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

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.: _____

Date Summons filed: _____

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the attached complaint of the Plaintiffs in this action and to serve a copy of your answer on the Plaintiffs' attorneys at the address stated below.

If this summons was personally delivered to you in the State of New York, you must serve the answer within 20 days after service, excluding the day of service. If this summons was not personally delivered to you in the State of New York, you must serve the answer within 30 days after service of the summons is complete, as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint.

Plaintiffs designate New York County as the place of trial.

The basis of venue is Defendants reside in New York County, and a contractual provision requires the place of trial to be New York County.

Dated: New York, New York
January 18, 2018

BLANK ROME LLP

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SUPREME COURT OF THE STATE OF NEW YORK
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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.: _____ **COMPLAINT**

Plaintiffs Frank Darabont, Ferenc, Inc. f/s/o Frank Darabont, and Darkwoods Productions, Inc. f/s/o Frank Darabont (collectively "Darabont"), and Creative Artists Agency, LLC ("CAA") (collectively "Plaintiffs"), by their attorneys, Blank Rome LLP and Kinsella Weitzman Iser Kump & Aldisert LLP, bring this action against Defendants AMC Network Entertainment LLC ("AMC Network"), AMC Film Holdings LLC (AMC Studios"), AMC Networks Inc. ("AMC Inc.") and Stu Segall Productions, Inc. ("Stu Segall") (collectively "AMC" or "Defendants"), and allege as follows:

I.

INTRODUCTION

1. Having recently completed its audit of AMC's accounting records, it is now clear that AMC's wrongful conduct extends well beyond artificially deflated license fees. In addition to withholding hundreds of millions of dollars from the creators of the hit television series *The Walking Dead* ("*TWD*" or the "Series") through improper self-dealing, which is the subject of litigation between the parties currently pending in this court, AMC has used a variety of shady

accounting practices, described below, to withhold tens of millions more. And, Plaintiffs recently learned that AMC attempted to hide evidence related to its self-dealing from Plaintiffs during discovery in the pending litigation. It was not until additional *TWD* producers filed new lawsuits against AMC late last year that Plaintiffs learned that another *TWD* producer—Robert Kirkman—also has a profit definition on the Series that contains self-dealing protections. AMC produced Kirkman's agreement to Plaintiffs in discovery in the underlying action but ***redacted*** the very self-dealing provision at issue, even after agreeing with Plaintiffs that AMC would not redact anything relevant to Kirkman's profit definition. But the truth has now come out, exposing AMC's bad faith accounting and its bad faith litigation tactics.

2. Darabont created and developed *TWD* for television, and CAA packaged *TWD* for AMC. As a result, as part of their compensation packages on the Series, Plaintiffs are entitled to participate in AMC Studios' profits based on the success of the Series.

3. Plaintiffs filed their pending lawsuit against Defendants on December 17, 2013 to recover damages based on AMC's use of a sham "imputed license fee" formula, which AMC employed to artificially reduce Plaintiffs' profits on *TWD*—the highest performing series in the history of cable television—by more than $280 million over its first seven seasons alone. Plaintiffs assert that AMC's imputed license fee formula breaches Darabont's contractual guarantee that "all transactions" between AMC affiliates about *TWD* must be made on the equivalent of an arms' length, fair market value basis. Plaintiffs also asserted additional claims based on AMC's position that the derivative series *Fear The Walking Dead* and *Talking Dead* were not spinoffs or derivative productions of *TWD*.

4. Under Darabont's August 7, 2010 agreement with AMC, and CAA's rights as the packaging agency for *TWD*, Plaintiffs are entitled to periodically audit AMC's books and records

related to the Series. As of the date of this Complaint, Plaintiffs have audited all profit participation statements issued from the Series' inception (October 2010) through September 30, 2014 (the "Audit Period"). Plaintiffs' audits revealed numerous breaches of contract, amounting to tens of millions of dollars in additional damages to Plaintiffs, above and beyond the damages caused by the inadequate license fee formula addressed in Plaintiffs' already-pending action. Plaintiffs formally submitted their audit reports to AMC in July 2017.

5. In August 2017, Robert Kirkman and four other profit participants on *TWD* filed lawsuits against AMC in New York and California regarding AMC's improper imputed license fees (the subject of Plaintiffs' pending litigation), as well as audit claims related to their own audits of AMC's books and records. Kirkman and the other participants' complaints, which attached Kirkman's *TWD* agreement, revealed that Kirkman's agreement with AMC Studios has an entirely different self-dealing provision than Darabont's, which requires that AMC use an ***actual*** license fee, rather than an ***imputed*** license fee, for all its transactions with affiliates, and that this actual license fee is subject to self-dealing protection, requiring arms' length, fair market license fees.

