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

JOE NOCERA,

PLAINTIFF,

-AGAINST-

BLOOMBERG L.P.,

DEFENDANT.

Index No. __________

COMPLAINT

Plaintiff Joe Nocera ("Nocera"), by and through his attorneys Jayaram Law, Inc., brings this action against Defendant Bloomberg L.P. ("Bloomberg"), and for his Complaint alleges as follows:

NATURE OF THE ACTION

1. Joe Nocera is a venerated journalist, author, and public intellectual who worked as a columnist for Bloomberg from 2017 to 2021.

2. During his employment at Bloomberg, Nocera developed the idea of turning a previously unpublished article about his experiences with Isaac "Ike" Herschkopf and Martin "Marty" Markowitz into a podcast.

3. The podcast, titled "The Shrink Next Door," went on to become some of the most popular content Bloomberg had ever produced. The podcast was streamed more than any other new podcast on Apple Podcasts in 2019, and it has been downloaded nearly 35 million times.

4. As a result of the success of the podcast, Bloomberg's production partner on the podcast, Wondery, wanted to shop the rights to exploit the podcast into a movie or TV series. Ultimately, Bloomberg and Wondery sold the option to exploit the podcast to MRC Studios.

Wondery and Bloomberg would split any revenues generated from an agreement with MRC on a fifty-fifty basis.

5. In connection with this option, Bloomberg and Nocera also entered into a contract under which Nocera and Bloomberg agreed to evenly split ***all revenues*** Bloomberg earns from the exploitation of the podcast by any third-party not affiliated with Bloomberg.

6. *The Shrink Next Door* TV series began airing on November 12, 2021. But even prior to the show's release, Bloomberg had already decided that advertising and Modified Adjusted Gross Receipts ("MAGR") revenue in connection with the TV series would not be paid to Nocera, in breach of the parties' agreement.

7. Nocera brings this action against Bloomberg for breach of contract, breach of the duty of good faith and fair dealing, and declaratory judgment for its failure to provide payment in accordance with Bloomberg's obligations.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the causes of action stated herein pursuant to Judiciary Law § 140-b, and venue is appropriate in this County pursuant to CPLR 509, as Plaintiff has designated New York County as venue for this action.

9. This Court has personal jurisdiction over Bloomberg under CPLR 302(a)(1) because Bloomberg "transacts . . . business within the state" and is headquartered in New York. The present dispute arises out of a contract that was entered into by Nocera and Bloomberg in New York.

PARTIES

10. Plaintiff Joe Nocera is a resident of New York and a former employee of Bloomberg.

11. Defendant Bloomberg L.P. is a foreign limited partnership organized under the laws of the state of Delaware and maintains a place of business at 731 Lexington Avenue, New York, New York 10022 and does business in the state of New York.

FACTUAL ALLEGATIONS

Joe Nocera: One of the Most Respected Voices in American Media

12. For more than four decades, Joe Nocera has been one of the most respected and hardworking voices across the American media landscape.

13. He began covering politics and business in the 1970s. In the 1980s, he served as an editor at *Newsweek* and *Texas Monthly*, along with other well-respected publications. His popular "Profit Motive" column appeared in *Esquire* from 1988 to 1990, and in *GQ* from 1990 to 1995, after which he joined *Fortune* magazine, where he served in a variety of roles, including as editorial director.

14. By 2005, Nocera was a business columnist for *The New York Times* and a staff writer for *The New York Times Magazine*. From 2011 to 2015, Nocera held one of the most prestigious positions in all of media, as a weekly Op-Ed columnist in the Opinion pages of *The New York Times*, where he expressed his nuanced views on issues ranging from gun control to education to e-cigarettes to Supreme Court terms.

15. Nocera has also written and co-written books, including *All The Devils Are Here: The Hidden History of the Financial Crisis*, *A Piece of the Action: How the Middle Class Joined the Money Class,* and *Good Guys and Bad Guys: Behind the Scenes With the Saints and Scoundrels of American Business (and Everything in Between)*.

