



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALBERT A. GORE, JR. AND JOEL HYATT,)
as Members' Representative on behalf of the Former)
Members of Current Media, LLC,)

Plaintiffs,)

v.)

AL JAZEERA AMERICA HOLDINGS I, INC.,)

Defendant.)

C.A. No. 10040-VCG

REDACTED VERSION --
FILED: AUGUST 20, 2014

VERIFIED COMPLAINT

Plaintiffs Albert A. Gore, Jr. and Joel Hyatt, by and through their undersigned counsel, bring this action against Defendant Al Jazeera America Holdings I, Inc. and allege upon personal knowledge as to their own acts, and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. This case arises from Defendant's willful breach of contract and attempt to defraud Plaintiffs by unlawfully restraining and attempting to seize approximately [REDACTED] in escrow funds that rightfully belong to Plaintiffs and other former members of Current Media, LLC ("Current Media") as a result of their sale of Current Media to Defendant.

2. Plaintiffs are among the former members, officers and directors of Current Media. In his capacity as Members' Representative, Plaintiff Hyatt serves

as the representative, agent, proxy and attorney-in-fact for all other former Current Media members not named in this Verified Complaint, and possesses an array of concomitant obligations, duties, rights, powers and authority.

3. Current Media's primary holding was the cable television network Current TV. Current TV was party to a number of distribution agreements with various programming distributors (*e.g.*, cable and satellite providers) pursuant to which the network was broadcast in over 50 million U.S. subscriber households.

4. Current Media was purchased by defendant Al Jazeera America Holdings I, Inc. in early 2013 for approximately [REDACTED]. Through its purchase of Current Media, Defendant intended to take over Current TV's distribution agreements and replace Current TV with its own network – Al Jazeera America ("AJAM").

5. Of the total [REDACTED] purchase price Defendant paid for Current Media, approximately [REDACTED] was placed in escrow for an 18-month period for the limited purpose of satisfying any indemnification obligations of the former members of Current Media (the "Former Members") under the Agreement and Plan of Merger through which Defendant purchased the company (the "Merger Agreement") and the other related contracts and agreements that governed the sale.

6. The 18-month escrow period ended on July 2, 2014, at which time Defendant was required by the Merger Agreement to enable the prompt return of all unused escrow funds that were not being withheld to satisfy pending indemnification claims submitted in compliance with the Merger Agreement prior to that date.

7. As of July 2, 2014, approximately [REDACTED] remained in escrow (the “Escrow Balance”).

8. Instead of allowing the return of the full Escrow Balance to the Members’ Representative (who, in turn, would distribute it among all Former Members based on their proportional interest in the purchase price received for Current Media), Defendant submitted, on June 27, 2014, five Claim Certificates through which it attempts to manufacture several ways to raid the entirety of the Escrow Balance in express violation of the Merger Agreement.

9. *First*, Defendant has improperly claimed that it is entitled to take [REDACTED] from the escrow account to cover unspecified, non-itemized “expenses” purportedly relating to the termination of a February 2012 contract between Defendant’s parent company Al Jazeera Media Network (“AJ”) and Time Warner Cable (“TWC”). This contract was essentially worthless to both parties because it permitted (but did not require) TWC to carry AJ’s first English-language network,

and predecessor to AJAM, Al Jazeera English (“AJE”), for free. TWC never exercised its free option to carry AJE and, as a result, AJ never received money or airtime for AJE under the deal. Despite the uneconomic nature of this agreement with TWC, prior to closing the sale of Current Media to Defendant, Defendant represented to Plaintiffs that it needed to terminate the agreement in order to ensure the post-sale viability of the revenue stream generated by the Current TV distribution agreements it would be taking over. Defendant also represented to Plaintiffs that termination expenses would consist only of minimal legal and administrative costs, which appeared reasonable given the inherent lack of value in the contract to TWC, Defendant or AJ. As a result of Defendant’s representations, Plaintiffs agreed in the Merger Agreement to cover half of the legitimate costs related to the “termination, cancellation, discontinuance or nonperformance” of AJ’s deal with TWC. In now claiming in a June 27, 2014 Claim Certificate that it is entitled to [REDACTED] in unspecified, unsupported “expenses” purportedly relating to the termination of that contract (meaning that terminating the deal purportedly cost Defendant [REDACTED]), Defendant has demonstrated that the aforementioned representations were based on falsehoods. A true and correct copy of the June 27, 2014 Claim Certificate is attached hereto as Exhibit 1.

and that he was never given the opportunity to control. A true and correct copy of the Dish Claim Certificate is attached hereto as Exhibit 2.

12. Defendant's Dish Claim Certificate is facially invalid, however, because none of the four representations and warranties cited in the Claim Certificate, nor any other representations and warranties, have been revealed to have been breached by Dish's insupportable claim for [REDACTED]. The Claim Certificate also fails to provide the requisite reasonable basis for the claims it asserts or to establish that [REDACTED]. Moreover, Defendant's failure to give timely notice to Plaintiff Hyatt and to permit him to control the defense of Dish's claim and audit – each constituting breaches of the Merger Agreement – have materially prejudiced the Former Members because, had Defendant provided notice and the ability to control the defense to Plaintiff Hyatt as required by the Merger Agreement, Plaintiff Hyatt would have been able to demonstrate that Dish's claim was patently baseless without incurring [REDACTED] in fees and expenses and without ever having to pay Dish the [REDACTED] it seeks. As a result, the Merger Agreement bars Defendant from seeking indemnification related to Dish's baseless claim for [REDACTED].

13. *Third*, Defendant failed to notify Plaintiff Hyatt of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], in clear violation of Defendant's contractual obligations under the Merger Agreement. Defendant also did not permit Plaintiff Hyatt to control the defense of [REDACTED], as it was contractually obligated to do. Indeed, Defendant's CEO, Ehab al Shihabi, was specifically informed of these contractual obligations. Yet, despite this knowledge, al Shihabi nonetheless instructed others in the company not to inform Plaintiff Hyatt about [REDACTED]. To make matters worse, Defendant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This

[REDACTED] claim is now the subject of yet another June 27, 2014 Claim Certificate, though the Claim Certificate provides no hint whatsoever as to what this purported [REDACTED] may be. Defendant was subsequently sued by

DirecTV for this same amount on July 11, 2014 – over one week after the close of the escrow period. Over three weeks later, Defendant notified Plaintiff Hyatt of DirecTV’s lawsuit and purported to offer him the right to control the defense of this “Third Party Claim,” despite the fact that the escrow period had long since closed. A true and correct copy of the DirecTV Claim Certificate is attached hereto as Exhibit 3.

14. Again, however, the June 27 DirecTV Claim Certificate is facially invalid, as it fails to provide a reasonable basis for the claims it asserts or to establish either that Current TV violated the [REDACTED] in its distribution agreement with DirecTV or that there were any inaccuracies in the representations and warranties that Defendant cites. Moreover, Defendant’s [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] violated the Merger Agreement and also materially prejudiced the Former Members, as Plaintiff Hyatt would have been able to [REDACTED]
[REDACTED], and therefore no monies owing to DirecTV. As to DirecTV’s July 2014 lawsuit, because it was filed after the escrow period had already elapsed, Plaintiff Hyatt is under no obligation to either defend the suit

himself or permit Defendant to claim indemnification for damages that it may incur in its own defense of the suit. And even if the escrow period was still open today, the lawsuit filed by DirecTV in California state court is the same exact Third Party Claim as DirecTV's April 2014 [REDACTED]

[REDACTED] The operative date for this Third Party Claim is therefore not July 11, 2014, but April 23, 2014, meaning that Defendant's August 2014 notice to Plaintiff Hyatt and offer to let him control the defense of the lawsuit was grossly tardy, materially prejudicing Plaintiffs (as did the botched efforts by Defendant to defend against DirecTV's claim on its own from April 23 to July 11). A true and correct copy of Defendant's August 2014 notice is attached hereto as Exhibit 4. As a result, the Merger Agreement bars Defendant from seeking indemnification related to DirecTV's baseless claim for [REDACTED] in any way, shape or form.

15. *Fourth*, Defendant failed to notify Plaintiff Hyatt that AT&T Services, Inc. ("AT&T") invoked [REDACTED] in March 2013 and failed to permit Plaintiff Hyatt to control [REDACTED], as he was contractually entitled to do in his capacity as Members' Representative. As a result of [REDACTED], AT&T served Defendant with a termination letter claiming that [REDACTED]

[REDACTED] and purporting to terminate AT&T's distribution agreement with Current TV, which Defendant had been assigned, despite the fact that [REDACTED]

16. Just as with the Dish and DirecTV Claim Certificates, however, the AT&T Claim Certificate is facially insufficient, as it establishes only that AT&T – a distributor that, like many other distributors over the years, clearly wanted nothing to do with Defendant and its programming – has *claimed* that [REDACTED] were violated, not that those claims are *actually correct*. Simply put, there were no inaccuracies in the representations and warranties cited in the AT&T Claim Certificate, Current TV never violated [REDACTED] in its distribution agreement with AT&T and nothing in the AT&T Claim Certificate provides the requisite reasonable basis for believing otherwise. Moreover, Defendant again failed to notify Plaintiff Hyatt of AT&T's termination claim and permit him to control the defense of it. Instead, Defendant defended against this claim by launching a lawsuit against AT&T and eventually settling that lawsuit, all without notice to or the participation or approval of Plaintiff Hyatt, in clear violation of the Merger Agreement. Defendant's failure to notify Plaintiff Hyatt and permit him to

control the defense of both [REDACTED] and the resulting termination claim materially prejudiced the Former Members, as Plaintiff Hyatt, in his capacity as Members' Representative, would have been able to establish that there had been [REDACTED] [REDACTED] and that there existed no basis for AT&T to terminate the distribution agreement, sparing Defendant from all of the myriad damages it purports to have suffered in its AT&T Claim Certificate. A true and correct copy of the AT&T Claim Certificate is attached hereto as Exhibit 5.

17. *Fifth*, Defendant has also served Plaintiff Hyatt with an invalid Claim Certificate related to a [REDACTED] settlement that it purportedly entered into with CBS Broadcasting, Inc. ("CBS") in February 2013 regarding a dispute over "a purported newsfeed licensing agreement." But as the Merger Agreement and its related schedules specifically apprised Defendant of the pendency of this dispute and the fact that Current Media "anticipate[d] the settlement" of it, there were no inaccuracies in the representations and warranties contained in sections of the Merger Agreement upon which Defendant bases this Claim Certificate. The Merger Agreement does not provide for the indemnification of fully disclosed liabilities such as the CBS dispute absent a showing of such inaccuracies. And even if there were some inaccuracy in the representations and warranties related to the CBS dispute, the Claim Certificate fails to "specify[] in reasonable detail . . .

the nature of the claim to which such Damages are related,” as required by the Merger Agreement. Moreover, even if damages related to the CBS dispute were somehow indemnifiable, the dispute constituted a Third Party Claim under the Merger Agreement, meaning that Defendant breached the terms of the Merger Agreement by failing to permit Plaintiff Hyatt to control the defense of it, which breach also materially prejudiced the Former Members. Instead, Defendant settled the claim without Plaintiff Hyatt’s participation and approval, thereby breaching the Merger Agreement yet again and further materially prejudicing the Former Members. A true and correct copy of the June 27, 2014 Claim Certificate is attached hereto as Exhibit 1.

18. *Sixth*, Defendant alleges in still another Claim Certificate that simply because it devised the foregoing array of fraudulent and meritless claims against the escrow account, the purported value of which – when combining the present claims discussed above and the future claims discussed below – is in excess of the Escrow Balance, it is therefore entitled to refuse indemnification for certain other ongoing matters for which valid claims were unquestionably served prior to the close of the escrow period and should be reimbursed for certain defense costs already paid out. Specifically, Defendant asserts that it may stop paying Plaintiff Hyatt’s defense costs for certain ongoing matters involving certain Former

Members (the “Former Members Matters”) and claims to “expressly reaffirm” its supposed “right” to recover defense costs expended by Plaintiff Hyatt for a “finder’s fee” litigation in California (the “Finder’s Fee Litigation”) that recently ended with a judgment in Current Media’s favor. But these are not proper “Claims” under the Merger Agreement, and in any event, Defendant’s position is erroneously premised on the notion that its other spurious claims against the escrow account somehow relieve it from its indemnification obligations with regard to the Former Members Matters and Finder’s Fee Litigation, obligations which Defendant had met without protest until it served Plaintiff Hyatt with its five June 27 Claim Certificates. The Merger Agreement, however, provides no basis for Defendant’s position. Rather, this appears to be an improper attempt by Defendant to gain leverage in negotiations over its other claims by refusing to abide by its indisputable obligation to pay the costs for the Former Members Matters and Finder’s Fee Litigation – costs which will end up being borne in any event by the funds held in the escrow account to satisfy the obligations of the Former Members.

19. *Seventh*, all of the Claims Certificates are defective for failing to specify in reasonable detail the basis of the claims they purport to set forth, as required under the Merger Agreement. Defendant has failed to identify or furnish

information readily available to it to provide a reasonable basis to substantiate its claims. Defendant has not disclosed or furnished (i) any details or supporting documentation of the purported [REDACTED] in expenses relating to the TWC Claim Certificate, the [REDACTED] in purported attorneys' fees and costs relating to the Dish Claim Certificate, the [REDACTED] in attorneys' fees and expenses relating to the DirecTV Claim Certificate, the [REDACTED] in attorneys' fees and disbursements relating to the AT&T Claim Certificate or the [REDACTED] in attorneys' fees and expenses relating to the CBS Claim Certificate, such as invoices of attorneys or other service providers; (ii) sufficient detail about the basis of the alleged [REDACTED] [REDACTED] at issue in the Dish and AT&T Claim Certificates and, in the case of the DirecTV Claim Certificate, *any detail at all* about [REDACTED] [REDACTED] (iii) the results of [REDACTED] [REDACTED] including the [REDACTED] [REDACTED] or (iv) the basis of any alleged breaches of representations and warranties in the Merger Agreement. As a result of these fundamental infirmities, no escrow funds may be retained to satisfy any of the defective Claim Certificates submitted by Defendant.