6. At the time Darabont entered into his agreement with AMC, he was the highest-profile name attached to *TWD*. Darabont negotiated for broad "most favored nation" ("MFN") protection in his agreement, entitling him to the benefit of any more favorable provisions AMC negotiated with other profit participants on the Series. However, despite his broad MFN protection, AMC improperly and egregiously ***redacted*** Kirkman's agreement when it was produced to Plaintiffs in discovery in the prior pending action, giving Plaintiffs the false impression that Kirkman did not obtain any self-dealing protection in his agreement, and thus, that Kirkman had a profit definition inferior to Darabont's. Worse yet, AMC flatly refused to

provide Kirkman's or other *TWD* participants' agreements to Plaintiffs' auditors, even though review of the other agreements was necessary to determine whether other participants had more favorable profit provisions than Darabont.

7. Upon the public filing of Kirkman's *TWD* agreement, Darabont then learned that AMC improperly withheld the key terms of Kirkman's agreement in the litigation to prevent Darabont from learning that Kirkman was entitled to an actual license fee, rather than an imputed license fee, and that this actual license fee is subject to protection against improper self-dealing. In light of the public filing of the Kirkman agreement, Plaintiffs' auditors gained access to the Kirkman agreement and revised the audit reports on August 31, 2017 to address this revelation. This action is brought to address Plaintiffs' audit claims.

II.

JURISDICTION AND VENUE

8. The Court has jurisdiction over Defendants under CPLR § 301 because Defendants are residents of New York and their primary place of business is in New York, and the parties contractually agreed to jurisdiction in this Court.

9. Venue is proper under CPLR § 503 because Defendants reside in New York County, and the parties contractually agreed to venue in New York County.

III.

THE PARTIES

A. The Plaintiffs

10. Plaintiff Frank Darabont is an individual who is, and at all relevant times was, a resident of the State of California. Darabont is a prolific and highly successful film and television screenwriter, director, and producer who wrote and directed feature films such as *The Shawshank*

Redemption and *The Green Mile*. Darabont created and developed *TWD* for television, wrote and directed the Series' pilot episode, wrote and co-wrote several other episodes and was an executive producer and the Series' showrunner during its groundbreaking first season and provided executive producer and showrunner services on all episodes produced during the Series' second season.

11. Plaintiff Darkwoods Productions, Inc. is a California corporation, with its principal place of business located in Los Angeles County, California. At all relevant times, Darkwoods Productions, Inc. was and is a "loan-out" company through which Darabont provides his producing services in the entertainment industry.

12. Plaintiff Ferenc, Inc. is a California corporation, with its principal place of business located in Los Angeles County, California. At all relevant times, Ferenc, Inc. was and is a "loan-out" company through which Darabont provides his writing and directing services in the entertainment industry.

13. Plaintiff Creative Artists Agency, LLC is a Delaware limited liability company, with its principal place of business located in Los Angeles County, California. CAA is one of the world's leading talent and sports agencies. CAA is Darabont's talent agent, and in that capacity, CAA helped broker the deal for Darabont to develop the Series for AMC. CAA is contractually entitled to a share of the Series' Modified Adjusted Gross Receipts ("MAGR") for its role in bringing *TWD* to AMC.

B. The Defendants

14. Defendant AMC Network Entertainment LLC ("AMC Network") is a Delaware limited liability company, with its principal place of business in New York County, New York. AMC Network was formerly known as "American Movie Classics Company LLC." AMC

Network exhibits television programming, including *TWD*, *Talking Dead*, and *Fear The Walking Dead*, and does so pursuant to transactions—or "understandings" or "arrangements" as AMC calls them—with AMC Studios and other AMC-affiliated production companies. Upon information and belief, AMC Network exercised its control and authority over AMC production entities, including AMC Studios, to cause them to commit breaches of Darabont's agreement to protect and enhance its own interests to the detriment of Plaintiffs.

15. Defendant AMC Film Holdings LLC ("AMC Studios") is a Delaware limited liability company, with its principal place of business in New York County, New York. AMC Studios is the successor in interest to Darabont's agreement for the Series with Defendant Stu Segall Productions, Inc., the original signatory to AMC's agreement with Darabont. Upon information and belief, AMC Studios is the party responsible for all payments under Darabont's agreement for the Series, and Stu Segall Productions, Inc. is the signatory for the Darabont agreement solely to comply with guild requirements. Upon information and belief, AMC Studios has operated as the production company for *TWD* from the Series' inception.

