MAGR is "X% of 100%," which means, according to the custom and practice in the television industry, that, in the absence of specific language to the contrary (and there was none here), the AMC Entities cannot deduct other participations and advances.

b. TWD was licensed by the AMC Entities to Apple for electronic sell through ("EST") distribution in the Unites States on iTunes. Whereas the AMC Entities' books and records show that they received a total of $22,756,003 from Apple through September 30, 2014 (after Apple deducted its fee), AMC Studios only reported $4,551,201, or 20% of this amount, as revenue on Plaintiffs' TWD MAGR statements. None of Plaintiffs' TWD Agreements state that this revenue can be reported on a 20% basis, and it should have been reported at 100% of what AMC received.

c. The AMC Entities often charge their own distribution fees on top of the distribution and sales fee charged by a third-party distributor, even when the AMC Entities do not engage in the underlying distribution. Paragraph 11(b) of Kirkman's November 2009 TWD Agreement expressly prohibits this. For example:

i. The AMC Entities use Starz to sub-distribute its home video in the United States and effectively pay it distribution fees ranging from 12.5% to 20%. The AMC

Entities also, separately, impose their own 20% distribution fee on the net amount received from Starz.

ii. The AMC Entities use Fox International Channels ("FIC") to sub-distribute television, home video, and other media for various international territories and pay it distribution fees ranging from 5% to 12%. The AMC Entities also, separately, impose their own distribution fees ranging from 10% to 20% on the net amount received from FIC.

iii. The AMC Entities use Striker as its merchandising and licensing agency for TWD and effectively pay it a 30% fee for its efforts. The AMC Entities also (a) impose their own 50% distribution fee on merchandising gross receipts in addition to the Striker fee (and (b) charge it on 100% of the merchandising receipts before Striker's 30% fee is applied). For example, if Striker earned \$100 and paid the AMC Entities \$70, AMC Studios reported \$70 on Plaintiffs' TWD MAGR statements as gross receipts, but also charged Plaintiffs with a \$50 distribution fee leaving Plaintiffs with an effective \$20.

iv. The AMC Entities use other third parties to handle other ancillary distribution for TWD, including video games. In addition to AMC Studios charging Plaintiffs' TWD MAGR statements with participations paid to a third party, which is prohibited by the provision in Kirkman's TWD Agreement discussed above, the AMC Entities took a 50% distribution fee on 100% of this revenue.

d. Fox International Channels ("FIC") is the international distributor of TWD. Plaintiffs are informed and believe that the AMC Entities caused FIC to sublicense TWD in certain foreign territories to the Sundance International Channel, an AMC affiliate. If so, the affiliate transaction provisions in Kirkman's and Alpert's TWD Agreements allow them to object to this subject transaction if it does not meet the requirements of those provisions. As to Hurd, Eglee and Mazzara, whose TWD Agreements do not contain an express related-party provision, AMC Studios has an implied obligation to obtain a license fee from Sundance International at fair market value.

e. AMC Studios has charged Plaintiffs' TWD MAGR statements with a number of costs, including for excessive marketing, corporate legal, participation accounting, system security consultant costs and event costs that should be absorbed by the overhead AMC Studios is charging on Plaintiffs' TWD MAGR statements and/or charged to other programs in whole or in part.

f. The AMC Entities received revenue for product integration on TWD, but AMC Studios only reduced its production costs on Plaintiffs' TWD MAGR statements by 50% of the amount received instead of 100%. None of Plaintiff's TWD Agreements allow for only a partial reduction.

g. AMC Studios has charged Plaintiffs' TWD MAGR statement with overhead at 12.5%. Kirkman's TWD Agreement does not provide for overhead at 12.5%.

h. AMC Studios refused to provide certain documents and information requested by Plaintiffs in connection with the TWD Audit through September 30, 2014.

121. As discussed in paragraphs 125-131 below, to the extent it follows a TWD episode, TTD should be considered part of TWD for MAGR purposes. AMC Network has not, however, paid any license fees for TTD, and AMC Studios has not imputed any value associated with AMC Network's exhibition of TTD on Plaintiffs' TWD MAGR statements. These are all breaches of Plaintiffs' TWD Agreements.

122. Video on demand ("VOD") and other digital media include systems that allow users to select and watch/listen to a program when they choose to, rather than having to watch at a specific time. Plaintiffs are informed and believe that (a) TWD is distributed on VOD and other digital media on the AMC Entities' own platforms, but (b) while the AMC Entities receive

revenue from these exhibitions, (c) no amounts are reported for them on Plaintiffs' TWD MAGR statements. There is no provision in Plaintiffs' TWD Agreements that allows AMC Studios to treat VOD and other digital media in this way.

123. Plaintiffs and Non-Parties recently gave the AMC Entities notice that they will conduct a supplemental audit of TWD covering the post September 30, 2014 time period. Plaintiffs may discover additional claims during the course of that audit and in discovery in this case.