20. *Eighth*, there is no basis in the Merger Agreement for Defendant to “reserve” any purported “right” to amend the Dish, DirecTV or AT&T Claim

Certificates to add claims or otherwise cure any of the myriad defects in those or any other Claim Certificates outside of the escrow period that ended on July 2, 2014. The purely hypothetical potential future claims asserted in the Dish, DirecTV and AT&T Claim Certificates do not fulfill the requirements of the Merger Agreement, as Defendant purports to believe only that future claims “may” be brought whereas the Merger Agreement explicitly requires a reasonable belief that such future claims “will” be brought – a significantly higher bar that these Claim Certificates do not even attempt to clear. In short, Defendant is not permitted to unilaterally extend the escrow period by making vague and speculative “placeholder” claims now and then amending its Claim Certificates after the escrow period has ended, if and when it possesses the requisite reasonable basis for believing that such claims actually “will” be brought. With the escrow period having closed, it is now simply too late for Defendant to cure the fundamental deficiencies regarding these speculative future claims, regardless of its empty attempt to “reserve rights” that it is not actually granted by the Merger Agreement.

21. As a result of the fraud and breaches of contract enumerated above, Plaintiffs ask the Court to order Defendant to authorize and facilitate the immediate turnover of the entire Escrow Balance to Plaintiffs (less any amount

needed to cover indemnification related to the Former Members Matters and Finder's Fee Litigation, for which indisputably valid claims were properly served prior to the close of the escrow period); to award Plaintiffs general and/or compensatory damages and their attorney fees and costs; to grant the declaratory relief requested below; and to award all other relief as may be appropriate.

PARTIES

22. Plaintiff Albert A. Gore, Jr. is the former Executive Chairman of the Board of Current Media, a former member of Current Media and the former Vice President of the United States. As a former member of Current Media, Plaintiff Gore has a direct economic interest in the Escrow Balance.

23. Plaintiff Joel Hyatt is the former Chief Executive Officer of Current Media, a former Director of Current Media and a former member of Current Media. Pursuant to the terms of the Merger Agreement, Plaintiff Hyatt also serves as the Members' Representative for all other former Current Media members. As the Members' Representative, Plaintiff Hyatt is empowered to bring suit challenging claims made against the escrow account established by the Merger Agreement. Plaintiff Hyatt is also entitled to contest, negotiate, defend, compromise or settle any "Legal Proceeding" – including claims, audits, litigations

or investigations by third parties – for which Defendant might seek to draw against the escrow account established by the Merger Agreement.

24. Defendant Al Jazeera America Holdings I, Inc. is a privately held corporation formed under the laws of Delaware and with its principal place of business in New York.

JURISDICTION

25. This Court has jurisdiction over this action pursuant to 8 *Del. C.* § 111(a) and 10 *Del. C.* § 341.

FACTUAL ALLEGATIONS

I. Plaintiffs Form Current Media And Build An Extensive Distribution Network Of More Than 50 Million U.S. Subscriber Households Within A Few Years

26. In 2004, Plaintiffs purchased from French media conglomerate Vivendi Universal Entertainment a 24-hour cable news network called Newsworld International (“NWI”) for approximately \$70 million through a new company called INdTV Holdings, LLC (“INdTV Holdings”), in an acquisition financed by equity capital firms and other investors.

27. At the time that Plaintiffs acquired NWI, its value as an acquisition target came chiefly from the distribution agreements that it had with two major cable distributors in the United States. As an acquirer, INdTV Holdings could

inherit these agreements and launch a new network – to be called INdTV – with the consent of each distributor so long as certain conditions were met. One such condition was that the post-acquisition programming conformed to the “service description” or “content category” contained in each distribution agreement, which in the case of NWI required news and information programming.

28. Plaintiffs intended to develop INdTV as an independent, non-partisan voice in an era of increasing consolidation and political polarization in television news programming. INdTV would primarily target the 18-to-34-year-old demographic, the most coveted of all advertising demographics.

29. Plaintiff Gore – who had worked as a journalist for several years before entering government service – was appointed as the Executive Chairman of INdTV. Plaintiff Hyatt was appointed Chief Executive Officer of INdTV.

30. By the time INdTV Holdings purchased NWI, INdTV had already recruited several television and cable industry heavyweights to provide financing and help develop programs. INdTV’s advisory board included, among others, Steve Jobs of Apple Computer, Inc., and Orville Schell, the Dean of the University of California at Berkeley School of Journalism.

31. At the time of purchase, NWI’s distribution network reached approximately 17 million subscriber homes, primarily through distribution

agreements with DirecTV and TWC, as well as some limited carriage with Comcast in certain markets such as the San Francisco Bay area. As a point of comparison, Fox News Channel was available in more than 85 million homes in the first quarter of 2004.

32. In the months after purchasing NWI, Plaintiffs continued to develop their new network and its programming ahead of a planned August 1, 2005 launch. Plaintiffs established a headquarters and built production and post-production studios in San Francisco. They hired David Neuman, a former NBC executive and President of both Walt Disney Television and Touchstone Pictures, as the President of Programming.

33. In April 2005, Plaintiffs announced that the new network would be called Current TV, and that INdTV Holdings would become Current Media.

34. Plaintiffs then set out to dramatically increase Current TV's carriage with cable and satellite providers from the 17 million subscriber households reached by its predecessor NWI. Plaintiff Hyatt stated publicly that the company's goal was for INdTV to reach 50 million subscriber households within five years.

35. NWI's biggest distributor at the time of its acquisition by Plaintiffs was DirecTV, which distributed the network through its "Total Choice" package of programs, its most popular and widely distributed tier of programming. On

July 28, 2005, DirecTV and Current TV announced the signing of a ten-year agreement extending Current TV's carriage on DirecTV's "Total Choice" programming packages and providing for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

36. The agreement with DirecTV laid the groundwork for similar extensions with other distributors, and new agreements with distributors that did not previously carry NWI.

37. Each of Current TV's distribution agreements contained an MFN clause stating in essence that if Current TV provided service to any third party on economic terms that could be deemed more favorable than the terms contained in a given distribution agreement, Current TV was required to give written notice to the distributor and permit the distributor to amend its own agreement to contain the more favorable economic terms if the distributor so chose.

38. The distribution agreements that Plaintiffs Gore and Hyatt negotiated with distributors on behalf of Current TV eventually resulted in carriage for the network into more than 50 million U.S. subscriber households, [REDACTED]

[REDACTED]. As a result of these lucrative

distribution agreements, and growth in its advertising sales, Current TV was able to generate annual revenues of almost \$100 million.

39. The revenues generated by these distribution agreements permitted Current TV to invest in its programming. As a result, Current TV attracted world class media talent and well-known political personalities to the network. Current TV also earned some of the most prestigious awards in television journalism, including, among others, two Emmy Awards, an Alfred I. duPont–Columbia University Award, two Livingston Awards and a coveted Peabody Award.

II. Al Jazeera Attempts To Get A Foothold For Al Jazeera English In The United States But Fails Miserably, Signing Only A Single One-Sided, Uneconomic Agreement With Time Warner Cable That Does Not Even Result In The Distribution Of Al Jazeera English

40. Around the same time that Plaintiffs Gore and Hyatt were developing Current TV, the Al Jazeera Media Network (“AJ”), a multinational media conglomerate based in Doha, Qatar, was seeking to expand its Middle Eastern media empire into the English-speaking world. AJ is fully owned and funded by the House of Thani, the ruling family of Qatar.

41. On November 1, 1996, AJ’s Al Jazeera Satellite Channel (“AJSC”) went live, launching with a loan of more than \$130 million from the then-Emir of Qatar.

42. On November 15, 2006, after several months of delays, AJ launched the English-language Al Jazeera English (“AJE”) in an attempt to reach a broader Western audience.

43. When it launched in November 2006, despite having one of its four news centers in Washington, D.C. (the others being in London, Doha and Kuala Lumpur), AJE did not actually have carriage with any of the major United States cable television providers such as Comcast, TWC, Cox Communications, Charter Communications or Cablevision. Likewise, neither of the two major U.S. satellite television providers – Dish and DirecTV – carried AJE.

44. Rather, AJE’s only U.S. distribution at launch was through niche satellite distributors such as GlobeCast World TV (a subsidiary of a French company that offered satellite television service broadcasting foreign television programs), streaming service over the internet via its own website and internet television carriers with miniscule amounts of customers such as JumpTV and Virtual Digital Cable Corporation.

45. Desperate to better position AJE in the United States television marketplace by securing widespread distribution with major cable and satellite television providers, AJ spent several years aggressively courting U.S. distributors for AJE, always with the same results – disinterest and rejection. For example, AJ

entered into discussions on several occasions with Comcast, the nation's largest cable company, but Comcast repeatedly decided not to carry AJE. The same decision was made by all of the other major U.S. cable and satellite television providers to which AJ made overtures.

46. By 2010, four years after its launch, outside of the internet and niche satellite television providers broadcasting primarily or exclusively foreign programming, AJE could only find carriage on three small regional cable providers in the United States – Toledo, Ohio's Buckeye Cablesystem, which brought AJE to less than 150,000 homes; Burlington, Vermont's Burlington Telecom, which offered the network to about 1,000 homes; and Washington, D.C.'s Washington Cable, which reached only about 500 homes. In 2011, AJE added three other cities to this short list, but only indirectly, by paying to sublet airtime directly from other obscure networks (*e.g.*, New York City's RISE), often on public television (*e.g.*, Los Angeles' KCET and Chicago's WTTW).

47. Finally, in February 2012 – eight months before entering into negotiations to acquire Current Media and Current TV and more than five years after the network first launched – AJE struck an eight-year distribution deal with TWC, the second-largest cable company in the U.S., which served customers in

multiple states including the New York City and Los Angeles metropolitan areas (the “AJE-TWC Agreement”).

48. Unfortunately for AJE, the AJE-TWC Agreement did not result in any distribution within the United States or in any revenues whatsoever, as the deal was what TWC later referred to in the media as a “hunting license” giving TWC the unilateral right to carry AJE on any of its local cable systems *only if it so chose*. Thus, TWC was not required to carry AJE on any of its systems, and if TWC did choose to carry AJE in any markets, it could then drop the network at any time for any reason, or for no reason at all.

49. Additionally, unlike most distribution agreements, which require the payment of a monthly per-subscriber-household license fee from the cable or satellite television company to the network, the AJE-TWC Agreement did not require TWC to pay any license fee at all in the event that it decided to actually carry AJE on any of its local cable systems.

50. In the end, TWC never launched AJE on any of its local cable systems, even though it could have done so for free under the AJE-TWC Agreement.

III. Having Failed To Obtain Meaningful Carriage For Al Jazeera English, Defendant Purchases Current Media In Order To Use Its Extensive Reach Into Over 50 Million U.S. Subscriber Households For A New Network, Al Jazeera America

A. Defendant Acquires Current Media From Plaintiffs For [REDACTED] [REDACTED] Approximately [REDACTED] Of Which Was Held In Reserve To Cover Potential Liabilities Or Litigation Costs

51. Prior to Defendant's acquisition of Current Media, AJE reached a miniscule number of U.S. homes (and even fewer actual viewers) through its patchwork distribution approach. Looking for a new entrée into the American television market after the disastrous failure of AJE in the United States, Defendant saw an opportunity to immediately increase its American reach by quantum leaps to over 50 million U.S. subscriber households by purchasing Current Media.

52. Instead of running AJE programming in place of Current TV after it purchased Current Media, Defendant intended to launch an entirely new network – Al Jazeera America (“AJAM”) – with the majority of its content produced by new American bureaus unconnected with AJE.

53. In October 2012, Defendant entered into negotiations with Current Media and neared a final deal in December 2012.

54. Plaintiffs initially harbored serious reservations about selling Current Media to Defendant. After careful due diligence, however, including consultations with several former senior U.S. government officials, Plaintiffs decided to meet

with Defendant. As those discussions with Defendant about a possible sale progressed, Plaintiffs concluded that AJ's large-scale entrance into the United States mass media marketplace would likely result in a significant improvement of its journalism not just in the United States, but across its global properties in the Middle East and elsewhere, which in turn could help foster deeper mutual understandings between the United States and the Arab world. In short, Plaintiffs believed that AJ's presence in the United States would likely result in more influence by the United States on AJ as opposed to more influence by AJ on American viewers.

55. Plaintiffs ultimately agreed to sell Current Media to Defendant (along with Current TV and its extensive network of distribution agreements) for approximately [REDACTED] in late December 2012.

56. The transaction was scheduled to close on December 31, 2012. Closing the transaction during 2012 was understood by all parties to be a key component of the deal. All of the final legal documents were ready for signing late in the afternoon of December 31, in time to file the transaction with the Office of the Delaware Secretary of State that day so as to meet the objective of concluding the transaction during the 2012 calendar year.

57. Both Defendant and its lawyers pressed Plaintiff Hyatt to sign the Merger Agreement moments before the 5:00 p.m. cut-off for filing the transaction in Delaware. However, Defendant had not yet fulfilled its major pre-closing condition – wiring the funds to the Payment Agent Bank as required by the Merger Agreement. Instead of wiring the funds as required by the Merger Agreement, Defendant pressured Plaintiffs to transfer legal control of Current Media to Defendant for a payment of the purchase price that would be made “later” – after the January 1, 2013 holiday. Plaintiffs refused to do so.

58. Consequently, the transaction was not completed during 2012, and the Former Members suffered additional tax burdens as a result of Defendant’s failure to honor its commitments under the Merger Agreement – a failure made even more egregious by Defendant’s underhanded attempt to close the transaction without actually paying the Former Members the purchase price, an attempt that was echoed 18 months later in Defendant’s Claim Certificates.

59. When the deal was eventually completed in early 2013, the Merger Agreement provided that [REDACTED] of the total consideration for the sale of Current Media would be held in escrow for 18 months, where it could be used to satisfy indemnification obligations of the Former Members under the Merger Agreement that arose during the escrow period, running through July 2, 2014 (but

not afterwards), and [REDACTED] was to be available to pay expenses of the Members' Representative. Pursuant to Section 8.7(b) of the Merger Agreement, whatever portion of the escrow money was not depleted after 18 months was to be immediately transferred to the Former Members on July 3, 2014, one day after the escrow period had elapsed.