16. Defendant AMC Networks Inc. ("AMC Inc.") is a publicly-traded Delaware corporation, with its principal place of business in New York County, New York. Upon information and belief, AMC Inc. indirectly owns and wholly controls AMC Studios and AMC Network. Upon information and belief, AMC Inc. exercised its control and authority over AMC Network and AMC production entities, including AMC Studios, to cause them to commit breaches of Darabont's agreement, doing so by improper means and to protect and enhance its own interests to the detriment of Plaintiffs.

17. Defendant Stu Segall Productions, Inc. ("Stu Segall") is a California corporation, with its principal place of business in San Diego County, California. Upon information and

belief, Stu Segall is a production services company whose name is on Darabont's agreement for *TWD* solely to comply with guild requirements, even though the terms of the agreement were negotiated with AMC.

18. Upon information and belief, some or all of the foregoing defendant entities are or were owned (in whole or in part) and/or are affiliated with AMC.

19. Plaintiffs are currently unaware of the true names and capacities of Defendants Does 1 through 10, and therefore sue those Defendants by fictitious names. Plaintiffs will seek to amend this Complaint to allege the true names and capacities of Does 1 through 10, when and if they are discovered. Upon information and belief, Does 1 through 10 participated in the wrongful acts alleged here, and are liable for those acts. Upon information and belief, Does 1 through 10 knew and participated in one or more of the specific acts committed by Defendants, and counseled Defendants and other Doe Defendants in perpetrating those wrongful acts, and/or aided and counseled Defendants and other Doe defendants in concealing those acts from Plaintiffs, as alleged more fully below.

20. Upon information and belief, in doing the acts alleged here, each of the Defendants was the agent, principal, employee, or alter ego of one or more of the other Defendants, and acted with the other Defendants' knowledge, consent, and approval. As such, each of the Defendants is responsible for the liabilities of the other Defendants.

IV.

RELATED ACTIONS

21. Plaintiffs commenced a lawsuit against Defendants in this Court on December 17, 2013 in an action captioned *Frank Darabont, Ferenc, Inc., Darkwoods Productions, Inc., and Creative Artists Agency, LLC v. AMC Network Entertainment LLC, AMC Film Holdings LLC,*

AMC Networks Inc., Stu Segall Productions, Inc., and Does 1 through 10, Index No. 654328/2013 (the "Prior Action"). The Prior Action is currently pending in the Supreme Court of New York, County of New York, before the Honorable Eileen Bransten. In the Prior Action, Plaintiffs asserted causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief, stemming from AMC's breaches of its contractual obligations in connection with AMC Network's exhibition of *TWD*. All discovery in the Prior Action has concluded, and Plaintiffs filed a Note of Issue on September 26, 2016. The parties filed cross-motions for summary judgment in the Prior Action that were heard on September 15, 2017. The motions are currently under submission.

22. Under Darabont's agreement for *TWD*, Plaintiffs have broad audit rights allowing them to audit AMC's books and records related to the Series and the profit participation statements provided by AMC Studios. Despite Plaintiffs' clear audit rights, AMC repeatedly attempted to delay and obstruct Plaintiffs' audit. Despite AMC's delays, Plaintiffs' audit of all participations statements from the inception of the Series through September 30, 2014 (the "Audit") was completed, and Plaintiffs' audit reports were submitted to AMC in July 2017. The Audit revealed numerous breaches of contract by AMC, which are alleged below. During the audit, AMC refused to supply the auditors with Kirkman's and other profit participants' underlying agreements, which were necessary to adequately assess Plaintiffs' audit claims in light of the broad MFN protection in Darabont's agreement.

23. Shortly after Plaintiffs submitted their audit reports to AMC, Kirkman and other *TWD* profit participants commenced parallel actions against AMC in the Supreme Court of New York, County of New York[1] and in the Superior Court of California, County of Los Angeles[2] in

[1] *Gale Anne Hurd, Valhalla Entertainment, Inc., David Alpert, Circle of Confusion Productions, LLC, New Circle of Confusion Productions, Inc., Charles Eglee, and United Bongo Drum, Inc. v. AMC Film Holdings, LLC, AMC*

August 2017 and attached Kirkman's agreement to the complaints in these actions. (These actions are referred to collectively here as the "Kirkman Actions.") The terms of Kirkman's agreement with AMC for *TWD*, which Darabont did not know before the public filing of the Kirkman Actions in August 2017, give rise to additional audit claims because of Darabont's MFN protection.

24. On August 31, 2017, in light of the public filing of Kirkman's agreement in connection with the Kirkman Actions, which revealed important undisclosed provisions related to Kirkman's definition of MAGR, Plaintiffs' auditors submitted revised audit reports to address additional claims that had not discovered because of AMC's obstruction.

V.