124. When all the claims alleged in this Complaint are adjudicated, it will result in a reduction of the interest previously charged by AMC Studios on Plaintiffs' TWD MAGR statements and pre-judgment interest will be due to Plaintiffs at the statutory rate.

X.

THE AMC ENTITIES HAVE OBLIGATIONS TO PLAINTIFFS FOR TTD CORRESPONDING WITH THEIR OBLIGATIONS FOR THE UNDERLYING SERIES THAT EACH EPISODE FOLLOWS

A. Kirkman's TTD Agreement.

125. Effective October 17, 2012, Kirkman and Five Moons entered into an agreement concerning TTD, a copy of which is attached as Exhibit 5 hereto ("Kirkman's TTD Agreement").

126. Material terms of Kirkman's TTD Agreement include:

a. Payment of certain fixed compensation for each original episode of TTD.

b. Kirkman and AMC did not agree in connection with the Kirkman's TTD Agreement on whether TTD was part of TWD and how contingent compensation concerning it would be addressed. Consistent with these open issues, Kirkman's TTD Agreement contains no integration clause.

B. Alpert's TTD Agreement.

127. Effective September 25, 2012, Alpert and Five Moons entered into an agreement concerning TTD, a copy of which is attached as Exhibit 6 hereto ("Alpert's TTD Agreement").

128. Material terms of Alpert's TTD Fixed Compensation Agreement include:

a. Payment of certain fixed compensation for each original episode of TTD.

b. Alpert and AMC did not agree in connection with Alpert's TTD Agreement on whether TTD was part of TWD and how contingent compensation concerning it would be addressed. Consistent with these open issues, Alpert's TTD Agreement contains no integration clause.

C. Hurd's TTD Agreement

129. Effective October 17, 2012, Hurd and Five Moons entered into an agreement concerning TTD, a copy of which is attached as Exhibit 7 hereto, and effective July 12, 2016, Hurd and Five Moons entered an amendment of that agreement, a copy of which is attached as Exhibit 8 hereto ("Hurd's TTD Agreement").

130. Material terms of Hurd's TTD Agreement include:

a. Payment of certain fixed compensation for each original episode of TTD.

b. Hurd and AMC did not agree in connection with the Hurd's TTD Agreement on whether TTD was part of TWD and how contingent compensation concerning it would be addressed. Consistent with this open issue, Hurd's TTD Agreement contains no integration clause.

D. Facts relating to TTD constituting AMC's breach of Plaintiffs' TWD Agreements (as well as Hurd's, Alpert's and Kirkman's FTWD Agreements).

131. As to contingent compensation, while the AMC Entities claimed that TTD was only a "promotional vehicle" and that they therefore did not need to account to Plaintiffs for

MAGR purposes, Plaintiffs are informed and believe that:

a. AMC Entities have made and continue to make considerable money on TTD, e.g., by selling advertising in connection with its exhibition on the AMC Network.

b. If TTD had been licensed by one of the AMC production entities to an unrelated network, that entity would have required the network to pay a license fee reflective of TTD's fair market value.

c. AMC Network, however, does not pay any license fee for TTD, and the AMC production entities do not use an ILF reflective of its fair market value when determining Plaintiffs' TWD MAGR and Kirkman's, Alpert's and Hurd's FTWD MAGR.

d. TTD has no value as a standalone series, i.e., AMC Studios can license it only with the underlying TWD or FTWD episode. TTD's only value is as part of the underlying series. Therefore, it should not be treated for MAGR purposes as its own series but rather as a part of the underlying series. Specifically, (i) when a TTD episode follows a TWD episode, its revenue and costs should be considered part of TWD for MAGR purposes and (ii) when a TTD episode follows a FTWD episode, its revenue and costs should be considered part of FTWD for MAGR purposes. The AMC Entities have not done so and this is a breach of Kirkman's, Alpert's and Hurd's TWD and FTWD Agreements respectively.

XI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Hurd's TWD Agreement and of the Implied Covenant of Good Faith and Fair Dealing) (By Hurd Against AMC Entities, Stu Segall and DOES 1 through 20)

132. Hurd repeats, realleges and incorporates paragraphs 1 through 131, above, as though here fully set forth.

133. Hurd's TWD Agreement constitutes a written contract between Hurd, on the one hand, and the AMC Entities, on the other hand. Included within that agreement is an implied covenant of good faith and fair dealing, pursuant to which AMC would not do anything to unfairly interfere with the right of Hurd to receive the full benefits of the Agreement.

134. Hurd fully performed all of her material obligations under her TWD Agreement or has otherwise been excused from performance.

135. Defendants have materially breached the provisions of Hurd's TWD Agreement, and its implied covenant of good faith and fair dealing as described above and perhaps in other ways not yet discovered.