60. Section 8.3 of the Merger Agreement limits Defendant's access to the funds in the General Escrow Account for purposes including:

- i. "any failure or inaccuracy of any representation or warranty made by the Company or the Members' Representative" in any of the documents related to the transaction, as of the date that the contract was signed;
- ii. "any breach or non-fulfillment of any covenant or agreement made or to be performed by the [Former] Members, the Company or the Members' Representative" in any of the documents related to the transaction;
- iii. "any exercise or purported exercise by any [Former] Member of appraisal rights in accordance with the California LLC Act";
- iv. all taxes of the company or taxes for which the company is liable;
- v. any action or claim asserting ownership or an interest in the Company that differs from the Company Disclosure Letter, or otherwise relates to the merger; and
- vi. "any Liabilities, costs or expenses incurred by Parent or any of its Affiliates, whether prior to or after the Closing, as a result of (A) the failure of the Company to obtain the Affiliate Consent of Time Warner Cable Inc., as set forth in Schedule 7.2(f)(A), the actions taken by the Company to satisfy the condition set

forth in Section 7.2(m) or the failure or inaccuracy of the representations and warranties made by the Company set forth in the last sentence of Section 4.24 or (B) the termination, cancellation, discontinuance or nonperformance by Al Jazeera Media Network of that certain Affiliation Agreement, dated as of February 2012, by and between Al Jazeera Media Network and Time Warner Cable Inc.; provided that, for the avoidance of doubt, such Liabilities, costs or expenses shall not include payments that the Company would otherwise be entitled to receive under the TWC Affiliation Agreement or any lost revenues or profits or diminution in value of the Company as result of the termination of such agreement.”

61. Taking the provisions of Section 8.3 together, the [REDACTED] in escrow funds was subdivided into three categories: (1) [REDACTED] in the General Escrow Account to cover potential damages and costs that might arise under the indemnity provisions of the Merger Agreement; (2) [REDACTED] in a Specified Litigation Escrow Account, which was set aside for then-ongoing litigation with a former employee; and (3) [REDACTED] in a Members’ Representative’s Expense Fund to cover any expenses that the Members’ Representative (Plaintiff Hyatt) might incur on behalf of the Former Members during the 18-month period between the sale of the company and the release of the escrow funds to the Former Members.

62. Pursuant to Section 8.10 of the Merger Agreement, the Members’ Representative has the indisputable ability and right to participate in and, in most instances, control any defense against “Third Party Claims,” which term is defined to include audits, litigation and other claims by third parties for which Defendant

might reasonably seek to draw against the General Escrow Account. Section 8.10 also requires that Defendant provide timely notice to the Members' Representative of any such pending Third Party Claims, and provides that, if the failure to provide such timely notice causes material prejudice to the Former Members, Defendant will be barred from seeking indemnification of such claims from the General Escrow Account.

63. Quite obviously, without receiving timely notice of an audit request or other pending Third Party Claim, the Members' Representative would be unable to exercise the broad array of the powers granted to him by the Merger Agreement in controlling the defense of that claim.

64. Section 8.9(c) of the Merger Agreement also explicitly provides that if Defendant "settles or otherwise compromises" a Third Party Claim without the consent of the Members' Representative, such settlement or compromise

shall not affect in any way the right of the Members' Representative to contest the obligation of the [Former] Members to indemnify [Defendant] with respect to such Third Party Claim pursuant to this Agreement or otherwise, including the right to contest or dispute the litigation strategy of the [Defendant], the cost of counsel selected by the [Defendant], or whether such settlement or compromise was materially affected by [Defendant's] existing relationship with the third party claimant.

65. And while Section 8.10(a) provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims,

even if one of these exceptions applied, Defendant would still have to notify the Members' Representative of the Third Party Claim and permit him to retain his own counsel and "participate in the defense of such Third Party Claim." Section 8.10(c) further provides that, even where Defendant has properly "assumed the defense" of a Third Party Claim under the narrow set of circumstances provided in Section 8.10(a), Defendant nevertheless "shall not agree to any settlement without the written Consent of the Members' Representative."

66. Sections 8.8 and 8.9 of the Merger Agreement also provide for specific processes by which claims against the General Escrow Account can be made by Defendant and how the Members' Representative can dispute them.

67. Specifically, Section 8.8 provides that, before the escrow period ends (*i.e.*, before July 2, 2014), Defendant must present a Claim Certificate describing charges incurred and forecasting any future payments. In forecasting future payments, Section 8.8(a) requires Defendant to state "that it reasonably believes it **will** incur or pay" future damages, state the maximum amount of such damages, and specify "in reasonable detail (based upon the information possessed by [it]) the nature of the claim." The Merger Agreement does not provide for indemnification of prospective future damages based on the mere representation that Defendant believes that it **may** incur such damages, nor does it give Defendant the right to

make a vague “placeholder” claim against the escrow account without any reasonable basis for doing so one day prior to the close of the escrow period and then amend that claim after the escrow period has ended, when it might someday hypothetically possess the requisite reasonable basis for believing that it actually “will” face such a claim. The Merger Agreement also does not allow the Defendant to cure a defective Claim Certificate after the escrow period has ended.

68. Section 8.9 of the Merger Agreement also empowers the Members’ Representative to challenge a claim against the escrow account. Pursuant to Section 8.9(a), the Members’ Representative may challenge such claims by giving written notice within 20 business days of receiving a Claim Certificate. Section 8.9(b) then prescribes a 30-business day period for engaging in good faith negotiations to resolve any such challenges. Section 8.9(c) further provides that, “[i]f no such agreement can be reached” during the 30-business day period, “but in any event upon the expiration of” that period, “the Members’ Representative may bring suit in the courts of the State of Delaware . . . to resolve the matter.”

69. Additionally, Section 8.9(d) provides that, “in any suit pursuant to Section 8.9” of the Merger Agreement, the “non-prevailing party . . . shall pay its own fees and expenses and the fees and expenses of the prevailing party, including attorneys’ fees and costs reasonably incurred in connection with such suit.”

70. Section 3.5(a) of the Merger Agreement further states that “[d]istributions of any Escrow Cash from either Indemnification Escrow Account shall be governed by the terms and conditions of the Escrow Agreement.” Section 8.7 provides that the Escrow Agent – defined in the separate Escrow Agreement as U.S. Bank National Association – must disburse whatever funds remain in the General Escrow Account to Plaintiffs, the Former Members, on the business day following the day that is 18 months after the closing date – *i.e.*, July 3, 2014.

71. Under Section 8.10 of the Merger Agreement, Defendant’s failure to provide prompt notice of a Third Party Claim to Plaintiff Hyatt does not relieve the Former Members of their indemnification obligations unless Defendant’s failure to notify results in the Former Members being materially prejudiced. To the extent that Defendant may argue that Section 8.10 somehow absolves it from providing Plaintiff Hyatt with adequate notice of a Third Party Claim before the close of the escrow period, however, Defendant has plainly misinterpreted the Merger Agreement. In fact, such an interpretation would render the unambiguous language of Section 8.8 – which requires that “claims on [the] Indemnification Escrow Fund” be brought “[o]n or before the last day of the General Escrow

Period” – meaningless. Therefore, any such interpretation of Section 8.10 would be unreasonable.

72. The language of Section 8.10 is clearly better understood as referring to events that occur *during* the escrow period. It would encompass, for example, a situation in which a third-party distributor provided Defendant with “notice of the assertion or commencement of [a] Legal Proceeding” the day after the Merger Agreement was signed. If Defendant then waited three months to notify Plaintiff Hyatt of such a Third Party Claim, the Former Members would still be obligated to indemnify Defendant if Defendant’s delay did not prejudice them. If, however, Defendant notified Plaintiff Hyatt *after* the close of the escrow period (as is the case with Defendant’s August 2014 letter to Plaintiff Hyatt purporting to notify him of a lawsuit filed against it by DirecTV on July 11, 2014), Defendant would not be entitled to indemnification, *even if such late notice would not have prejudiced the Former Members in any way*. In other words, Section 8.10 cannot be read to modify or limit Section 8.8.

B. Plaintiff Hyatt Personally Obtains Consent From All But One Of Current TV’s Distributors, With TWC The Lone Holdout

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

74. The substance of Plaintiff Hyatt's discussions with Current TV's distributors confirms that Defendant could not have launched AJAM in the United States without his assistance in encouraging the distributors to consent to the sale. All of Current TV's distributors indicated that they had previously turned down direct requests from AJ for distribution of AJAM's predecessor network, AJE.

1. Plaintiffs Sought To Obtain DirecTV's Consent, Which DirecTV Granted Only After Plaintiffs Agreed To A Ransom Payment Of [REDACTED] Out Of The Former Members' Sale Proceeds

75. On December 14, 2012, Plaintiff Hyatt met with DirecTV's representatives to request DirecTV's consent to the sale of Current Media to Defendant, and, after several days of intense discussions, DirecTV indicated that it would give its consent to the sale, [REDACTED]

[REDACTED].

76. Days before the sale was to be consummated, Defendant insisted that

[REDACTED].

77. Current Media subsequently paid DirecTV [REDACTED] to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. This payment came from Current Media's Former Members' proceeds of the deal, thereby reducing such proceeds by [REDACTED].

2. Plaintiff Hyatt Obtained The Consent Of Comcast And AT&T

79. In December 2012, Plaintiff Hyatt met separately with both Comcast and AT&T to request their consent to the sale of Current Media to Defendant.

80. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Comcast consented to the change of control on December 20, 2012.

81. During Plaintiff Hyatt's meeting with AT&T, AT&T expressed concern that its customers might not want AJAM on their cable systems. Plaintiff Hyatt persuasively argued that AT&T should not base its decision on any form of ignorance or bias, and on December 27, 2012, AT&T conveyed its consent to Plaintiff Hyatt via email. AT&T sent Plaintiff Hyatt a signed copy of its consent to the sale the following day, December 28, 2012.

3. TWC Does Not Consent To The Sale Of Current Media Because Of The AJE-TWC Agreement And Defendant Subsequently Makes Fraudulent Representations To Plaintiffs To Seek To Cause The Former Members To Agree To Indemnify It For Half The Cost Of Terminating That Agreement

- i. Plaintiffs Sought To Obtain TWC's Consent, But Were Hamstrung By The AJE-TWC Agreement Granting TWC The Option To Carry AJE For Free

82. TWC was the only distributor that refused to grant its consent, which meant that Defendant would be purchasing Current Media but could not be assigned Current TV's distribution agreement with TWC. After it became clear that TWC would not consent to the sale, Current Media and Defendant negotiated a reduction in the purchase price for the company.

83. In December 2012, Plaintiff Hyatt met with TWC's representatives to discuss whether TWC would consent to a change of control at Current Media whereby Defendant would step into Current TV's existing agreement with TWC and replace Current TV's programming with AJAM. TWC refused to consent, citing the fact that the existing AJE-TWC Agreement gave it the option for eight years to broadcast AJE for free (which option it never exercised) and was therefore a far better deal for TWC than permitting AJAM to step into the existing distribution agreement with Current TV, which would have required TWC

84. During this meeting, however, TWC left open the possibility that, if AJAM was successful, it would consider carrying the network and would pay for it, [REDACTED]

85. Once the deal between Current Media and Defendant was signed, TWC announced that it would immediately stop carrying Current TV, but stated publicly that it might add AJAM later, “as the service develops.”

- ii. Defendant Makes Fraudulent Misrepresentations To Induce Plaintiffs To Agree To Split The Cost Of Terminating The AJE-TWC Agreement In Order To Facilitate A Fraudulent And Invalid Claim Against The Escrow Account Related Thereto

86. During the acquisition negotiations, Defendant’s CEO Ehab al Shihabi represented to Plaintiff Hyatt that Defendant would not be prepared to launch AJAM until several months after the sale of Current Media was finalized. He further represented that Defendant intended to take Current TV off the air immediately on Comcast, DirecTV, AT&T and the other distributors whose Current TV distribution agreements Defendant would be taking over and run AJE programming on its newly purchased network until AJAM was ready to launch.

87. Al Shihabi also represented to Plaintiff Hyatt (and Defendant’s outside counsel represented to Current Media’s outside counsel) that failing to terminate the AJE-TWC Agreement prior to changing Current TV’s programming

over to AJE would leave it vulnerable to the possibility that TWC could exercise its unilateral right to carry AJE for free while AJE programming was running on an interim basis on the other distributors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88. As part of the negotiations over the final details of the acquisition, Defendant's counsel therefore requested of Current Media's counsel that Plaintiffs agree to get TWC to release Defendant's parent, AJ, from the one-sided AJE-TWC Agreement. Plaintiffs and their counsel explained to Defendant that it would be impossible to get that consent in sufficient time to close the transaction on the already-delayed schedule, given that the request was made on New Year's Day and the sale was expected to close the following day.

89. Defendant then requested that Plaintiffs instead indemnify it for any damages associated with Defendant's termination of the AJE-TWC Agreement.

90. Defendant, via its outside counsel, represented to Current Media's outside counsel that the only known potential damages that could result from

terminating the AJE-TWC Agreement, which had no value to Defendant, AJ or TWC, would be minor legal expenses associated with crafting the paperwork necessary to dissolve the contract.

91. Based on Defendant's representations that it planned to run AJE programming until AJAM was ready to launch, it needed to terminate the uneconomic AJE-TWC Agreement in order to do so and terminating that agreement would entail only minor legal expenses relating to memorializing its cancellation, Plaintiffs agreed to indemnify Defendant for half of the cost of terminating the essentially worthless AJE-TWC Agreement.

92. What Plaintiffs learned, however, when Defendant served Plaintiff Hyatt with its Claim Certificates 18 months later on June 27, 2014, was that Defendant claimed (without any basis or support) to have incurred [REDACTED] in expenses related to the termination of the AJE-TWC Agreement, half of which Plaintiffs were now purportedly on the hook for, despite the fact that it was a worthless agreement that generated no revenues for Defendant or TWC and merely gave TWC an eight-year unilateral right to carry AJE for free – a right that TWC never actually exercised. These purported expenses, which Defendant fails to itemize in its Claim Certificate, are far greater than the minimal legal expenses

Defendant cited in inducing Plaintiffs to agree to pay for half of the costs of terminating the AJE-TWC Agreement.

93. Moreover, Defendant never even launched AJE on Comcast, DirecTV, AT&T or any of Current TV's other distributors during the interim period between the sale of Current Media and the launch of AJAM. Instead, Defendant kept Current TV's programming on the air until AJAM launched in August 2013.

94. Terminating the AJE-TWC Agreement was therefore totally unnecessary – [REDACTED]

[REDACTED]

[REDACTED].

95. Defendant's representations to Plaintiffs that it would run AJE programming under the former Current TV distribution agreements, that failing to terminate the AJE-TWC Agreement would put its revenue stream from the Current TV distribution agreements at risk and that cancelling the AJE-TWC Agreement would entail only minor legal expenses therefore constituted a fraudulent ruse to raid money from the Escrow Balance.