BACKGROUND

A. Darabont's *TWD* Agreement

25. Darabont executed a long-form agreement dated August 7, 2010 with AMC Studios (the "Darabont Agreement"), through AMC Studios' predecessor-in-interest Stu Segall. A true and correct copy of the Darabont Agreement is attached as **Exhibit 1**. AMC Studios is the successor in interest to Stu Segall Production, Inc. The Darabont Agreement, among other things, sets forth the terms and compensation for the Series' first episode script, first episode producing services, Series producing services, Series production bonuses, directing services,

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Network Entertainment, LLC, AMC Networks Inc., Stu Segall Productions, Inc., Five Moons Productions I LLC, and "Does 1 through 40," Supreme Court of New York, County of New York, Index No. 655380/2017. It is Plaintiffs' understanding that the New York action has been consolidated with Robert Kirkman's action in California and transferred to California and/or dismissed.

[2] *Robert Kirkman; Robert Kirkman, LLC; Glen Mazzara; 44 Strong Productions, Inc.; David Alpert; Circle of Confusion Productions, LLC; New Circle of Confusion Productions, Inc.; Gale Anne Hurd; and Valhalla Entertainment, Inc. v. AMC Film Holdings, LLC; AMC Network Entertainment, LLC; AMC Networks Inc.; Stu Segall Productions, Inc.; Stalwart Films, LLC; TWD Productions, LLC; Striker Entertainment, LLC; Five Moons Productions, Inc.; AMC TV Studios, LLC; Crossed Pens Development LLC; and Does 1 through 40*, Superior Court of California, County of Los Angeles, Case No. BC 672124.

consultant services, screen credits, and contingent compensation (profit participation), and also establishes Darabont's rights as to derivative works and theatrical productions. The Darabont Agreement also provided Darabont with audit rights to audit AMC's profit participation statements related to the Series using auditors with expertise in the entertainment industry.

26. As is typical for an artist of Darabont's stature, in addition to fees for writing, directing, and producing, Darabont is entitled under the Darabont Agreement to a share of AMC Studios' profits from the Series based on a percentage of a pool of funds known as Modified Adjusted Gross Receipts ("MAGR")—essentially gross receipts AMC Studios receives minus production costs and certain deductions.

27. Under CAA's agreement with AMC, CAA is also entitled to a share of MAGR based on Darabont's MAGR definition. Because of Plaintiffs' stature in the industry and the importance of developing a flagship or "tentpole" original series for AMC, Plaintiffs are collectively entitled to up to 25% of MAGR based on the success of the Series.

28. Under the Darabont Agreement, AMC could elect to produce the Series itself, which it did. In this event, AMC would be both producing the Series and licensing it to itself to air on its own network. The Darabont Agreement provides that, if AMC self-produced the Series, AMC would prepare a long-form MAGR definition with an "imputed license fee" ("ILF") designed to define and calculate the license fees AMC would credit to itself for the right to broadcast the Series. (*See* Ex. 1., ¶ B(13)(d)(ii).) When a vertically-integrated company like AMC both produces and broadcasts a series, an ILF may be used to calculate MAGR for purposes of accounting to profit participants such as Plaintiffs because no license fee need actually be exchanged between the vertically-integrated studio and network due to the self-dealing nature of the transaction. This differs from the situation in which a studio licenses a

television series to an unaffiliated network. In that situation, there is no need to "impute" a license fee because an actual license fee is paid from one entity to the other, and the unaffiliated entities engage in true arms-length negotiations that serve to protect the interests of profit participants such as Plaintiffs.

29. Because the Darabont Agreement provided the entities controlled by AMC with the option of both producing and broadcasting the Series, Darabont wanted to ensure that, should this option be exercised, he would be in no worse position than if AMC had elected to have an independent and unaffiliated company produce the Series. Accordingly, Darabont specifically negotiated for and obtained language in the Darabont Agreement guaranteeing that "***AMC's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs***." (Ex. 1. ¶ 13(d)(iii) (emphasis added) (the "Affiliate Transaction Provision").) Simply put, this Affiliate Transaction Provision requires AMC to set the ILF for *TWD* equal to the fair market value of what AMC Network would pay for the right to broadcast comparable programming produced by an unaffiliated studio.

30. The Darabont Agreement also provides Darabont with two distinct "most favored nation" provisions. The first MFN provision states that "the imputed license fee [in Darabont's MAGR definition] will be no less favorable than the imputed license fee applicable to any other MAGR participant with respect to the Series" (the "ILF MFN"; *id.*, ¶ 13(d)(ii)(G)). The second, broader MFN provision states, "With respect to matters relating to the calculation of Artist's MAGR participation . . . ***in no event shall Artist's MAGR participation be defined less favorably than MAGR is defined for any other individual participant on the Series***; it being agreed that favorability of the MAGR definition shall be determined based on Artist's MAGR

definition taken as a whole as compared to another participant's MAGR definition taken as a whole, and not based on individual terms from several MAGR definitions" (the "MAGR MFN"; *id.*, ¶ 13(d)(iv) (emphasis added).)