136. As a result of Defendants' breaches, Hurd has suffered damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Breach of Alpert's TWD Agreement and of the Implied Covenant of Good Faith and Fair Dealing)

(By Alpert Against AMC Entities, Stu Segall and DOES 1 through 20)

137. Alpert repeats, realleges and incorporates paragraphs 1 through 136, above, as though here fully set forth.

138. Alpert's TWD Agreement constitutes a written contract between Alpert, on the one hand, and the AMC Entities, on the other hand. Included within that agreement is an implied covenant of good faith and fair dealing, pursuant to which the AMC Entities would not do anything to unfairly interfere with the right of Alpert to receive the full benefits of Alpert's TWD Agreement.

139. Alpert fully performed all of his material obligations under Alpert's TWD Agreement or has otherwise been excused from performance.

140. Defendants have materially breached the provisions of Alpert's TWD Agreement, and its implied covenant of good faith and fair dealing as described above and perhaps in other ways not yet discovered.

141. As a result of Defendants' breaches, Alpert has suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Breach of Eglee's TWD Agreement and of the Implied Covenant of Good Faith and Fair Dealing)

(By Eglee Against AMC Entities, Stu Segall and DOES 1 through 20)

142. Eglee repeats, realleges and incorporates paragraphs 1 through 141, above, as though here fully set forth.

143. Eglee's TWD Agreement constitutes a written contract between Eglee, on the one hand, and the AMC Entities, on the other hand. Included within that agreement is an implied covenant of good faith and fair dealing, pursuant to which AMC would not do anything to unfairly interfere with the right of Eglee to receive the full benefits of the Agreement.

144. Eglee fully performed all of his material obligations under Eglee's TWD Agreement or has otherwise been excused from performance.

145. Defendants have materially breached the provisions of Eglee's TWD Agreement, and its implied covenant of good faith and fair dealing as described above and perhaps in other ways not yet discovered.

146. As a result of Defendants' breaches, Eglee has suffered damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

(Inducing Breach of Hurd's, Alpert's and Eglee's TWD Agreements)

(By Hurd, Alpert and Eglee against AMC Parent, AMC Network and DOES 21 through 40)

147. Hurd, Alpert and Eglee repeat, reallege and incorporate paragraphs 1 through 146 above as though here fully set forth.

148. At all material times, Hurd's, Alpert's and Eglee's TWD Agreements were valid and binding agreements.

149. At all material times, the AMC Parent, AMC Network and DOES 21 through 40 knew of Hurd's, Alpert's and Eglee's TWD Agreements, and the obligations they imposed on AMC Studios and any of its successors and assignees with regard to Plaintiffs.

150. Hurd, Alpert and Eglee are informed and believe that the AMC Parent, AMC Network and DOES 21 through 40 intentionally, and with the motive to further their own self-interests and not the interests of AMC Studios, caused AMC Studios and/or its successors and assignees to breach their TWD Agreements.

151. By reason of the AMC Parent's and AMC Network's inducement of AMC Studios to breach the subject agreements, Hurd, Alpert and Eglee have suffered damages.

152. The conduct of the AMC Parent, AMC Network and DOES 21 through 40 was a substantial factor in causing Hurd, Alpert and Eglee harm.

153. Hurd, Alpert and Eglee are informed and believe that in inducing AMC Studios to breach their TWD Contracts, the AMC Parent, AMC Network and DOES 21 through 40 acted without justification, fraudulently, with malice and oppression and in conscious disregard of Hurd's, Alpert's and Eglee's rights, and have deliberately caused and intended to cause great economic harm to Hurd, Alpert and Eglee with full knowledge of the wrongfulness and

unjustifiable nature of their conduct. Therefore, Hurd, Alpert and Eglee should be awarded punitive and exemplary damages sufficient to punish the AMC Parent, AMC Network and DOES 21 through 40 for engaging in this conduct and to deter similar conduct in the future.

XII.

DEMAND FOR RELIEF

154. WHEREFORE, Plaintiffs demand for judgment against each Defendant, jointly and severally, as follows:

a. On the First Cause of Action in favor of Hurd against each of the Defendants and DOES 1-20, for actual and compensatory damages in an amount substantially greater than the monetary threshold in the New York County Commercial Division and to be determined at the trial of this action;

b. On the Second Cause of Action in favor of Alpert against each of the Defendants and DOES 1-20, for actual and compensatory damages in an amount substantially greater than the monetary threshold in the New York County Commercial Division and to be determined at the trial of this action;

c. On the Third Cause of Action in favor of Eglee against each of the Defendants and DOES 1-20, for actual and compensatory damages in an amount substantially greater than the monetary threshold in the New York County Commercial Division and to be determined at the trial of this action;

d. On the Fourth Cause of Action in favor of each of Hurd, Alpert and Eglee against Defendants AMC Parent, AMC Network and DOES 21 through 40, for actual and compensatory damages in an amount substantially greater than the monetary threshold in the New York County Commercial Division and to be determined at the trial of this action;

e. For pre- and post-judgment interest thereon at the legal rate in favor of each of the

Plaintiffs against the AMC Entities and DOES 1-20;

f. For exemplary and punitive damages on the Fourth Cause of Action in favor of each of the Plaintiffs against AMC Parent, AMC Network and DOES 21-40;

g. For such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 15, 2017

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