IV.

[REDACTED]

96. As Plaintiffs came to learn, Defendant intended to use the termination of the AJE-TWC Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97. The termination of the AJE-TWC Agreement – allegedly at a cost of [REDACTED] in expenses, though these costs are completely unsupported in Defendant’s TWC Claim Certificate – came amidst talks between the two parties regarding a potential new distribution agreement giving AJAM carriage on TWC.

[REDACTED]

[REDACTED]

[REDACTED]

98. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. [REDACTED]

[REDACTED] Despite the fact that TWC had publicly dropped Current TV upon its acquisition by Defendant just a few months earlier and had never exercised its right to carry AJAM's predecessor, AJE, even though it could have done so for free under the AJE-TWC Agreement, [REDACTED]

[REDACTED] the two sides announced that they had entered into a new agreement giving AJAM carriage on TWC (the "AJAM-TWC Agreement").

100. [REDACTED]

101. Additionally, like the prior AJE-TWC Agreement, the AJAM-TWC Agreement was ill-advised, one-sided and unprofitable for Defendant.

102. While the AJAM-TWC Agreement provided for [REDACTED]

103. To make matters worse, after finalizing the AJAM-TWC Agreement,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] – Defendant actually informed its other distributors that their respective MFN provisions had been triggered by the wildly one-sided terms of the new AJAM-TWC Agreement. Undoubtedly, the publicity that would inevitably be generated by TWC finally agreeing to carry AJAM after so publicly refusing to do so at the time of the sale would have created significant interest on the part of Defendant’s other distributors so as to make it impossible to conceal the terms of the AJAM-TWC Agreement.

104. As a result of the triggering of these MFN requirements, all of AJAM’s distributors received an enormous windfall – overnight, they went from

[REDACTED]
[REDACTED].

105. The AJAM-TWC Agreement therefore effectively denuded the extensive revenue-generating distribution agreements that Plaintiffs had built for Current TV, turning what had been pure revenue for Current Media into net expenditures for Defendant. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

106. The baseless and fraudulent claims against the Escrow Balance that are the subject of the Claim Certificates at issue in this litigation represent an attempt to get the Former Members to foot the bill for the financially disastrous post-acquisition business decisions – like entering into the ill-advised, one-sided AJAM-TWC Agreement – made by Defendant’s executives. Moreover, the [REDACTED] relating to unspecified and unsupported “expenses” is not indemnifiable because that money did not directly relate to the termination of the AJE-TWC Agreement, but instead [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. Defendant Concocts A Plan To Shore Up Its Relationships With Its New Distributors: Encourage Them To Make Baseless Third Party Claims Against The Escrow Balance, Prevent Plaintiff Hyatt From Defending And Vanquishing Those Third Party Claims By Falsely Treating Them As Its Own Direct Claims And Force The Former Members To Foot The Bill For The Resulting Damages

107. As part of its process of taking over Current Media, Defendant hired a consultant for distribution matters, Ken Tolle, to advise and assist it in its relationships with its new cable and satellite distributors. These relationships became of even greater importance when AJAM launched on August 20, 2013 to

dismal ratings. AJAM's ratings have remained dismal through the filing of this Verified Complaint.

108. Through discussions with Mr. Tolle, Defendant realized that it might be able to curry favor with the distributors at no cost to itself by helping the distributors make claims against the sale proceeds remaining in the Escrow Balance, which proceeds rightfully belong to the Former Members.

109. Upon making this realization, Defendant set in motion a plan to shore up its relationships with its distributors by helping them to the Former Members' money via the Third Party Claims underlying the Claim Certificates now at issue in this litigation.

110. Defendant's plan was simple. The distributors would make Third Party Claims that Plaintiff Hyatt would easily be able to defeat at little to no cost if the claims were properly handled pursuant to the terms of the Merger Agreement, which required that Plaintiff Hyatt be given written notice of such claims and the ability to control their defense. Instead of permitting Plaintiff Hyatt to control the defense of the Third Party Claims, however, Defendant would not inform Plaintiff Hyatt of these Third Party Claims and would control the defense itself, thereby knowingly violating the clear requirements of the Merger Agreement. Defendant planned to support its failure to properly notify Plaintiff Hyatt of these Third Party

Claims and permit him to control their defense by asserting that they were not the Third Party Claims that they quite obviously in fact were, but rather were direct claims by Defendant purportedly stemming from “certain of the representations and warranties set forth in Article IV of the Merger Agreement . . . not [being] true as of the date of the Closing.” Defendant’s plan then required it to put up a weak “defense” of the Third Party Claims, thereby allowing funds that belong to the Former Members to be transferred to the distributors, without Defendant being out of pocket.

111. Defendant would thereby be able to make payments to its distributors to keep them happy without spending a dime of its own money. Defendant hoped that currying favor with the distributors in this way would encourage them to renew or extend the distribution agreements AJAM inherited from Current TV notwithstanding AJAM’s dismal ratings.

112. Defendant knew, however, that its purported direct claims, which it based on vaguely alleged, unsupported claims made by its third-party distributors, were, in fact, “Third Party Claims” as defined under the Merger Agreement. Indeed, after Plaintiff Hyatt, in his capacity as Members’ Representative, objected to Defendant’s June 27, 2014 Claim Certificates, Defendant acknowledged as much, providing Plaintiff Hyatt (albeit belatedly and therefore ineffectively, more

- i. The claim described in the June 27, 2014 DirecTV Claim Certificate is identical to the claim that DirecTV now makes in its lawsuit – [REDACTED] (as discussed in greater detail below at Point VII);
- ii. Dish similarly claims that it was entitled to [REDACTED] (as discussed in greater detail below at Point VI); and
- iii. AT&T similarly claimed, prior to settling its claims, that it was entitled “to terminate the Affiliation Agreement . . . for [REDACTED] (as discussed in greater detail below at Point VIII).

114. And yet, despite its recent acknowledgement that claims alleging

[REDACTED] [constitute] ‘Third Party Claim[s]’ under Section 8.10 of the Merger Agreement,” in the fifty days since Defendant served Plaintiff Hyatt with its Claim Certificates on June 27, 2014, Defendant has yet to offer *any reason* – let alone a compelling reason – why it has treated DirecTV’s identical earlier claim or the strikingly similar Dish and AT&T claims – which it has known about since April 2014, April 2013 and July 2013, respectively – as anything other than what they clearly are: Third Party Claims.

115. In addition to its knowledge that DirecTV's April 2014 incarnation of the same Third Party Claim that DirecTV now brings in its lawsuit against Defendant – and the similar claims asserted by Dish and AT&T – were plainly Third Party Claims under the Merger Agreement, Defendant also knew that these claims were completely meritless. Before concluding the acquisition of Current Media, Defendant retained a specialist firm, FTI, to do extensive due diligence on all of Current TV's distribution agreements [REDACTED]. FTI issued an extensive report detailing its findings: That there did not exist even a single one of the [REDACTED] now detailed in Defendant's Claim Certificates.

116. Moreover, Defendant's conduct, as well as its own Claim Certificates, make clear that it actually *agrees* with Plaintiffs that these distributors' claims of [REDACTED] are without merit. For example, Defendant knew about the [REDACTED] (which is now the subject of the Dish Claim Certificate) when the Former Members made that payment just before the sale of Current Media closed, yet it voiced no concern that [REDACTED] in any of Current TV's distribution agreements, all of which were provided to Defendant prior to the close of the sale. Additionally, in its AT&T Claim Certificate, Defendant states that it "attempted to amicably resolve

Agreement; and (ii) to follow the clear requirements set forth in the Merger Agreement for handling Third Party Claims.

118. This Court therefore need not adjudicate the underlying allegations of [REDACTED] made by Dish, DirecTV and AT&T. It simply would not make sense for the validity of those claims (which have been made by companies that are not party to this suit) to be litigated in this forum, especially where Defendant, as explained herein, clearly agrees with Plaintiffs that the claims are without merit. Rather, with regard to the Dish, DirecTV and AT&T Third Party Claims, this Court need only address the question of whether Defendant breached its contractual requirements under the Merger Agreement in its handling of those Third Party Claims.

119. Defendant's underhanded tactic of using the Escrow Balance – which unequivocally belongs to the Former Members, not Defendant – as a reservoir from which to pull money to buy favor with its distributors also explains why Defendant never availed itself of the benefits of the Transition Services Agreement that it strongly insisted Plaintiffs Gore and Hyatt sign prior to the sale. The Transition Services Agreement permitted Defendant to call on Plaintiffs Gore and Hyatt, who had amassed a great deal of expertise and experience in the near-decade they spent running Current Media and building a distribution platform of

50 million U.S. subscriber households, to assist them in their new business for a period of six months after the sale. But calling upon Plaintiffs Gore and Hyatt for their help under the Transition Services Agreement would have risked exposing Defendant's plan to breach the Merger Agreement and raid the Escrow Balance to them, which was a risk that Defendant could not take.

120. For the same reasons, Defendant never formed the Advisory Board on which it had the contractual right to require Plaintiffs Gore and Hyatt to serve, as doing so would have made it impossible for Defendant to conceal its plan to help its distributors take the Former Members' money.

121. By failing to exercise their contractual right to work cooperatively with Plaintiffs Gore and Hyatt in the months after the closing of the sale of Current Media, Defendant was able to conceal its plan to breach the Merger Agreement and raid the Escrow Balance for more than a year and a half, until June 27, 2014, just prior to the expiration of the escrow period, when it served Plaintiff Hyatt with the five purported Claim Certificates that are the subject of this litigation.

VI. Defendant Breaches Its Obligation To Timely Notify Plaintiff Hyatt And Permit Him To Control The Defense Of Both Dish Network's [REDACTED], Thereby Materially Prejudicing Plaintiffs, And Files A Facially Invalid Claim Certificate Related Thereto

122. It was only shortly after Defendant initiated its plan to use the Former Members' money to pay off its distributors that, in April 2013, Dish informed Defendant that it had knowledge of Current Media's [REDACTED]. Dish ostensibly learned this information from the disclosure relating to the sale that it requested and received as a former member of Current Media (and which was attached to Defendant's Dish Claim Certificate).

123. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendant now claims, fifteen months after receiving the Dish claim, that, despite the aforementioned facts making clear that Dish is not entitled to a

[REDACTED], it “believes that it will eventually be required to make a payment” to Dish [REDACTED].

124. According to Defendant’s Claim Certificate, Dish also at some point initiated an audit of Current TV’s pre-merger compliance with its MFN provisions. This audit clearly did not lead to [REDACTED], as the only payment that Dish claims to be owed is [REDACTED].

125. The Dish Claim Certificate only makes vague and conclusory reference to “certain of the representations and warranties” being inaccurate, listing Sections 4.6(b), 4.10(b), 4.10(d), and 4.24 of the Merger Agreement generally without providing any information that would lead a reader to understand how those representations were actually inaccurate. This is a far cry from the Claim Certificate’s assertion that it will provide “specific circumstances” entitling Defendant to indemnification. Defendant’s conclusory references to the warranties and representations listed above, and its reliance on purely hypothetical statements, are plainly insufficient under Section 8.8(a)(iii), which requires Defendant to “specify[] in reasonable detail . . . the nature of the claim to which such Damages are related.”

126. Indeed, the Dish Claim Certificate sets forth no facts that suggest an actual breach of any representation or warranty. Despite Defendant’s assertion that it “believes that it will eventually be required to” pay Dish the [REDACTED] it purportedly demands, nothing in the Claim Certificate provides a reasonable basis for believing that [REDACTED] actually occurred. Rather, the Claim Certificate merely states that Dish “claimed that [it] was entitled to the [REDACTED] [REDACTED] pursuant” to its distribution agreement with Current TV, which Defendant was assigned. But, as stated above, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

127. Moreover, none of the specific representations and warranties of the Merger Agreement vaguely and generally cited in the Claim Certificate have been revealed as “not true as of the date of the Closing” by Dish’s unsupportable claim [REDACTED] payment to DirecTV. Section 4.6 states that the “execution, delivery and performance” of the Merger Agreement does not conflict with, *inter alia*, Current Media’s organizational documents and any law or order by a governmental authority. This statement was true at the time of closing and remains true today. Section 4.10(b)

states that “no event has occurred, and no circumstance or condition exists, that . . . would reasonably be expected to,” *inter alia*, “result in a breach or violation of, or default under, any material obligation under a Material Contract” where “Material Contracts” include the affiliate distribution agreements. This statement was true at the time of closing and remains true today – Current Media did not breach any of its Material Contracts. Section 4.10(d) specifies that Current Media is not in violation of any MFN provision. As discussed, Defendant well knows – and, had Plaintiff Hyatt been given notice and right to control the defense to the Dish claim, he would have been able to prove – none of the allegations in the Dish Claim Certificate or its accompanying Exhibit [REDACTED]. Thus, the statement in Section 4.10(d) was true at the time of closing and remains true today. Section 4.24 relates to representations by Current Media regarding the subscriber base of Current TV. Nothing in the Dish Claim Certificate remotely suggests that these representations were false. They, too, were true at closing and remain true today.

128. Additionally, even if the Former Members’ [REDACTED] payment to DirecTV did somehow render false some representation or warranty contained in the Merger Agreement (which it certainly did not, for all the reasons set forth herein), Defendant was nevertheless fully aware of that payment when it was made

and voiced no concern that it could [REDACTED]
[REDACTED], all of which were provided to Defendant prior to the close of the sale. Defendant cannot now claim that representations and warranties on which it purportedly relied in purchasing Current Media were somehow proven false by Dish's baseless claim that a payment by the Former Members to DirecTV *that Defendant knew about at the time it was made* [REDACTED] [REDACTED] in the distribution agreement between Dish and Current TV *that Defendant had in its possession prior to the payment being made*. Representations and warranties are designed to protect a party from facts that it is not capable of knowing; they do not provide a license for parties to recover damages where they already know, prior to signing the agreement, all the information necessary to evaluate whether the representations and warranties are inaccurate (though, again, all of the representations and warranties in the Merger Agreement were true at closing, and remain true today). Thus, the mere fact of Defendant's knowledge of the [REDACTED] payment to DirecTV prior to the close of the sale, taken alone, suffices to invalidate the Dish Claim Certificate in its entirety.