B. Kirkman's *TWD* Agreement

31. Because Kirkman created and owned the underlying rights in "The Walking Dead" comic book series, Kirkman and AMC Network entered into a "Literary Purchase Option Purchase Agreement" dated November 30, 2009 (the "Kirkman Agreement"). A true and correct copy of the recently publicly-filed version of the Kirkman Agreement is attached as **Exhibit 2**.

32. The material terms of the Kirkman Agreement include a grant of "5% of 100%" of MAGR (*id.*, ¶¶ 11(a) and 11(c)) and a MAGR definition that provides, "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." (*Id.*, ¶ 11(b); emphasis added.)

33. The Kirkman Agreement also provides that, if AMC Network exhibited *TWD*, it would pay ***actual license fees*** to an AMC production company entity for that right, rather than having AMC Studios impute a license fee into MAGR. There is no mention of an ILF in the Kirkman Agreement. Indeed, the last sentence of Section 11.b. of the Kirkman Agreement states: "No network sales fee shall be charged regarding AMC's ***initial license fee***." (Emphasis added.) In the case of other *TWD* participants (including Darabont) where AMC chose to expressly provide for an ILF in their agreements, the comparable sentence provides that "no television

distribution fees shall be charged with respect to the Gross Receipts attributed to such ***imputed license fee***.") (*See* Ex. 1, ¶ 13(d)(ii); emphasis added.)

34. Under the heading "Dealings with Affiliates," the Kirkman Agreement provides in pertinent part: "[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***." (Ex. 2, ¶ 24; emphasis added.) ("Kirkman's Affiliate Transaction Provision").

C. AMC Conceals the Kirkman Agreement's Language From Darabont

35. Plaintiffs filed the Prior Action on December 17, 2013. AMC made its first document production in the Prior Action on June 4, 2014, which included heavily redacted copies of AMC's agreements with the other Series profit participants, including Kirkman. A true and correct copy of the redacted Kirkman Agreement produced by AMC in the Prior Action is attached as **Exhibit 3**. Although the parties agreed in the Prior Action that certain provisions could be redacted from third party Series agreements, AMC agreed to produce unredacted all provisions of these agreements relevant to MAGR. Although it relates directly to the calculation of Kirkman's MAGR, paragraph 24 of the Kirkman Agreement (entitled "Dealings With

Affiliates")—which contains Kirkman's Affiliate Transaction Provision discussed above—is ***entirely redacted*** from the version of the Kirkman Agreement AMC produced in the Prior Action. (*Id.*)

36. AMC's improper redactions gave Darabont the false impression that Kirkman failed to obtain any affiliate transaction protection whatsoever in the Kirkman Agreement, and that the Kirkman Agreement was thus materially inferior to the Darabont Agreement. Darabont had no reason to believe that AMC had redacted an essential term of the Kirkman Agreement. There are several profit participants on *TWD*. Some profit participants obtained affiliate transaction provisions in their agreements, and others did not. However, in each instance, with the exception of Kirkman, AMC disclosed a profit participant's affiliate transaction provision if the participant had such a provision in his or her agreement. Thus, Darabont reasonably believed that Kirkman did not obtain affiliate transaction protection in his agreement, and Darabont reasonably believed that Darabont's affiliate transaction protection was superior to anything obtained by Kirkman.

37. The reason for AMC's improper concealment has now been publicly exposed. Kirkman has different license fee language—requiring an actual license fee rather than an ILF—and a different Affiliate Transaction Provision from Darabont and the other profit participants. Kirkman's contractual language undermines and contradicts numerous positions that AMC has taken in the Prior Action. Worse yet, AMC failed to provide Kirkman's language to Darabont's auditors during Darabont's audit. Specifically, AMC failed to disclose and concealed from Darabont the following facts: (a) that the Kirkman Agreement contains no reference to an ILF and thus requires AMC Network to pay AMC Studios an actual license fee for exhibition of *TWD*; and (b) that the contemplated licensing transaction between AMC Studios and AMC

Network for the license of *TWD* is governed by Kirkman's Affiliate Transaction Provision, which mandates that any licensing transaction "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"—*i.e.*, that the monetary terms of the actual (not imputed) license for *TWD* between AMC Studios and AMC Network be set at fair market value.