16. In his decades of chronicling the world of business, Nocera has earned the respect of colleagues and critics alike. His writing has earned him numerous awards, including three

Gerald Loeb Awards, three John Hancock Awards for Excellence in Business Writing, the PEN America ESPN Award for Literary Sportswriting, and the New York Public Library's Helen Bernstein Award for best non-fiction book of 1995. In 2007, Nocera was named a Pulitzer Prize finalist.

17. In 2017, Nocera began writing a column for *Bloomberg View* (since renamed *Bloomberg Opinion*) on business, politics and other subjects.

Nocera's Discovery of Ike and Marty and Creation of the Work

18. In the summer of 2010, Nocera met Isaac "Ike" Herschkopf and Martin "Marty" Markowitz.

19. A year later, when he discovered that Ike and Marty's relationship was twisted in a way he had never assumed, Nocera determined that there might be a compelling story in what had transpired between the two men for nearly 30 years. Throughout 2012 and 2013, Nocera conceived of, researched, and wrote a story about Ike and Marty.

20. During those two years, Nocera conducted interviews, scrupulously researched, outlined, and drafted an 8,000-word story that was set to run on the cover of *The New York Times Magazine* in August 2013. The feature-length article included photos, quotes, and Nocera's finalized text (the "Work"). Unfortunately, the editors decided three-days prior to publication that the Work would not be printed that summer. Nocera received a "kill fee" for the unpublished story.

21. When Nocera joined Bloomberg in 2017, the Work had not been mentioned in his interviews. It was not mentioned in his employment agreements nor shared with the Bloomberg team in any way. Bloomberg did not demonstrate an interest in the Work. In fact, Bloomberg did not even know about the Work when it hired Joe in 2017.

Nocera's Work on "The Shrink Next Door" Podcast

22. Early in 2018, at his son's suggestion, Nocera shopped the Work to Bloomberg and others. Despite holding several meetings with another media outlet, Nocera decided to stick with Bloomberg.

23. Nocera was excited when Francesca Levy (Bloomberg's head of podcasts) and Jared Sandberg (Senior Executive Director of Bloomberg Digital) partnered with Wondery—a promising new podcast network and the producer of "Dr. Death" and "Dirty John"—to help Nocera create a six-to-eight-part podcast around the Work that fall, in which Nocera was to contribute original reporting based on his experiences with Martin "Marty" Markowitz and Isaac "Ike" Herschkopf.

24. The podcast—a derivative of Nocera's original Work—would eventually be called "The Shrink Next Door" (the "Derivative Work").

25. On September 19, 2018, Bloomberg entered into a Co-Production Agreement with Wondery, which named Nocera as the Bloomberg journalist who would be providing the content. The Derivative Work that was ultimately produced was titled "The Shrink Next Door," and Nocera was billed as the writer and host.

26. "The Shrink Next Door" podcast launched on May 21, 2019. It was a popular and critical success. It was the number one podcast on iTunes for three weeks straight and won the 2020 Webby Award for Documentary in the category Podcasts. It has been downloaded almost 35 million times since its release.

27. Following the success of the Derivative Work, on July 11, 2019, Bloomberg amended the Co-Production Agreement to give Wondery the right to shop the podcast to MRC Studios ("MRC") for all TV and Theatrical Motion Picture rights. Wondery and Bloomberg would

split any revenues generated from an agreement with MRC on a fifty-fifty basis (the "MRC Option").

28. On October 4, 2019, Bloomberg, through outside counsel, sent a proposed agreement to Nocera regarding the MRC Option, Wondery, and Bloomberg, which stated that Nocera would "receive fifty percent (50%) (the 'Author Participation') . . . of Bloomberg's share of all revenues (other than service related fees) in connection with the exploitation of the [Derivative] Work by third parties on platforms that are not owned, controlled or branded by Bloomberg (each exploitation, a 'Project'); provided further that you will be entitled to retain one hundred percent (100%) of any initial option purchase price."