129. And while Defendant attempts to style the Dish Network Claim Certificate as being based on alleged inaccuracies in the representations and

warranties in the Merger Agreement, it plainly relates to Third Party Claims. Dish's audit and its [REDACTED] both constitute "Third Party Claims" as defined in Section 8.10 of the Merger Agreement, given that they each were an "assertion or commencement of [a] Legal Proceeding," as defined in Article I, Section 1.1 of the Merger Agreement. Moreover, the "audit" itself was a "Legal Proceeding" under this definition, as was Dish's "claim" of [REDACTED] [REDACTED] represented steps in a "litigation" that would likewise constitute a "Legal Proceeding." Indeed, Defendant essentially admitted that Dish's [REDACTED] [REDACTED] was a "Third Party Claim" when it served Plaintiff Hyatt, on August 6, 2014, with a letter stating that a lawsuit brought by DirecTV constituted "a 'Third Party Claim' under Section 8.10 of the Merger Agreement" where, just like Dish's claim, DirecTV had alleged [REDACTED] [REDACTED]

130. Section 8.10 of the Merger Agreement requires Defendant to give the Members' Representative, Plaintiff Hyatt, reasonably prompt written notice no later than thirty days after it receives Third Party Claims such as the Dish claims. If Defendant fails to provide such timely notice and any of the Former Members are materially prejudiced as a result, then the Former Members are relieved of the

obligation to indemnify Defendant. Plaintiff Hyatt is also entitled to control the defense of these Third Party Claims.

131. Rather than timely notify Plaintiff Hyatt of Dish's audit and its April 2013 request for the [REDACTED] and permit him to control the defense of these Third Party Claims, however, Defendant simply permitted Dish to audit Current TV's pre-merger MFN compliance with no notice whatsoever to Plaintiff Hyatt, timely or otherwise, and without ever providing him with a copy of the resulting audit report. Moreover, Defendant purports to have spent the last fifteen months trying to itself resist making the [REDACTED] that Dish purportedly demands.

132. Defendant has now served Plaintiff Hyatt with a Claim Certificate seeking [REDACTED] in attorneys' fees and expenses related to the Dish Third Party Claims. This figure includes expenses attendant to the Dish audit, which did not even result in the revelation of any MFN violations. Per the last sentence of Section 8.3 of the Merger Agreement, expenses incurred investigating breaches of Section 8.3 are not indemnified unless they actually reveal a breach of Section 8.3.

[REDACTED]

[REDACTED] Rather it was simply the sheet detailing the

proceeds of the deal that was provided by Plaintiffs to members of Current Media who, like Dish, were entitled to receive it.

133. Defendant also purports to “reserve” the “right” to amend the Dish Claim Certificate to include (i) [REDACTED] that it believes “it will eventually be required” to pay to Dish; (ii) another [REDACTED] in damages that it believes it may incur from “three other affiliate distributors [who may also] demand payments” of [REDACTED] each; and (iii) another [REDACTED] in attorneys’ fees and expenses related thereto.

134. As an initial matter, had Plaintiff Hyatt been permitted to control the defense of the audit, as was his contractual right under the Merger Agreement, he would have been able to, among other things, rely on prior annual audits of Current TV’s MFN compliance by its outside auditor to demonstrate that Current TV was in full MFN compliance for the periods covered by Dish’s audit. The Former Members were therefore materially prejudiced by Defendant’s failure to permit Plaintiff Hyatt to control the defense of the audit, as Plaintiff Hyatt would have been able to avoid the expenses attendant to that audit, which Defendant now claims as damages in its Claim Certificate.

135. Additionally, Defendant’s failure to provide Plaintiff Hyatt with notice of Dish’s April 26, 2013 Third Party Claim for [REDACTED] until

June 27, 2014 – one day shy of fourteen months after Defendant first received notice of that Third Party Claim – has inarguably prejudiced the Former Members. Because Plaintiff Hyatt received no timely notice of Dish’s Third Party Claim, negotiations regarding that claim have, by Defendant’s own admission, been going on for over fifteen months from the date of the filing of this Complaint, directed solely by Defendant, to the exclusion of Plaintiff Hyatt’s right to assume and direct the defense of such Third Party Claims under Section 8.10 of the Merger Agreement. During this time period, Defendant has purportedly racked up over [REDACTED] in attorneys’ fees and expenses, a significant portion of which surely related to these negotiations, which Plaintiff Hyatt had every right to lead and control.

136. Moreover, [REDACTED]
[REDACTED] as Plaintiff Hyatt would have been able to easily and amply demonstrate based on his extensive industry experience, the fact that he negotiated all of Current TV’s distribution agreements in the first place and [REDACTED]
[REDACTED]. Thus, had Plaintiff Hyatt been timely notified of these Third Party Claims and permitted to control their defense, as clearly required by the Merger Agreement, he would have been able to defend

them fully, saving the [REDACTED] in fees and expenses and forcing Dish to relent on its claim [REDACTED]. By preventing Plaintiff Hyatt from controlling the defense of these Third Party Claims, Defendant materially prejudiced the Former Members, thereby forfeiting its right to seek indemnification from the Escrow Balance.

137. As to Defendant's purported belief "that, in the future, it may incur or pay additional such damages . . . [REDACTED]
[REDACTED]
[REDACTED]" this totally unsupported statement is an insufficient basis upon which to state a claim for indemnification under Section 8.8(a) of the Merger Agreement, which requires that Defendant state "that it reasonably believes it will incur or pay Damages" in the future and specify "in reasonable detail (based upon the information possessed by [it]) the nature of the claim."

138. Additionally, the Merger Agreement makes clear that all claims for indemnification must be brought within 18 months of closing – *i.e.*, by July 2, 2014. Defendant apparently believes that because it inserted this "placeholder" into its June 27, 2014 Dish Claim Certificate, it should be allowed to ignore the eighteen-month time limit and seek indemnification from the Former Members for

Third Party Claims arising after the close of the escrow period. But this would constitute an impermissible unilateral rewriting of the Merger Agreement. The Former Members bargained to indemnify Defendant for claims brought within 18 months of closing, not claims brought after 18 months. No provision of the Merger Agreement gives Defendant the right to file this kind of vague, baseless “placeholder” claim against the escrow account one day prior to the end of the escrow period and then amend its Claim Certificate in the theoretical event that it ever possesses the requisite reasonable basis for believing that it actually “will” face such a claim. Similarly, no provision of the Merger Agreement gives Defendant the right to cure its defective Claim Certificate after July 2, 2014.

139. Moreover, because Dish’s claim [REDACTED] is without merit, any similar claims made by other distributors would be equally meritless. Further, Defendant can possess no “information” that could lead it to “reasonably believe” that “it will incur or pay” damages to any other distributors based on the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Defendant cannot extend the 18-month escrow period established in

the Merger Agreement merely by asserting purely hypothetical, non-existent claims and purporting to “reserve” a “right” that is not actually granted to it by the Merger Agreement.

140. The truth is that Defendant never notified Plaintiff Hyatt about Dish’s Third Party Claims because those claims had in fact been surreptitiously encouraged by Defendant as a way of currying favor with Dish and other distributors. Indeed, Defendant has yet to pay the [REDACTED] that it purports to believe it will “eventually be required to pay” to Dish because it intended all along to first get Plaintiffs on the hook for the full amount of this baseless claim via its Claim Certificate.

141. Additionally, although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply and Defendant, for example, could show, as is not the case here, that there were other defenses available to it that might not be available if Plaintiff Hyatt were controlling the defense, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to at least participate in the defense of these claims, which Defendant did not do.

142. The Former Members have thus been materially prejudiced by Defendant's failure to notify Plaintiff Hyatt and permit him to control the defense of both of Dish's Third Party Claims – [REDACTED]. Defendant has therefore forfeited its right to seek indemnification for these Third Party Claims from the Escrow Balance.

143. Per the foregoing, the purported claims outlined in the Dish Claim Certificate are invalid under Section 8.8(a) of the Merger Agreement and, in any event, Defendant's handling of those claims violated the requirements of Section 8.10 of the Merger Agreement. As such, Section 8.2 of the Merger Agreement requires that the Escrow Agent disburse those funds that Defendant seeks to have held back in the Dish Claim Certificate to the Former Members immediately.

VII. Defendant Breaches Its Obligation To Timely Notify Plaintiff Hyatt And Permit Him To Control The Defense Of Both [REDACTED], Thereby Materially Prejudicing Plaintiffs, And Files A Facially Invalid Claim Certificate Related Thereto

144. Just as it had encouraged Dish's Third Party Claims as a way of currying favor with it, Defendant surreptitiously encouraged DirecTV – which had already gotten a significant cut of the proceeds of the sale of Current Media when it received a [REDACTED] ransom payment from those proceeds [REDACTED] – to seek additional money from the Former Members by raiding the Escrow

Balance. Thus, in the fall of 2013, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

145. The DirecTV Claim Certificate is facially invalid, however. As an initial matter, it only makes vague and conclusory reference to “certain of the representations and warranties” being inaccurate, listing Sections 4.6(b), 4.10(b), 4.10(d) and 4.24 generally without providing any information that would lead a reader to understand how those representations were actually inaccurate. This is a far cry from the Claim Certificate’s assertion that it will provide “specific circumstances” entitling Defendant to indemnification. Defendant’s conclusory references to these warranties and representations, and its reliance on purely hypothetical statements, are plainly insufficient under Section 8.8(a)(iii), which requires Defendant to “specify[] in reasonable detail . . . the nature of the claim to which such Damages are related.”

146. Indeed, the DirecTV Claim Certificate sets forth no facts that suggest an actual breach of any representation or warranty. Defendant concedes as much by stating that these representations and warranties would not be true only “**if** the

assertions in the Summary [provided by DirecTV] are correct” and DirecTV is owed [REDACTED]. But Defendant provides no reasonable basis for believing that these unsupported assertions by DirecTV are, in fact, “correct,” or that [REDACTED] that would entitle DirecTV to any payment, let alone a payment of [REDACTED].

147. For example, Defendant has failed to provide Plaintiff Hyatt with [REDACTED], which Defendant has known about since April 2014. Indeed, nowhere in the Claim Certificate or its Exhibit is there any explanation whatsoever as to what the alleged [REDACTED]. For this additional reason, the Claim Certificate is plainly insufficient under Section 8.8(a)(iii) of the Merger Agreement. Defendant’s apparent position, that Plaintiffs must take it and DirecTV at their word and permit Defendant to [REDACTED] – nearly half of the Escrow Balance – from the escrow account without making any effort whatsoever to explain or back up their claims, can find no support in the Merger Agreement.

148. Indeed, even if Defendant’s June 27 DirecTV Claim Certificate had been the timely written provision of notice to Plaintiff Hyatt of DirecTV’s Third

Party Claim for [REDACTED] and the offer of the right to control the defense of that Third Party Claim, as was required by the Merger Agreement, Defendant *still* would not have fulfilled the requirements of Section 8.10. To wit, under Section 8.10, Plaintiff Hyatt, in his capacity as Members' Representative, is not only entitled to receive prompt notice of any Third Party Claims, he also has the right to assume and conduct the defense of any Third Party Claims. Plaintiff Hyatt's rights in this regard are limited, however, because if he fails to give Defendant notice that he is assuming the defense within fifteen days of receiving notice of a Third Party Claim, then Defendant is entitled to defend against the Third Party Claim itself. This fact, which Defendant acknowledges in its August 6, 2014 letter to Plaintiff Hyatt regarding DirecTV's lawsuit against it, makes clear that Defendant is required to provide Plaintiff Hyatt with something substantially more than mere minimal notice of a Third Party Claim, as it did in its June 27 DirecTV Claim Certificate (as well as, to only a slightly lesser extent, its Dish and AT&T Claim Certificates). Rather, the language of Section 8.10 makes clear that Defendant must provide Plaintiff Hyatt with information sufficient to enable him to determine whether or not he wishes to assume the defense of such a Third Party Claim. Defendant possessed more information about the details underlying [REDACTED], but chose not to provide

Plaintiff Hyatt with that information. Thus, even if the barebones DirecTV Claim Certificate were actually the timely notice and offer to control that is required by the Merger Agreement, Plaintiff Hyatt surely could not be expected to make an informed decision about whether to assume the defense of DirecTV's Third Party Claim without being provided any information whatsoever about the purported [REDACTED], or any other significant detail about DirecTV's Third Party Claim other than the fact that it sought [REDACTED], a number seemingly pulled down out of the ether by DirecTV.

149. And as with the Dish Claim Certificate discussed above, none of the specific representations and warranties of the Merger Agreement vaguely and generally cited in the DirecTV Claim Certificate have been revealed as "not true as of the date of the Closing" by DirecTV's unsupported claim for [REDACTED].

150. Just as it did with the Dish Claim Certificate, Defendant attempts to style the DirecTV Claim Certificate as being based on alleged inaccuracies in the representations and warranties in the Merger Agreement. But DirecTV's [REDACTED] [REDACTED], like Dish's audit [REDACTED] [REDACTED], plainly constituted "Third Party Claims" as defined in Section 8.10 of the Merger Agreement

151. Rather than timely notify Plaintiff Hyatt of DirecTV's [REDACTED] and permit him to control the defense of it, as required under the Merger Agreement, Defendant simply agreed to it – with no notice to Plaintiff Hyatt, timely or otherwise.

152. Moreover, Defendant's CEO, Ehab al Shihabi, was specifically informed that he had a contractual obligation to inform Plaintiff Hyatt of DirecTV's [REDACTED], but he knowingly instructed others in the company not to do so, despite knowing that such failure would constitute a breach of the Merger Agreement and materially prejudice the Former Members.

153. [REDACTED] Defendant again agreed to this without notifying Plaintiff Hyatt or giving him the opportunity [REDACTED].

154. [REDACTED]

155. [REDACTED]

156. The Former Members were therefore materially prejudiced by Defendant's failure to notify Plaintiff Hyatt of the circumstances of DirecTV's two Third Party Claims and failure to permit Plaintiff Hyatt to participate in or control the defense of them, including by waiving the aforementioned [REDACTED]

[REDACTED].

Plaintiff Hyatt would have been able to easily and amply demonstrate that there had been [REDACTED]

[REDACTED] given his extensive industry experience, the fact that he

negotiated all of Current TV's distribution agreements in the first place and the fact that he was aware of [REDACTED]. Thus, had Plaintiff Hyatt been timely notified of these Third Party Claims and permitted to control their defense, he would have been able to defend against them fully, saving the fees and expenses attendant to them and forcing DirecTV to relent on its claim for [REDACTED].