38. AMC's failure to disclose this language to Darabont is itself a breach of Darabont's MAGR MFN, a breach of AMC's audit obligations, and a serious violation of AMC's discovery obligations in the Prior Action. Proper disclosure of the concealed language in the Kirkman Agreement would have significantly reduced the extent of discovery in the Prior Action because Kirkman's concealed language negates key arguments made by AMC in the Prior Action. AMC has taken the position in the Prior Action that Darabont's Affiliate Transaction Provision does not apply to the ILF that AMC Studios imputes for *TWD* because the ILF is not part of any "transaction" between affiliates governed by Darabont's Affiliate Transaction Provision, and no transaction between AMC affiliates ever occurred as to *TWD*. This argument is flawed and incorrect, as addressed in Plaintiffs' pending motion for summary judgment in the Prior Action. But, if AMC's position was correct (which it is not), Kirkman's contractual MAGR definition would be substantially "better" than Darabont's—in that the Kirkman Agreement does not allow for an ILF at all but instead requires an actual fair market license fee to be paid by AMC Network to AMC Studios for *TWD*. Thus, Darabont would be entitled to the benefit of this "better" language. Indeed, the primary defense AMC raised in the Prior Action is that because the Darabont Agreement uses an ILF instead of an actual license fee,

there is no "actual transaction" that occurs between AMC affiliates. Although this defense strains logic as to the ILF, it would not apply at all to an actual license fee.

D. Plaintiffs' Audit of AMC's Books and Records

39. Under the Darabont Agreement, Plaintiffs conducted an audit of the *TWD* profit participation statements received from AMC Studios from inception of the Series through September 30, 2014. The audit was conducted by Hacker, Douglas & Company, LLP (the "Auditors"), certified public accounts located in Los Angeles who specialize in television and entertainment industry audits. Plaintiffs' audit reports were initially submitted to AMC in July 2017. The audit reports were subsequently revised and resubmitted to AMC on August 31, 2017 in light of the public disclosure of the Kirkman Agreement, which had previously been withheld from the Auditors.

40. The audit, which covers the period from the inception of the Series in October 2011 through September 30, 2014, revealed numerous breaches of the Darabont Agreement including, but not limited to, the following:

a) AMC licensed *TWD* to Apple for electronic sell through ("EST") through Apple's iTunes service. AMC only reported 20% of the revenue it received from Apple through September 30, 2014, after Apple deducted its own distribution fees. AMC improperly treated the EST revenue as direct distribution by AMC, even though Apple, not AMC, is distributing *TWD* via iTunes and is charging a distribution fee for its services. AMC should have reported 100% of the revenue that it received from Apple rather than a mere 20% royalty. As a result, AMC has underreported receipts from EST through September 30, 2014 by more than $18,000,000 during the Audit Period.

b) AMC entered into sub-distribution agreements with Fox International Channels ("FIC") and Anchor Bay for certain international, home video, and other distribution of *TWD*. AMC is reporting 100% of its receipts from these subdistributors, subject to a 20% distribution fee. However, these third parties are also charging their own distribution fees ranging from 5% to 20%. The Darabont Agreement caps AMC's distribution fees at 10%, ***inclusive of any sub-distribution fees***, whereas AMC is deducting the third party distribution fees and assessing its own 20% distribution fee on its receipts from the third party distributors. Upon information and belief, the Kirkman Agreement does not allow AMC to charge any distribution fee unless AMC is engaging in direct distribution. Under Darabont's MAGR MFN provision, Plaintiffs are entitled to whichever contract provision nets the best result to Plaintiffs. At a minimum, AMC has applied improper distribution fees and reduced gross receipts through September 30, 2014 by more than $14,000,000 during the Audit Period.

c) On a hit series like *TWD*, companies will often pay substantial fees to have their products appear on screen during episodes of a series (so-called product integration fees). Here, AMC has failed to account for certain product integration fees from Gerber and Hyundai, totaling at least $1,575,000 during the Audit Period. To the extent AMC failed to account for revenue from other companies who have likewise paid product integration fees, AMC is required to account to Plaintiffs for all product integration revenue.

d) AMC underreported license fees from FIC related to Series episodes in Season 5. According to the payment schedules, AMC has understated the gross receipts by more than $2,800,000 for these episodes.

e) As part of AMC's foreign television distribution deal with FIC, AMC caused FIC to license the Series to Sundance International Channel ("Sundance"), an AMC affiliate, in several territories in Europe and Asia. Under the Darabont Agreement, all of AMC's transactions with its affiliates are subject to Darabont's Affiliate Transaction Provision, which requires that the license fees be on "monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs." Upon information and belief, Sundance paid a below-market license fee for *TWD*, artificially reducing the gross receipts for the Series. To the extent that AMC has similarly disguised other affiliated transactions by having third party distributors like FIC license *TWD* back to AMC affiliates, all such transactions are subject to and must comply with Darabont's Affiliate Transaction Provision.