29. Outside counsel for Bloomberg also outlined the material terms of the MRC Option as they related to Nocera's interests under the attached agreement:

a. Option Fee/Period - $250,000 (applicable) for 12 months

b. Extension Fee/Period - $250,000 (non-applicable) for 12 months

c. 2nd Extension/Period - $175,000 (non-applicable) for 9 months

d. Purchase Price - $1,250,000 (less initial option fee)

e. Series royalty - $7,500/episode

f. Series Sales Bonus - $100,000 for 10 episodes reducible pro rata if less episodes produced

g. Series Production Bonus - $250,000 for season 2, $500,000 for any subsequent season

h. Modified Adjusted Gross Receipts ("MAGR") - 5% of 1000% of MAGR

i. Feature Film – for feature produced after TV series, 2.5% of the in-going budget with a floor of $1,250,000 and a ceiling of $1,750,000 and 2.5% of net proceeds

j. Generic spin-offs – amount equal to 50% of royalty, 50% of purchase price and 50% of MAGR

k. Planted spin-off - amount equal to 25% of royalty, 25% of purchase price and 25% of MAGR

l. Remake - amount equal to 50% of royalty, 50% of purchase price and 50% of MAGR

30. At no point did the parties discuss or negotiate the ***exclusion*** of advertising revenue from the agreement. Nocera and Bloomberg executed the agreement on or about October 21, 2019 ("TSND Agreement").

31. The executed TSND Agreement still included the fifty-fifty split of Bloomberg's share of all revenues in connection with the exploitation of the Derivative Work.

Nocera's Termination from Bloomberg and Bloomberg's Breach

32. On or around September 23, 2021, Bloomberg terminated Nocera's employment, stating that Nocera had breached his employment contract. His termination came only a month and a half before the premiere of *The Shrink Next Door* TV series that would be released on Apple TV+ on November 12.

33. During this time, Nocera, through his attorney, contacted Bloomberg in order to determine what revenue he was due under the TSND Agreement. Bloomberg acknowledged that Nocera was owed at least $322,500 from the following revenue streams: (a) MRC initial option fee; (b) MRC acquisition fee; (c) MRC Series Sale Bonus for 8 episodes; and (d) MRC Series Royalty for 8 episodes. Bloomberg stated that the initial option fee and MRC acquisition fee payments had already been made to Nocera and that the rest would be paid out to Nocera when Bloomberg is paid by MRC. The balance outstanding owed to Nocera is $35,000. Bloomberg

also stated that it "has no expectation of any additional revenues from exploitation of the podcast from the MRC Option."

34. Upon further inquiry by Nocera's counsel regarding advertising revenue in connection with the MRC Option, Bloomberg stated that advertising revenue is not included in the "share of revenues received by Bloomberg," explaining that "[a]dvertising revenue is not shared with journalists and is not included in Mr. Nocera's agreement."

35. However, in the TSND Agreement, Nocera is entitled to "Bloomberg's share of ***all revenues*** . . . in connection with the exploitation of the Work." Bloomberg's refusal to pay Nocera advertising revenue that it has received or will receive in connection with the MRC Option, is a clear breach of the TSND Agreement.

36. Further, Bloomberg's statement that it "has no expectation of any additional revenues from exploitation of the podcast" from *The Shrink Next Door* series disregards the strong likelihood of Bloomberg receiving Modified Adjusted Gross Receipts (or "MAGR") from the streaming series, which also amounts to a declaration that Bloomberg does not intend to share "all revenues . . . in connection with the exploitation of the Work" as the TSND Agreement requires—constitutes an anticipatory breach of the TSND Agreement.