157. Defendant's failure to provide Plaintiff Hyatt with notice of DirecTV's April 23, 2014 Third Party Claim for [REDACTED] until June 27, 2014 – over two months after Defendant first received notice of that Third Party Claim – has inarguably prejudiced the Former Members. Because Plaintiff Hyatt received no timely notice of DirecTV's Third Party Claim, negotiations regarding that claim have, for over three months from the date of the filing of this Complaint, been directed solely by Defendant, to the exclusion of Plaintiff Hyatt's right to assume and direct the defense of such Third Party Claims under Section 8.10 of the Merger Agreement. Defendant's botched handling of these negotiations – which Plaintiff Hyatt had every right to lead and control – have now led to DirecTV filing suit against it, which will surely cause Defendant to incur even further damages.

158. By the aforementioned willful and knowing material breaches of the terms of the Merger Agreement, Defendant has forfeited its right to seek

indemnification from the Escrow Balance for these Third Party Claims. Nothing in the Merger Agreement allows Defendant to evade the clear requirements for handling Third Party Claims. Defendant cannot knowingly ignore these requirements – thereby breaching the Merger Agreement – in order to unilaterally convert Third Party Claims into Defendant’s own claims.

159. Additionally, Defendant has yet to pay DirecTV’s claim for [REDACTED] because, as with the Dish claim for [REDACTED], it is waiting to ensure that it can get Plaintiffs on the hook for the full amount of this baseless claim.

160. As to Defendant’s purported belief “that it may incur or pay additional such damages in the future as a result of other distributor affiliates asserting claims similar to those asserted by” DirecTV, this conclusory statement is insufficient under the requirements of Section 8.8(a) of the Merger Agreement, for the same reasons, discussed above, that similar language in the Dish Claim Certificate is insufficient to state a claim against the escrow fund. The Merger Agreement makes clear that all claims for indemnification must be brought within 18 months of closing – *i.e.*, by July 2, 2014 – and Defendant cannot ignore this time limit and seek indemnification from the Former Members for Third Party Claims arising after the close of this escrow period by making vague, baseless

“placeholder” claims or seeking to amend or otherwise cure its defective DirecTV Claim Certificate. Moreover, to assert with absolutely no specifics or support that a “reasonable estimate” of these hypothetical future damages is [REDACTED] does not meet the clear requirements of the Merger Agreement. Likewise, Defendant’s reservation of the right to “amend [its] Certificate” after the expiration of the escrow period does not find any support in the Merger Agreement.

161. Defendant, in fact, was sued by DirecTV in the Superior Court of California on July 11, 2014 – two weeks after the Claim Certificates were served on Plaintiff Hyatt and over one week after the close of the escrow period. DirecTV’s lawsuit, which seeks the same damages sought in its April 2014 letter to Defendant [REDACTED], demonstrates the botched nature of Defendant’s unauthorized procedure for handling Third Party Claims, just as does the AT&T lawsuit discussed below.

162. Defendant provided Plaintiff Hyatt, on August 6, 2014, with a letter purporting to “provide required written notice [of DirecTV’s lawsuit] to the Members’ Representative . . . pursuant to Section 8.10 of the Merger Agreement” and offering Plaintiff Hyatt “the right to control the defense of” it. Defendant reasoned that it was required to provide Plaintiff Hyatt with notice and the right to control the defense of the DirecTV lawsuit because the suit [REDACTED]

[REDACTED] and is therefore “a ‘Third Party Claim’ under Section 8.10 of the Merger Agreement” and must be “tendered by Al Jazeera for defense by the Members’ Representative.”

163. Defendant’s conclusion – which it inexplicably failed to reach with regard to DirecTV’s earlier April 2014 claim for the exact same money on the exact same grounds, or with regard to the strikingly similar Dish and AT&T claims – that a claim for money damages based on the [REDACTED]

[REDACTED] constitutes a Third Party Claim is certainly sound. Unfortunately for Defendant, the escrow period closed on July 2, 2014 – over one month before Defendant notified Plaintiff Hyatt of the DirecTV suit and offered him the right to defend against DirecTV’s claim. Under the terms of the Merger Agreement, the period during which Third Party Claims such as this one are eligible for indemnification by the Former Members, using funds in the Escrow Account set aside for that purpose, extended only 18 months from the closing date of the transaction.

164. As discussed above, while Defendant’s failure to provide prompt notice of a Third Party Claim to Plaintiff Hyatt does not relieve the Former Members of their indemnification obligations unless Defendant’s failure to notify results in the Former Members being materially prejudiced, Defendant cannot read

Section 8.10 of the Merger Agreement to modify or limit Section 8.8's requirement that "claims on [the] Indemnification Escrow Fund" be brought "[o]n or before the last day of the General Escrow Period." Such an interpretation of Section 8.10 would render the unambiguous language of Section 8.8 meaningless, and would therefore be unreasonable. As such, the Merger Agreement cannot be unilaterally rewritten by Defendant to extend the contractual escrow period. Thus, there is simply no basis in the Merger Agreement for Defendant to foist this lawsuit on Plaintiff Hyatt, or to seek indemnification for damages related thereto.

165. Even if the escrow period had not yet elapsed, while DirecTV's lawsuit is certainly a Third Party Claim, Defendant is incorrect in asserting that it originated on July 11, 2014, when DirecTV filed it. DirecTV's lawsuit makes the same arguments and seeks the same damages as in its April 2014 letter to Defendant [REDACTED] and claiming a right to [REDACTED] as a result thereof. Thus, the lawsuit is the same exact Third Party Claim at issue in DirecTV's April 23, 2014 letter to Defendant, and Defendant's failure to notify Plaintiff Hyatt of the claim and permit him to control the defense of it within thirty days of *that date* (which would have fallen well within the now-elapsed escrow period) is fatal to its attempts to now pass the lawsuit filed in California state court over to Plaintiff Hyatt.

166. Moreover, as discussed above, when providing Plaintiff Hyatt with notice and the right to control the defense of a Third Party Claim, Defendant is required to provide something substantially more than mere minimal notice of a Third Party Claim. Defendant must give Plaintiff Hyatt information sufficient to enable him to determine whether or not he wishes to assume the defense of such a Third Party Claim. But neither Defendant's August 6, 2014 letter to Plaintiff Hyatt notifying him of DirecTV's lawsuit and purporting to offer him the right to control the defense of it nor the sealed, unredacted version of DirecTV's lawsuit that Defendant provided along with its correspondence, nor even Defendant's June 27 DirecTV Claim Certificate (i) informed Plaintiff Hyatt of the precise nature of the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As such, even if DirecTV's post-escrow period lawsuit qualified for indemnification and for control by Plaintiff Hyatt (which it certainly does not, given that notice was provided over one month after the escrow period closed), Plaintiff Hyatt surely could not be expected to be able to make an informed decision about whether to assume the defense of that suit based on the

minimal information provided to him by Defendant in its late June and early August 2014 correspondence.

167. Lastly, to the extent Defendant may consider its latest missive notifying Plaintiff Hyatt of the DirecTV suit and purporting to offer him control of it an “amendment” of its June 27, 2014 DirecTV Claim Certificate, as discussed elsewhere herein, Defendant’s purported reservation of its so-called “right to amend” the facially invalid DirecTV Claim Certificate lacks any basis in the Merger Agreement and is without legal effect, particularly where that Claim Certificate failed to acknowledge that the DirecTV claim was a “Third Party Claim” and failed to provide even a hint, let alone clarity, as to the [REDACTED], or the requisite reasonable basis for believing that such suit would be brought. The Merger Agreement makes clear that all claims for indemnification must be brought within 18 months of closing – *i.e.*, by July 2, 2014 – and it is far too late for Defendant, in August 2014, to now decide to treat the DirecTV matter as a Third Party Claim – something which its June 27 Claim Certificate makes very clear it previously chose not to do.

168. And of course, though Defendant purported to notify Plaintiff Hyatt of alleged *breaches of representations and warranties* related to DirecTV’s April 23, 2014 claim for [REDACTED] *before* the escrow period closed (though, as described

above, no representations or warranties were actually breached), Defendant's June 27 DirecTV Claim Certificate, sent days before the escrow period closed, cannot render timely its notice of DirecTV's lawsuit, sent more than a month after the escrow period closed, because the Merger Agreement refers to notification of *Third Party Claims*, and (i) by Plaintiffs' reading, the July 11 DirecTV lawsuit is the same Third Party Claim as set forth in DirecTV's April 2014 letter, and therefore time-barred because the Former Members were prejudiced by Defendant's more than 30-day delay in informing them of that Third Party Claim; and (ii) by Defendant's reading, only the July 11 DirecTV lawsuit constituted a Third Party Claim, but that lawsuit was filed by DirecTV after the close of the escrow period, and Plaintiff Hyatt was given notice of it by Defendant long after the close of the escrow period, and thus it is time-barred. Therefore, under either the Plaintiffs' or Defendant's reading of the Third Party Claim regarding DirecTV's lawsuit, it is time-barred.

169. In sum, then, Defendant, through all its many clear and intentional material breaches of the Merger Agreement cited above, has forfeited any right it might have had to seek indemnification for any damages that it may incur as a result of defending against DirecTV's suit.

170. Additionally, although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here, as evidenced by Defendant's attempts to tender the DirecTV lawsuit to Plaintiff Hyatt now, well after the close of the escrow period. Moreover, even if one of the exceptions did apply and Defendant, for example, could show, as is not the case here, that there were other defenses available to it that might not be available if Plaintiff Hyatt were controlling the defense, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do in anything even resembling a timely fashion.

171. The Former Members have thus been materially prejudiced by Defendant's failure to notify Plaintiff Hyatt and permit him to control the defense of both of DirecTV's Third Party Claims – [REDACTED]

172. Per the foregoing, the purported claims outlined in the DirecTV Claim Certificate are invalid under Section 8.8(a) of the Merger Agreement and, in any event, Defendant's handling of those claims violated the requirements of Section 8.10 of the Merger Agreement. As such, Section 8.2 of the Merger Agreement

4.10(d), and 4.24 generally without providing any information that would lead a reader to understand how those representations were actually inaccurate.

175. Indeed, the AT&T Claim Certificate sets forth no facts that suggest an actual breach of any representation or warranty. Defendant concedes as much by stating that these representations and warranties would not be true only “if AT&T’s assertion that Current was in breach of [REDACTED] and the Affiliation Agreement was correct.” But Defendant provides no reasonable basis for believing that AT&T’s assertion is, in fact, “correct,” or that [REDACTED] [REDACTED] occurred that would have entitled AT&T to drop AJAM, thereby setting in motion the chain of events that led to the extensive damages claimed in the AT&T Claim Certificate.

176. For example, Defendant has failed to provide Plaintiff Hyatt with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

177. And as with the Dish and DirecTV Claim Certificates discussed above, none of the specific representations and warranties of the Merger Agreement vaguely and generally cited in the AT&T Claim Certificate have been revealed as “not true as of the date of the Closing” by “AT&T’s assertion” in its termination letter. In fact, they are all true.

178. Defendant yet again attempts to style the AT&T Claim Certificate as being based on alleged inaccuracies in the representations and warranties in the Merger Agreement. But, just like the Dish and DirecTV claims, [REDACTED] and assertion of its termination rights constituted “Third Party Claims” as defined in Section 8.10 of the Merger Agreement. Moreover, as with the Dish and DirecTV claims, Defendant essentially admitted that AT&T’s termination letter was a “Third Party Claim” when it served Plaintiff Hyatt, on August 6, 2014, with a letter stating that a lawsuit brought by DirecTV constituted “a ‘Third Party Claim’ under Section 8.10 of the Merger Agreement” because it alleged [REDACTED] [REDACTED] as AT&T’s termination letter can be given the exact same description.

179. Rather than timely notify Plaintiff Hyatt of AT&T’s [REDACTED] and permit him to control the defense of it, as required under the Merger Agreement,

Defendant simply agreed to it – with no notice to Plaintiff Hyatt, timely or otherwise. Then, rather than provide Plaintiff Hyatt with [REDACTED]

[REDACTED], Defendant took it upon itself to “attempt[] to amicably resolve this claim.” Of course, AT&T – which had previously refused for years to carry AJAM’s predecessor network, AJE – “rejected all such resolutions” and decided that it “would not carry [AJAM] upon its launch.”

180. Even after its initial attempts to resolve AT&T’s claim failed miserably, Defendant still did not avail itself of Plaintiff Hyatt by giving him notice of the dispute and permitting him to control the defense of AT&T’s termination claim, as it was required to do under the Merger Agreement. Instead, Defendant opted to launch a lawsuit that it eventually settled after almost one year of litigation which saw the filing of two complaints, two motions to dismiss, a full battery of motion to dismiss briefing and an appeal to the Delaware Supreme Court. And much of this litigation, and the [REDACTED] of alleged (but unsupported) attorneys’ fees incurred in relation to it, did not pertain to AT&T’s substantive claims of [REDACTED], but rather involved Defendant’s desire to keep the litigation under seal – expenses for which

Defendant is not entitled to indemnification from the Former Members in any event.

181. Defendant now seeks, via still another June 27, 2014 Claim Certificate, an as-yet unquantifiable amount of damages from a panoply of sources related to AT&T's two Third Party Claims, including:

- [REDACTED]
- The loss of access to AT&T's subscribers after AT&T refused to carry AJAM, and the concomitant loss of the license fees purportedly owed it under Current TV's distribution agreement with AT&T, which Defendant was assigned;
- Adverse publicity;
- Injury to its "efforts to obtain new or expanded distribution for [AJAM], with consequent loss of revenue and profit";
- Expenses attendant to [REDACTED]; and
- "Attorneys' fees and disbursements in connection with the dispute that presently amount to approximately [REDACTED]."

Defendant also asserts in its Claim Certificate that it "reasonably believes that it may incur and pay additional such Damages in the future, both as a result of the [AT&T Third Party Claims] and because of the possibility that other distributor affiliates may assert claims similar to those asserted by AT&T," and purports to "reserve" the "right" to amend the Claim Certificate accordingly.

182. As an initial matter, however, had Plaintiff Hyatt been permitted to control [REDACTED] as was his contractual right under the Merger Agreement, he would have been able, among other things, [REDACTED]
[REDACTED]
[REDACTED]. The Former Members were therefore materially prejudiced by Defendant's failure to permit Plaintiff Hyatt to control [REDACTED] because Plaintiff Hyatt would have been able to avoid the expenses attendant to [REDACTED] that Defendant now claims as damages in its Claim Certificate.

