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June 16, 2014

BY HAND AND ELECTRONIC FILING

The Honorable Eileen Bransten
Supreme Court of New York
60 Centre Street, Room 521
New York, New York 10007

Re: *Darabont v. AMC Networks Entertainment LLC, Index No. 654328/2013*

Dear Justice Bransten:

We represent Defendants AMC Networks Entertainment LLC (“AMC Channel”), AMC Film Holdings LLC (“AMC Studios”), AMC Networks Inc., and Stu Segall Productions, Inc. (“Segall”) (collectively, “Defendants”). Defendants submit this letter to request a conference before the Court to resolve a discovery dispute regarding Plaintiffs Creative Artists Agency’s (“CAA”), Frank Darabont’s, Ferenc, Inc.’s, and Darkwoods Productions, Inc.’s refusal to produce documents that relate to the allegations in the Complaint filed in the above-referenced matter.

Counsel for the parties and the Court participated in a discovery conference call in this action on June 5. Counsel have since attempted to resolve the current dispute but were unable to reach an agreement.

I. INTRODUCTION

Plaintiffs allege in this action, among other things, that the formula AMC Studios uses to compute Plaintiffs’ contingent compensation is in “blatant disregard for . . . industry custom and practice,” and that AMC Studios acted in bad faith by conducting its negotiations of this formula without regard to industry custom and practice. Compl., ¶ 53. Plaintiff CAA possesses various documents relevant to these allegations on account of it being “one of the top . . . agencies in the entertainment industry.” Compl., ¶ 22. Indeed, by virtue of the numerous actors, directors, producers, and writers that CAA represents in the entertainment industry, the agreements negotiated by CAA and other representatives of its clients reflect the very industry standards within which CAA alleges Defendants failed to negotiate.

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Yet, Plaintiffs refuse to produce these documents, insisting that the documents are confidential and the burdens associated with producing them are too high. This is despite the fact that Plaintiffs have made no showing of burden, Defendants have limited the scope of production to documents concerning basic cable television that were created on or after January 1, 2009, and the Court has stated its intention to issue a protective order. Plaintiffs cannot have it both ways—to allege that Defendants breached industry custom and practice, but then refuse to produce the documents in their possession that speak directly to and disprove these allegations.

II. FACTUAL BACKGROUND

Plaintiffs' Complaint alleges that with respect to the Series, Darabont and CAA have been deprived of contingent compensation—*i.e.*, a percentage of the “gross receipts” received by AMC Studios less certain deductions and exclusions. The formula, or “definition,” that the parties agreed to use to calculate Plaintiffs' contingent compensation is referred to throughout their agreements as “Modified Adjusted Gross Receipts” (“MAGR”).

The parties' agreements provided that MAGR would be defined as follows: “AMC's customary MAGR definition, with such changes as have been [previously] agreed, and subject to such further changes as may be agreed following good faith negotiation within customary basic cable television industry parameters consistent with AMC's business practices and [Darabont's] stature in the basic cable television industry.” *See* Compl., Ex. B, ¶ (d)(3)(b). Plaintiffs allege that AMC breached this provision by failing to negotiate the MAGR definition in good faith consistent with industry custom and practice. *See* Compl., ¶¶ 56(G), 60. Plaintiffs also contend that they were offered a less valuable MAGR definition than what is customary within the basic cable television industry. *See id.*, ¶ 53.

On March 4, 2014, Defendants served document requests tailored to these allegations of Plaintiffs' Complaint. Two categories that CAA objects to are: (1) contingent compensation agreements and related negotiating history for all participants on the Series (RFP Nos. 8-10), and (2) contingent compensation agreements, negotiating history, and contingent compensation statements related to other basic cable television series (RFP Nos. 14, 28-33). CAA objects to producing these documents on the grounds that they are confidential and would be burdensome to produce. Defendants reminded Plaintiffs that the Court plans to issue a protective order in the case and that Defendants had limited their requests to documents created after January 1, 2009. Notwithstanding these and other efforts to resolve their differences informally, the parties have reached an impasse.

III. ARGUMENT

Plaintiffs refuse to produce documents related to “industry custom and practice” despite claiming that Defendants breached their duty to meet this alleged contractual standard. As set forth below, these documents should be produced because they will reveal the truth about Plaintiffs' allegations—that AMC Studios' negotiations with Plaintiffs were not only done in

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good faith consistent with basic cable television industry standards, but that the MAGR definition resulting from these negotiations actually *exceeded* industry standards.

A. Custom and Practice With Respect to the Series.

Defendants seek from Plaintiffs the MAGR definitions and related negotiating history for all Series participants, including those who did not join this lawsuit (RFP Nos. 8-9). These individuals, which include the creator of the original *The Walking Dead* comic book, received the same MAGR definitions as Plaintiffs and engaged in similar negotiations of those definitions with AMC Studios. Plaintiff CAA represents some of these individuals, so Defendants expect that CAA possesses documents illustrating this negotiating history, including the type of modifications to AMC's customary MAGR definition that these individuals requested during the negotiation process, and the concessions to which AMC ultimately agreed. Such negotiating history is highly relevant to disproving Plaintiffs' claims that Defendants deviated from industry custom and practice in the course of negotiating Plaintiffs' agreements.

Defendants also seek communications that these individuals and their representatives had amongst themselves and with Plaintiffs concerning their MAGR definitions (RFP No. 10). To the extent that these individuals—all of whom have the same MAGR definition as Plaintiffs—collaborated with Plaintiffs during the negotiation process, Defendants are entitled to discover correspondence reflecting whether they and Plaintiffs believe that AMC truly engaged in “bad faith” negotiating tactics.

B. Industry Custom and Practice With Respect to Other Cable Television Series.

The remaining documents at issue include the contingent compensation agreements negotiated by and on behalf of plaintiff CAA and its clients, and correspondence reflecting how these agreements were negotiated and administered (RFP Nos. 14, 28-33). These documents will help establish industry custom and practice because CAA represents numerous actors, directors, producers, and writers in the cable television business, and therefore possesses documents that reflect the industry standards within which they allege Defendants failed to negotiate. Moreover, CAA possesses contingent compensation interests of its own (separate from its clients) with respect to several cable television series. Yet, CAA has refused to produce a single document from this category.

During the parties' meet and confers, Defendants explained the relevance of these documents and asked Plaintiffs how they intended to prove their case without them. Plaintiffs responded that they intended to produce the documents that they would use at trial but no others. Unfortunately, the law does not permit Plaintiffs to produce only those documents that support their allegations and fail to provide Defendants with the documents that refute those allegations and bolster their defenses. *See* CPLR 3101(a); *see also* *Allen v. Crowell-Collier Publ'g Co.*, 21 N.Y.2d 403, 406 (N.Y. 1968); *accord* *Johnson v. Nat'l R.R. Passenger Corp.*, 83 App. Div. 2d 916 (N.Y. App. Div. 1st Dep't 1981).

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IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court order Plaintiffs to produce the discovery sought by Defendants herein.

Respectfully submitted,

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