f) AMC hired Striker Entertainment LLC ("Striker") as its merchandising and licensing agency for *TWD*. Striker retains 25% to 35% of the gross revenues generated by its licensing agreements. In addition, AMC is charging its own 50% distribution fee on *TWD* merchandising, improperly reducing gross receipts by more than $3,400,000 during the Audit Period.

g) AMC included music publishing receipts and soundtrack receipts in ancillary gross receipts and charged a 50% distribution fee against revenue, on top of AMC's 15% administration fee on music publishing.

h) AMC improperly charged fees paid to FTI Consulting, an accountant named Elvia Frank, and various law firms including Loeb & Loeb LLP and Pryor Cashman LLP, for services that are generally performed in-house by studios and that

should be absorbed by AMC's overhead charges. As a result, AMC's distribution fees were overstated by more than $1,750,000 during the Audit Period.

i) AMC's distribution charges included a marketing cost of $37,600 for a Comic-Con banner. Yet the corresponding invoice was for only $18,800.

j) AMC receives tax credits from the State of Georgia for filming *TWD* in Georgia. AMC initially failed to include these Georgia tax credits as an offset against production costs on Plaintiffs' participation statements. AMC ultimately corrected this error, but AMC assigned $800,000 from its tax credits for Season 4 to an affiliated entity and failed to include this $800,000 as an offset against production costs on the Series. To the extent AMC has engaged in this practice for other seasons, the entire Georgia tax credits should be treated as an offset against production costs.

k) AMC improperly deducted $414,499 from Plaintiffs' MAGR for profits received by Plaintiff Ferenc, Inc. The Darabont Agreement does not allow for this deduction.

l) AMC improperly deducted $1,500,000 in advances paid to other profit participants. The Darabont Agreement does not allow for these deductions. And, to the extent that other participants' advances are deducted from Plaintiffs' profit statements and reduce Plaintiffs' profits, it is a breach of the MFN provision to provide those advances to other participants without providing comparable advances to Plaintiffs based on their respective profit interest in MAGR.

m) The interest applied to AMC's production costs on Plaintiffs' participation statements was inflated as a result of AMC's improper practices discovered during the

audit. And, when a judgment is obtained, Plaintiffs are entitled to pre-judgment interest at the statutory rate for profits that were due during the audit period.

n) The Darabont Agreement contains the MAGR MFN discussed above. To the extent that any participants who are part of the Kirkman Actions obtained more favorable provisions impacting their respective MAGR provisions, or were provided with information through their auditors that revealed additional claims, Plaintiffs are entitled to the benefit of any additional audit claims identified in the Kirkman Actions.

o) The recent public disclosure that the Kirkman Agreement entitles him to the benefit of an actual license fee paid from AMC Network to AMC Studios for *TWD* rather than an imputed license fee, which actual license fee must itself be subject to Kirkman's Affiliate Transaction Provision, raises the question of whether AMC has the right to use an imputed license fee to calculate Plaintiffs' MAGR at all. To the extent that Kirkman's entitlement to an actual license fee subject to Kirkman's Affiliate Transaction Provision is deemed or determined to be more favorable than Plaintiffs' ILF formula and Darabont's Affiliate Transaction Provision, Plaintiffs are entitled to the benefit of whichever contract provision nets the more favorable result under Darabont's MAGR MFN.

41. After Plaintiffs submitted the audit reports to AMC, Plaintiffs reached out to AMC on several occasions about their audit claims, but AMC never provided a substantive response to the audit reports.

42. Plaintiffs recently provided notice to AMC that Plaintiffs will be conducting a supplemental audit of all profit participation statements that post-date September 30, 2014.

43. Upon information and belief, AMC also breached its MFN obligation to Plaintiffs by charging a 50% distribution fee on revenues received for ancillary rights such as merchandising and commercial tie-ins, while agreeing to a more favorable 35% distribution fee for another profit participant on *TWD*. The failure to adjust Plaintiffs' distribution fee to 35% has resulted in more than $1,500,000 in additional damages to Plaintiffs to date.

FIRST CAUSE OF ACTION
Breach of Contract
(Against All Defendants)

44. Plaintiffs incorporate the allegations in paragraphs 1 through 43 of this Complaint as if fully set forth here.

45. Plaintiffs have performed all of the conditions, covenants, and promises required on their part as to the terms and conditions of the Darabont Agreement, except as excused, waived, or made impossible by AMC.