183. Additionally, Defendant's failure to provide Plaintiff Hyatt with notice of AT&T's July 19, 2013 Third Party Claim for termination of its distribution agreement until June 27, 2014 – nearly one year after Defendant first received notice of that Third Party Claim – has inarguably prejudiced the Former Members. Because Plaintiff Hyatt received no timely notice of AT&T's Third Party Claim, negotiations regarding that claim were directed solely by Defendant, to the exclusion of Plaintiff Hyatt's right to assume and direct the defense of such Third Party Claims under Section 8.10 of the Merger Agreement. Defendant's botched "attempt[s] to amicably resolve" AT&T's Third Party Claim for termination – which negotiations Plaintiff Hyatt had every right to lead and

control – resulted, by Defendant’s own admission, only in (i) ”AT&T reject[ing] all such resolutions” and dropping “the Al Jazeera America service upon its launch on August 20, 2013,” events for which Defendant now seeks massive damages from the escrow account; and (ii) Defendant filing its own now-settled lawsuit against AT&T, which caused Defendant to incur even further damages.

184. Moreover, Plaintiff Hyatt would have been able to easily and amply demonstrate that, within the cable television industry, [REDACTED] [REDACTED] [REDACTED]. Thus, had Plaintiff Hyatt been timely notified of these Third Party Claims and permitted to control their defense, he – as the individual who negotiated all of Current TV’s distribution agreements in the first place – would have been able to defend them fully and successfully, preventing AT&T from ever dropping AJAM and avoiding the subsequent litigation, which allegedly resulted in, among other damages asserted in the Claim Certificate, [REDACTED] other economic concessions, lost revenues and profits, adverse publicity and attorneys’ fees and disbursements of nearly [REDACTED] and growing.

185. Additionally, no invoices or evidence of Defendant’s nearly [REDACTED] in expenses were provided with the AT&T Claim Certificate, despite

the fact that Defendant and its counsel demanded such documentation whenever Plaintiffs submitted Claim Certificates with regard to the Former Members' Matters and the Finder's Fee Litigation.

186. Moreover, Defendant's settlement of its lawsuit against AT&T, insofar as it also constituted a settlement of AT&T's Third Party Claim for termination of its distribution agreement, likewise violated the terms of the Merger Agreement, which provides that only Plaintiff Hyatt, in his capacity as Members' Representative, can settle such Third Party Claims.

187. Section 8.9(c) also explicitly provides that if Defendant "settles or otherwise compromises" a Third Party Claim without the consent of the Members' Representative, such settlement or compromise

shall not affect in any way the right of the Members' Representative to contest the obligation of the [Former] Members to indemnify [Defendant] with respect to such Third Party Claim pursuant to this Agreement or otherwise, including the right to contest or dispute the litigation strategy of the [Defendant], the cost of counsel selected by the [Defendant], or whether such settlement or compromise was materially affected by [Defendant's] existing relationship with the third party claimant.

Here, Plaintiffs contest, among other things, (i) Defendant's litigation strategy with regard to the AT&T Third Party Claims (which strategy was chiefly designed not to defeat AT&T's baseless claims of [REDACTED] but to curry favor with AT&T so that it would agree to distribute AJAM, with the cost of currying such

favor being borne by the Former Members); (ii) the [REDACTED] in attorneys' fees and disbursements purportedly spent in litigating and settling the AT&T Third Party Claims (which fees, wholly unsupported by invoices or any other explication, (a) are unreasonably high as a result of Defendant's plan to stick the Former Members with the bill; and (b) most likely pertained to the protracted litigation by Defendant regarding confidentiality and are thus not indemnifiable); and (iii) the fact that the settlement or compromise of AT&T's Third Party Claims was materially affected by Defendant's relationship with AT&T (which Defendant was incentivized to salvage at all costs, which costs it planned to improperly foist upon the Former Members).

188. Because Defendant materially prejudiced the Former Members by virtue of the aforementioned breaches of the Merger Agreement with regard to AT&T's Third Party Claims, Defendant has forfeited its right to seek indemnification from the Escrow Balance for damages it purportedly incurred in connection with those Third Party Claims.

189. And again, Defendant's purported belief "that it may incur and pay additional such Damages in the future, both as a result of the [AT&T Third Party Claims] and because of the possibility that other distributor affiliates may assert claims similar to those asserted by AT&T," is insufficient for the reasons

previously stated with respect to similar statements in the Dish and DirecTV Claim Certificates. Defendant appears to possess no “information” that could lead it to “reasonably believe” that “it will incur or pay” damages to any other distributors making claims similar to those made by AT&T. If it had such information, Defendant was required to provide that information in its Claim Certificate. It did not. The Merger Agreement does not allow Defendant to make these kind of vague “placeholder” claims now and then amend its Claim Certificate after the escrow period has ended, when it might someday hypothetically possess the requisite reasonable basis for believing that such claims “will be brought.” The Former Members bargained to indemnify Defendant for claims brought within 18 months of closing, not claims brought after 18 months. More than 19 months have now elapsed since the sale of Current Media closed, and the escrow period has long since expired. By ignoring the 18-month time limit and seeking indemnification from the Former Members for Third Party Claims that may arise after the close of the escrow period, Defendant seeks to unilaterally rewrite the Merger Agreement.

190. Additionally, although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here.

Moreover, even if one of the exceptions did apply and Defendant, for example, could show, as is not the case here, that there were other defenses available to it that might not be available if Plaintiff Hyatt were controlling the defense, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do. Furthermore, Section 8.10(c) explicitly provides that, even where one of the exceptions in Section 8.10(a) applies, meaning that Defendant may properly “assume[] the defense” of a Third Party Claim, Defendant still “shall not agree to any settlement without the written Consent of the Members’ Representative.” Here, Defendant did not obtain Plaintiff Hyatt’s consent, written or otherwise, to the purported settlement of AT&T’s Third Party Claims.

191. The Former Members have thus been materially prejudiced by Defendant’s failure to notify Plaintiff Hyatt and permit him to control the defense of both of AT&T’s Third Party Claims – [REDACTED]. As such, Defendant has forfeited its right to seek indemnification from the Escrow Balance for the damages it purportedly incurred in connection with these Third Party Claims.

192. Per the foregoing, the purported claims outlined in the AT&T Claim Certificate are invalid under Section 8.8(a) of the Merger Agreement and, in any

event, Defendant's handling of those claims violated the requirements of Section 8.10 of the Merger Agreement. As such, Section 8.2 of the Merger Agreement requires that the Escrow Agent disburse those funds that Defendant seeks to have held back in the AT&T Claim Certificate to the Former Members immediately.

IX. Defendant Breaches The Terms Of The Merger Agreement By Filing An Invalid Claim Certificate Relating To The Fully Disclosed CBS Dispute Or, In The Alternative, Breaches Its Obligation To Permit Plaintiff Hyatt To Control The Defense Of That Dispute, Materially Prejudicing Plaintiffs

193. In Section 4.8 of the Merger Agreement, titled "Undisclosed Liabilities," Current Media represented that it did not have any "debts, liabilities, obligations or commitments of any nature whatsoever" except, among other things, "those arising under any litigation, claim, dispute or other proceeding disclosed pursuant to Schedule 4.14 of the Company Disclosure Letter."

194. In Section 4.14 of the Merger Agreement, titled "Absence of Litigation," Current Media represented, among other things, that, "[e]xcept as set forth in Schedule 4.14 of the Company Disclosure Letter, there are no pending or . . . threatened material Legal Proceedings . . . against or brought by" Current Media and that, to its knowledge, "no event has occurred, and no claim, dispute or other condition or circumstance exists, that would reasonably be expected to give rise to or serve as a basis of the commencement of any such Legal Proceeding."

195. Schedule 4.14 then lists five exceptions to the representations in Sections 4.8 and 4.14, one of which reads as follows:

On August 17, 2012, the Company received a letter of claim from CBS, Inc., in which CBS contended that Company owed CBS certain sums in connection with a purported newsfeed licensing agreement. Company promptly refuted CBS' claim, challenging the validity of the alleged agreement in reliance upon Company's timely withdrawal from its negotiation with CBS on the basis of the parties' failure to reach agreement on material terms. Company anticipates the settlement of this dispute.

196. On June 27, 2014, Defendant served Plaintiffs with a Claim Certificate purporting to notify Plaintiff Hyatt, in his capacity as Members' Representative, "of specific circumstances" entitling it "to indemnification from the General Escrow Account" relating to "inaccuracies in the representations and warranties" set forth in the Merger Agreement. The Claim Certificate then quotes the above language from Schedule 4.14 and states that, about one month after the consummation of the sale of Current Media, it settled the CBS dispute for ██████████, which amount it now claims as damages, along with ██████████ in related attorneys' fees and disbursements. The description of the "specific circumstances" underlying the claim are anything but "specific," however:

[C]ertain of the representations and warranties set forth in Article IV of the Merger Agreement were not true as of the date of the Closing. These include, but are not limited to, the representations and warranties set forth in Sections 4.7, 4.8 and 4.14 of the Merger Agreement.

197. As an initial matter, the Merger Agreement and Schedule 4.14 to the Company Disclosure Letter specifically apprised Defendant of the pendency of the CBS dispute and the fact that Current Media “anticipate[d] the settlement” of it.

198. Section 8.3 of the Merger Agreement does not provide for the indemnification of fully disclosed liabilities such as the CBS dispute absent a showing of inaccuracies related to it in the representations and warranties contained in the Merger Agreement. Simply put, there were no inaccuracies in the Merger Agreement related to the CBS dispute, which was explicitly carved out from the “Undisclosed Liabilities” representations and warranties in Section 4.8 and the “Absence of Litigation” representations and warranties in Section 4.14. As to Section 4.7, which relates to “Financial Statements” and GAAP accounting, the existence of the fully disclosed CBS dispute is simply irrelevant.

199. Even if there were some inaccuracy in the representations and warranties related to the CBS dispute, the Claim Certificate only makes vague and conclusory reference to “certain of the representations and warranties” being inaccurate. The Claim Certificate’s listing of Sections 4.7, 4.8 and 4.14 generally without any information that would lead a reader to understand how those representations were actually shown to be inaccurate is a far cry from the its earlier assertion that it will provide “specific circumstances” entitling Defendant to

indemnification. The conclusory language of the Claim Certificate is certainly insufficiently specific under Section 8.8(a)(iii).

200. Moreover, even if the CBS dispute did somehow provide a basis for a claim against the escrow account regardless of the fact that Defendant was explicitly informed about its pendency, the claim at the center of the dispute would plainly constitute a “Third Party Claim.” CBS’s claim that it was owed “certain sums in connection with a purported newsfeed licensing agreement” clearly constituted “the assertion or commencement of [a] Legal Proceeding,” as defined in Section 1.1 of the Merger Agreement. It was also an initial step in a “litigation” that would qualify as a “Legal Proceeding” under that definition.

201. To the extent that the CBS dispute may constitute a Third Party Claim despite the fact that it was explicitly disclosed in Schedule 4.14, Section 8.10 of the Merger Agreement requires Defendant to provide Plaintiff Hyatt, as Members’ Representative, the right to control the defense against all Third Party Claims, including the terms under which these Third Party Claims are settled or compromised. Therefore, if the CBS dispute is somehow a valid Third Party Claim, then Defendant necessarily breached the terms of the Merger Agreement by failing to permit Plaintiff Hyatt to control its defense and settling or compromising it without Plaintiff Hyatt’s participation.

202. As was made clear in Schedule 4.14, CBS's contention that Current Media "owed CBS certain sums in connection with a purported newsfeed licensing agreement" is wholly without merit, given that Current Media had withdrawn from negotiations before any agreement was reached. Plaintiff Hyatt, who had first-hand knowledge of those negotiations, would have been able to settle the dispute without paying ██████████ and expending ██████████ in attorneys' fees and disbursements. Therefore, to the extent that CBS's claim constituted a valid Third Party Claim, Defendant's failure to permit Plaintiff Hyatt to control its defense materially prejudiced the Former Members. As a result, Defendant has forfeited its right to indemnification from the Escrow Balance for damages purportedly incurred as a result of CBS's claim.

203. Moreover, Defendant's settlement of the CBS claim, if indeed it was a Third Party Claim eligible for indemnification, also violated the terms of the Merger Agreement, which provides that only Plaintiff Hyatt, in his capacity as Members' Representative, can settle such Third Party Claims.

204. Here, consistent with Section 8.9(a) of the Merger Agreement, Plaintiffs contest, among other things, (i) Defendant's litigation strategy with regard to the CBS claim (*i.e.*, its complete capitulation in the face of demonstrably baseless allegations, which capitulation was driven by its plan to improperly seek

indemnification for the resulting damages from the Former Members' proceeds of the sale of the company); as well as (ii) the [REDACTED] in attorneys' fees and disbursements purportedly spent in settling the CBS claim (which fees are unreasonably high as a result of Defendant's plan to stick the Former Members with the bill).

205. Additionally, although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply and Defendant, for example, could show, as is not the case here, that there were other defenses available to it that might not be available if Plaintiff Hyatt were controlling the defense, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do. Furthermore, Section 8.10(c) explicitly provides that, even where one of the exceptions in Section 8.10(a) applies, meaning that Defendant may properly "assume[] the defense" of a Third Party Claim, Defendant still "shall not agree to any settlement without the written Consent of the Members' Representative." Here, Defendant did not obtain Plaintiff Hyatt's consent, written or otherwise, to the purported settlement of the CBS Third Party Claim

206. Per the foregoing, the purported claim outlined in the CBS Claim Certificate is invalid under Sections 8.3 and 8.8(a) of the Merger Agreement and, in any event, Defendant's handling of those claims violated the requirements of Section 8.10 of the Merger Agreement. As such, Section 8.2 of the Merger Agreement requires that the Escrow Agent disburse the [REDACTED] and [REDACTED] in attorneys' fees and other disbursements that Defendant seeks to have held back in the CBS Claim Certificate to the Former Members immediately.

X. Defendant Threatens To Improperly Withhold Defense Costs Related To Two Ongoing Matters In Violation Of The Merger Agreement

207. Defendant served Plaintiff Hyatt with an additional Claim Certificate that purports to "reserve" the "right" to (i) refuse future indemnification for a Delaware arbitration and related matters filed by certain Former Members; and (ii) seek reimbursement for indemnification payments made in the Finder's Fee Litigation.