37. Upon information and belief, there will be additional commercial exploitation of the Derivative Work, including a potential season 2 of *The Shrink Next Door* TV Series and a potential musical adaptation. Under the TSND Agreement, Nocera would be owed revenue on all these commercial exploitations.

38. *The Shrink Next Door* TV series, starring Paul Rudd and Will Ferrell, is being heavily advertised on billboards and online ads across the country. Streaming on Apple TV+, it is set to be a valuable adaptation of Nocera's Work. It has already resulted in a significant uptick in

new downloads of the podcast, generating additional ad revenue for Bloomberg. Bloomberg's position, which has no grounding in the plain language of the TSND Agreement, is an exploitative attempt at profiting off Nocera's creation without paying him what he is owed under the TSND Agreement and as a content creator.

COUNT I
BREACH OF THE TSND AGREEMENT

39. Nocera repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth here.

40. On or about October 21, 2019, Nocera and Bloomberg entered into the TSND Agreement.

41. The TSND Agreement is binding on the Parties.

42. Pursuant to the TSND Agreement, Bloomberg agreed that Nocera would "receive fifty percent (50%) (the 'Author Participation') . . . Bloomberg's share of all revenues (other than service related fees) in connection with the exploitation of the Work by third parties on platforms that are not owned, controlled or branded by Bloomberg (each exploitation, a 'Project'); provided further that you will be entitled to retain one hundred percent (100%) of any initial option purchase price."

43. At the time of the filing of this Complaint, Nocera is owed at least $35,000. Bloomberg acknowledged that Nocera was owed that amount and indicated that it would remit payment once it was paid by MRC.

44. Pursuant to the TSND Agreement, Bloomberg has a continuing obligation to remit fifty percent (50%) of Bloomberg's share of all revenues in connection with the exploitation of "The Shrink Next Door." Further, Nocera is entitled to one hundred percent (100%) of any initial option purchase price.

45. Bloomberg has breached the TSND Agreement by indicating that it would not include advertising revenue in connection with *The Shrink Next Door* TV series.

46. Bloomberg's statement that "[a]dvertising revenue is not shared with journalists and is not included in Mr. Nocera's agreement" amounts to a declaration that Bloomberg does not intend to share "all revenues . . . in connection with the exploitation of the Work" as the TSND Agreement requires.

47. However, under the TSND Agreement, Nocera is entitled to "Bloomberg's share of ***all revenues*** . . . in connection with the exploitation of the Work."

48. Further, Bloomberg's statement that it "has no expectation of any additional revenues from exploitation of the podcast from the MRC Option" disregards the real possibility of Bloomberg receiving Modified Adjusted Gross Receipts as part of the revenue from *The Shrink Next Door* TV series. This statement is an anticipatory breach of the TSND Agreement.

49. Nocera has performed his obligations under the TSND Agreement.

50. Nocera has suffered damages as a result of Bloomberg's breach of the TSND Agreement, the amount of which will be determined at trial.

COUNT II
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

51. Nocera repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth here.

52. On or about October 21, 2019, Nocera and Bloomberg entered into the TSND Agreement.

53. The TSND Agreement is binding on the Parties.

54. Pursuant to the TSND Agreement, Bloomberg agreed that Nocera would "receive fifty percent (50%) (the 'Author Participation') . . . Bloomberg's share of all revenues (other than

service related fees) in connection with the exploitation of the Work by third parties on platforms that are not owned, controlled or branded by Bloomberg (each exploitation, a 'Project'); provided further that you will be entitled to retain one hundred percent (100%) of any initial option purchase price."

55. By entering into the TSND Agreement, Bloomberg had an implied covenant to act in good faith and in fair dealing in the course of Bloomberg's performance of its contractual obligations.

56. Bloomberg's statement that "[a]dvertising revenue is not shared with journalists and is not included in Mr. Nocera's agreement" amounts to a declaration that Bloomberg does not intend to share "all revenues . . . in connection with the exploitation of the Work" as the TSND Agreement requires.