46. AMC has materially breached, and will continue to breach, the Darabont Agreement as alleged above and as follows:

a) By committing the breaches discovered by the Auditors outlined in paragraph 40 above;

b) By obstructing Plaintiffs' ability to conduct the audit of AMC's books and records including, but not limited to, refusing to disclose the Kirkman Agreement to the Auditors;

c) By failing to comply with the MAGR MFN provision in the Darabont Agreement and by improperly concealing the relevant provisions of the Kirkman Agreement in the Prior Action;

d) By failing to reduce the distribution fee on ancillary rights from 50% to 35%, in contravention of the MAGR MFN provision.

47. As a direct and proximate result of AMC's breaches of the Darabont Agreement, Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than $10,000,000.

SECOND CAUSE OF ACTION
Breach of Implied Covenant of Good Faith and Fair Dealing
(Against All Defendants)

48. Plaintiffs incorporate the allegations in paragraphs 1 through 47 of this Complaint as if fully set forth here.

49. Implied in every contract, including the Darabont Agreement, is a covenant among the contracting parties that no party will do anything to interfere with another party's enjoyment of its contractual rights and benefits, and that each contracting party will do everything that the contract presupposes it will do to accomplish the contract's purpose.

50. AMC has breached the covenant of good faith and fair dealing implied in the Darabont Agreement by engaging in bad faith conduct intended to frustrate Plaintiffs' rights to receive the benefits of the Darabont Agreement. AMC has engaged in bad faith conduct by, among other things:

a) Failing and refusing to provide Plaintiffs with the benefit of Kirkman's MAGR definition;

b) Obstructing Plaintiffs' audit rights, and

c) Improperly redacting the Kirkman Agreement during discovery in the Prior Action in a manner that led Plaintiffs to believe that Kirkman had not received affiliate transaction protection.

51. As a direct and proximate result of AMC's breaches of the covenant of good faith and fair dealing implied in the Darabont Agreement, Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than $10,000,000.

THIRD CAUSE OF ACTION
Declaratory Judgment
(Against All Defendants)

52. Plaintiffs incorporate the allegations in paragraphs 1 through 51 of this Complaint as if fully set forth here.

53. A justiciable controversy has arisen, and now exists, between Plaintiffs and AMC (and AMC's affiliates) about their respective rights and duties under the Darabont Agreement that AMC and their principals and/or alter egos entered into as to the Series.

54. Plaintiffs contend that AMC has deliberately deflated the ILF by claiming that it is not subject to Darabont's Affiliate Transaction Provision. Plaintiffs also contend that the Kirkman Agreement does not allow for an ILF and instead requires an actual license fee from AMC Network to AMC Studios for initial broadcasts of *TWD*. Plaintiffs also contend that they are entitled, under the MAGR MFN in the Darabont Agreement, to the better of (1) Plaintiffs' imputed license fee, subject to Plaintiffs' Affiliate Transaction Protection, or (2) Kirkman's actual license fee, subject to Kirkman's Affiliate Transaction Provision. Upon information and belief, AMC contends otherwise. Plaintiffs also contend that AMC will not provide Plaintiffs with the better of the two contract provisions absent a determination by the Court.

55. Plaintiffs desire a judicial determination of the rights and duties of the parties, and a declaration of AMC's obligations to honor the terms and conditions of the Darabont Agreement. A judicial determination is necessary and appropriate at this time to ascertain the parties' rights and duties to one another.

56. Plaintiffs seek a declaratory judgment that Plaintiffs are entitled to the better of (1) Plaintiffs' ILF formula, subject to Plaintiffs' Affiliate Transaction Provision, or (2) Kirkman's actual license fee contract provision, subject to Kirkman's Affiliate Transaction Provision.

WHEREFORE, Plaintiffs respectfully request judgment against Defendants as follows:

A. As to Plaintiffs' First Cause of Action for Breach of Contract, awarding monetary damages in an amount to be determined at trial, but in no event less than $10,000,000, plus interest, attorneys' fees, and costs;

B. As to Plaintiffs' Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing, awarding monetary damages in an amount to be determined at trial, but in no event less than $10,000,000, plus interest, attorneys' fees, and costs;

C. As to Plaintiffs' Third Cause of Action for Declaratory Judgment, a judicial declaration of the parties' contractual rights and duties in connection with *TWD* and the Darabont Agreement, including a declaration that Plaintiffs are entitled to the better of (1) Plaintiffs' ILF formula, subject to Plaintiffs' Affiliate Transaction Provision, or (2) Kirkman's actual license fee contract provision, subject to Kirkman's Affiliate Transaction Provision; and

D. Granting Plaintiffs any further relief that the Court deems just and proper.

Dated: New York, New York
January 18, 2018

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