57. This is in direct contravention of the TSND Agreement which imposes an obligation on Bloomberg to pay Nocera fifty percent (50%) of its share of ***all revenue*** derived from the Derivative Work.

58. Bloomberg has denied its obligation to provide payment of 50% of advertising revenue to Nocera pursuant to the TSND Agreement to his detriment.

59. Bloomberg's denial is made in bad faith and meant to evade its obligation to Nocera for the exploitation of the Derivative Work and involvement in "The Shrink Next Door."

60. Bloomberg's actions have the effect of destroying and injuring the rights of Nocera to receive the fruits of the TSND Agreement.

61. As a result of the foregoing, Nocera has suffered damages due to Bloomberg's breach of good faith and fair dealing in relation to the TSND Agreement, the amount of which will be determined at trial.

COUNT III
DECLARATORY JUDGMENT

62. Nocera repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth here.

63. On or about October 21, 2019, Nocera and Bloomberg entered into the TSND Agreement.

64. The TSND Agreement is binding on the Parties.

65. Pursuant to the TSND Agreement, Bloomberg agreed that Nocera would "receive fifty percent (50%) (the 'Author Participation') . . . Bloomberg's share of all revenues (other than service related fees) in connection with the exploitation of the Work by third parties on platforms that are not owned, controlled or branded by Bloomberg (each exploitation, a 'Project'); provided further that you will be entitled to retain one hundred percent (100%) of any initial option purchase price."

66. Bloomberg's statement that "[a]dvertising revenue is not shared with journalists and is not included in Mr. Nocera's agreement" amounts to a declaration that Bloomberg does not intend to share "all revenues . . . in connection with the exploitation of the Work" as the TSND Agreement requires.

67. Bloomberg's interpretation of the contract is wrong. Bloomberg has a continuing obligation under the TSND Agreement to pay Nocera fifty percent (50%) of its share of ***all revenue*** from *The Shrink Next Door* TV series—including advertising revenue. Further, Nocera is entitled to one hundred percent (100%) of any initial option purchase price.

68. Bloomberg and Nocera each assert a contradictory understanding concerning their respective rights and obligations under the TSND Agreement.

69. As such, an actual and justiciable controversy has arisen and now exists between Bloomberg and Nocera concerning their respective rights and obligations pursuant to the TSND Agreement.

70. Nocera has no adequate remedy at law.

71. As a result of the foregoing, Nocera seeks declaratory judgment determining that he is owed 50% of any additional revenue earned by Bloomberg pursuant to the TSND Agreement, including, without limitation, advertising revenue.

PRAYER FOR RELIEF

WHEREFORE, Nocera respectfully requests that this Court enter a judgment as follows:

a. Declaring that:

 i. The TSND Agreement is a valid and enforceable agreement;

 ii. Pursuant to the TSND Agreement, Nocera is owed fifty percent (50%) of Bloomberg's share of all revenues (other than service-related fees) in connection with the exploitation of the "The Shrink Next Door" by third parties on platforms that are not owned, controlled or branded by Bloomberg and one hundred percent (100%) of any initial option purchase price;

 iii. Bloomberg's obligations under the TSND Agreement include advertising revenue earned from the exploitation of the Work;

 iv. Failure to remit payment to Nocera pursuant to the TSND Agreement constitutes a breach; and,

 v. Bloomberg is to provide an accounting of all revenue it has earned and expects to earn with respect to the exploitation of the Work by third parties or platforms that are not owned, controlled, or branded by Bloomberg.

b. Awarding damages in an amount to be determined at trial;

c. Awarding Nocera pre-judgment and post-judgment interest at the maximum rate allowable by law; and

d. Awarding Nocera all other relief as may be appropriate.

JURY TRIAL DEMANDED

Plaintiffs request a jury trial.

Dated: December 14, 2021
New York, New York

Respectfully submitted,
JAYARAM LAW, INC.

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