208. Until now, Defendant has paid (although not on a timely basis) the defense costs for the Former Members Matters and Finder's Fee Litigation in accordance with its obligations under the Merger Agreement, and has been simultaneously reimbursed for these payments from the General Escrow Account. It has not, however, paid the last set of defense costs submitted to it on June 17, 2014. As a result, Plaintiff Hyatt has personally paid the invoice for fees submitted

by former Delaware Chief Justice Norman Veasey, the Arbitrator in the Former Members Matters, so that the case could proceed without prejudicial interference resulting from Defendant's breach of its indemnification obligations. Plaintiff Hyatt, who inarguably is entitled to indemnification for these expenses, cannot be reimbursed because Defendant has improperly blocked all access to the escrow accounts, even including the Members' Representative's Expense Fund.

209. The Former Members Matters involve claims brought by certain Former Members against Plaintiffs. An additional \$50,000 to \$100,000 is expected to be needed to bring them to their conclusion.

210. Without any factual basis, Defendant contends in its Claim Certificate that additional Former Members "may assert claims similar to" those alleged in the Former Members Matters. This is patently untrue, however, as all other Former Members have signed releases waiving any right that they may otherwise have to make such claims.

211. The Finder's Fee Litigation involved claims by John Terenzio against Current Media and Plaintiff Gore. On June 5, 2014, the California court overseeing the Finder's Fee Litigation determined that the lawsuit was baseless and granted the Current Media parties' motion for summary judgment as to all claims. *See Terenzio v. Current TV*, No. CGC-13-529261 (Cal. Sup. Ct. June 5, 2014). An

additional \$25,000 to \$150,000 is expected to be incurred if Mr. Terenzio files an appeal.

212. Despite Defendant's clear obligation to indemnify Plaintiffs Hyatt and Gore under the Merger Agreement for the Former Members Matters and Finder's Fee Litigation, Defendant served Plaintiff Hyatt with a Claim Certificate on June 27, 2014 in which it sought to "reserve the right to decline to provide further such indemnification" for these matters and, with regard to the Finder's Fee Litigation, seek reimbursement for defense costs already expended. Defendant argued that it was entitled to take these actions because "claims have been made against the General Indemnity Escrow Account that exceed the amount available in that account." These "claims," of course, are Defendant's own, purportedly set forth in Defendant's facially invalid Claim Certificates served on Plaintiff Hyatt on June 27, 2014.

213. But Defendant's Claim Certificate is erroneously premised on the argument that making claims against the escrow account – no matter how spurious – somehow relieves Defendant of its indemnification obligations. The Merger Agreement provides no basis for such a contention. Defendant therefore cannot escape its duty to cover these valid defense costs with the funds remaining in the Escrow Balance.

214. Moreover, these are not “Claims” within the meaning of Section 8.3(a) of the Merger Agreement because, contrary to Defendant’s assertion, they do not reflect a breach of any representation or warranty.

215. With regard to the Former Members Matters, Defendant alleges that the representations and warranties in Sections 4.1 and 4.6 of the Merger Agreement were untrue as of the Closing Date. Section 4.1 describes the organization of Current Media and states that, among other things, no consent of any of the Former Members was required to execute the Merger Agreement. Section 4.6 states that the “execution, delivery and performance” of the Merger Agreement does not conflict with, *inter alia*, Current Media’s organizational documents and any law or order by a governmental authority. Both of these statements were true at the time of closing, and both remain true today.

216. With regard to the Finder’s Fee Litigation, Defendant’s position that there was a misstatement in Section 4.20 (which states that no finder is entitled to a fee in connection with the sale of Current TV) is particularly unfounded in light of the California court’s recent ruling that “no triable issue of material fact exists to support any of the claims brought by Plaintiff John Terenzio.” *Terenzio v. Current TV*, No. CGC-13-529261, at *1 (Cal. Sup. Ct. June 5, 2014).

217. This Claim Certificate clearly does not describe bona fide claims against the escrow account. Instead, Defendant is threatening to cut off Plaintiffs from receiving the defense funds to which they are entitled – and which are paid out of funds belonging to the Former Members, not funds belonging to Defendant – unless Plaintiffs accede to Defendant’s unreasonable and baseless demands contained in the other Claim Certificates. This type of transparent gamesmanship cannot be condoned.

XI. Plaintiffs Have Attempted In Good Faith To Resolve This Dispute

218. Plaintiffs timely objected to Defendant’s Claim Certificates pursuant to Section 8.9(a) of the Merger Agreement.

219. Plaintiffs also attempted to negotiate in good faith for thirty business days pursuant to Section 8.9(b) of the Merger Agreement. Defendant, however, was unyielding on its improper attempt to raid the Escrow Balance for its own benefit.

CAUSES OF ACTION

**COUNT I
BREACH OF CONTRACT**

██████████ Dish Claim and Related Audit)

220. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

221. The Merger Agreement is a lawfully executed and binding contract between Plaintiffs and Defendant.

222. Plaintiffs fully performed their obligations under the Merger Agreement.

223. Defendant materially breached its obligations under Section 8.1 of the Merger Agreement by falsely claiming that certain expenses fall within the enumerated categories of damages for which the General Escrow Account can be used and are wrongfully withholding from Plaintiffs the remainder of the Escrow Balance. As set forth above, there has not been a breach of any representation or warranty under the Merger Agreement and Dish's purported claim for [REDACTED] is entirely unfounded.

224. Defendant materially breached its obligations under Section 8.7 of the Merger Agreement by unreasonably claiming indemnification for non-covered damages, thus preventing the Escrow Agent from disbursing to the Former Members that portion of the Escrow Balance due to them on July 3, 2014.

225. Dish's claim for [REDACTED] and related audit request were "Third Party Claims" under the terms of the Merger Agreement.

226. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to give Plaintiff Hyatt, as Members'

Representative, any notice, let alone reasonably prompt notice, of Dish's claim for

[REDACTED].

227. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against Dish's claim for the same

[REDACTED].

228. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to give Plaintiff Hyatt, as Members' Representative, any notice, let alone reasonably prompt notice, of Dish's request to conduct an audit of Current TV's MFN compliance.

229. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against Dish's audit request.

230. Although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do.

231. By not notifying Plaintiff Hyatt and permitting him to control or at least participate in the defense of Dish's Third Party Claims, Plaintiff Hyatt and all of the other Former Members were materially harmed by forever being deprived of this important right. Had Defendant timely notified Plaintiff Hyatt and allowed him to control the defense of Dish's Third Party Claims, as it was obligated to do, Plaintiff Hyatt would have been able to successfully defend against the Third Party Claims for far less expense due to, among other things, the fact that he personally negotiated the Dish distribution agreement and his knowledge of the fact that the [REDACTED] claim is completely baseless. Defendant's failure to notify Plaintiff Hyatt and give him the right to control the defense of Dish's Third Party Claims constituted material breaches of the Merger Agreement and materially prejudiced the Former Members.

232. The Dish Claim Certificate is further invalid for failing to specify in reasonable detail the basis of the claims it asserts.

233. Defendant's Dish Claim Certificate further constitutes a breach of the Merger Agreement to the extent that it seeks indemnification for purely hypothetical potential future claims that it purports to believe "may" be brought or otherwise purports to "reserve" any so-called "right" to amend the Claim Certificate to add claims or otherwise cure any of its defects outside of the escrow

period that ended on July 2, 2014. The Merger Agreement provides no basis for the unilateral extension of the escrow period by making vague and speculative “placeholder” claims now and then amending a Claim Certificate after the escrow period has ended, if and when Defendant possesses the requisite reasonable basis for believing that such claims actually “will” be brought.

234. Defendant’s refusal to work cooperatively and in good faith with Plaintiff Hyatt regarding the use and timely release of escrow funds to pay expenses associated with covered claims, as required by the Merger Agreement, constitutes a material breach of the agreement.

235. Defendant further materially breached its obligations to Plaintiffs under the agreement by failing to negotiate in good faith.

236. Plaintiffs have suffered and continue to suffer damages as a result of these breaches, and this Claim Certificate should be held invalid.

**COUNT II
BREACH OF CONTRACT**

(DirecTV [REDACTED])

237. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

238. The Merger Agreement is a lawfully executed and binding contract between Plaintiffs and Defendant.

239. Plaintiffs fully performed their obligations under the Merger Agreement.

240. Defendant materially breached its obligations under Section 8.1 of the Merger Agreement by falsely claiming that certain expenses fall within the enumerated categories of damages for which the General Escrow Account can be used and wrongfully withholding from Plaintiffs the remainder of the Escrow Balance. As set forth above, there has not been a breach of any representation or warranty under the Merger Agreement and DirecTV's purported claim for [REDACTED] is entirely unfounded.

241. Defendant materially breached its obligations under Section 8.7 of the Merger Agreement by unreasonably claiming indemnification for non-covered damages, thus preventing the Escrow Agent from disbursing to the Former Members that portion of the Escrow Balance due to them on July 3, 2014.

242. DirecTV's [REDACTED] claim were "Third Party Claims" under the terms of the Merger Agreement.

243. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, with any notice, let alone reasonably prompt notice, of DirecTV's [REDACTED].

244. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against DirecTV's [REDACTED].

245. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to give Plaintiff Hyatt, as Members' Representative, any notice, let alone reasonably prompt notice, of DirecTV's claim for [REDACTED].

246. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against DirecTV's claim for [REDACTED].

247. Although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do.

248. By not notifying Plaintiff Hyatt and permitting him to control or at least participate in the defense of DirecTV's Third Party Claims, Plaintiff Hyatt

and all of the other Former Members were materially harmed by forever being deprived of this important right. Had Defendant timely notified Plaintiff Hyatt and allowed him to control the defense of DirecTV's Third Party Claims, as it was required to do under the contract, Plaintiff Hyatt would have been able to easily and amply demonstrate that there had been no [REDACTED] DirecTV to any payment given, among other things, his extensive industry experience, the fact that he personally negotiated all of Current TV's distribution agreements in the first place, [REDACTED]

[REDACTED]. Defendant's failure to notify Plaintiff Hyatt and give him the right to control the defense of DirecTV's Third Party Claims constituted material breaches of the Merger Agreement and materially prejudiced the Former Members.

249. The DirecTV Claim Certificate is further invalid for failing to specify in reasonable detail the basis of the claims it asserts. In fact, the DirecTV Claim Certificate does not even state the [REDACTED]. Rather it asserts that [REDACTED] and attaches a calculation of the damages supposedly flowing from the unstated violation. The Merger Agreement clearly requires that much more "reasonable detail" be contained in any Claim Certificate.

250. Defendant's DirecTV Claim Certificate further constitutes a breach of the Merger Agreement to the extent that it seeks indemnification for purely hypothetical potential future claims that it purports to believe "may" be brought or otherwise purports to "reserve" any so-called "right" to amend the Claim Certificate to add claims or otherwise cure any of its defects outside of the escrow period that ended on July 2, 2014. The Merger Agreement provides no basis for the unilateral extension of the escrow period by making vague and speculative "placeholder" claims now and then amending a Claim Certificate after the escrow period has ended, if and when Defendant possesses the requisite reasonable basis for believing that such claims actually "will" be brought.

251. Defendant's refusal to work cooperatively and in good faith with Plaintiff Hyatt regarding the use and timely release of escrow funds to pay expenses associated with covered claims, as required by the Merger Agreement, constitutes a material breach of the agreement.

252. Defendant further materially breached its obligations to Plaintiffs under the agreement by failing to negotiate in good faith.

253. Plaintiffs have suffered and continue to suffer damages as a result of these breaches.

COUNT III
BREACH OF CONTRACT
(AT&T [REDACTED] and Resulting Termination Claim)

254. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

255. The Merger Agreement is a lawfully executed and binding contract between Plaintiffs and Defendant.

256. Plaintiffs fully performed their obligations under the Merger Agreement.

257. Defendant materially breached its obligations under Section 8.1 of the Merger Agreement by falsely claiming that certain expenses fall within the enumerated categories of damages for which the General Escrow Account can be used and wrongfully withholding from Plaintiffs the remainder of the Escrow Balance. As set forth above, there has not been a breach of any representation or warranty under the Merger Agreement and AT&T's purported termination claim is entirely unfounded.

258. Defendant materially breached its obligations under Section 8.7 of the Merger Agreement by unreasonably claiming indemnification for non-covered damages, thus preventing the Escrow Agent from disbursing to the Former Members that portion of the Escrow Balance due to them on July 3, 2014.

259. AT&T's [REDACTED] and its resulting termination claim were "Third Party Claims" under the terms of the Merger Agreement.

260. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to give Plaintiff Hyatt, as Members' Representative, any notice, let alone reasonably prompt notice, of AT&T's [REDACTED].

261. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against AT&T's [REDACTED].

262. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to give Plaintiff Hyatt, as Members' Representative, any notice, let alone reasonably prompt notice, of AT&T's termination claim [REDACTED].

263. Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members' Representative, the right to control the defense against AT&T's termination claim [REDACTED].

264. Although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the

defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do.

265. By not notifying Plaintiff Hyatt and permitting him to control or at least participate in the defense of AT&T's Third Party Claims, Plaintiff Hyatt and all of the other Former Members were materially harmed by forever being deprived of this important right. Had Defendant timely notified Plaintiff Hyatt and allowed him to control the defense of AT&T's Third Party Claims, as it was obligated to do, Plaintiff Hyatt would have been able to demonstrate that there had been [REDACTED] entitling AT&T to terminate its distribution agreement with AJAM given, among other things, his extensive industry experience and the fact that he negotiated all of Current TV's distribution agreements in the first place. Plaintiff Hyatt would have been able to successfully defend against the Third Party Claims at minimal expense, in contrast to Defendant's excessive spending on its lawsuit against AT&T (much of which spending was for the entirely irrelevant and unrelated purpose of keeping the litigation confidential). Defendant's failure to notify Plaintiff Hyatt and give him the right to control the

defense of AT&T's Third Party Claims constituted material breaches of the Merger Agreement and materially prejudiced the Former Members.

266. Moreover, Defendant's settlement of its lawsuit against AT&T – which also settled AT&T's termination claim, which was at the center of the lawsuit – also violated the terms of the Merger Agreement, which provides that only Plaintiff Hyatt, in his capacity as Members' Representative, can settle such Third Party Claims. Additionally, Section 8.10(c) explicitly provides that, even where one of the exceptions in Section 8.10(a) applies, meaning that Defendant may properly “assume[] the defense” of a Third Party Claim, Defendant still “shall not agree to any settlement without the written Consent of the Members' Representative.” Here, Defendant did not obtain Plaintiff Hyatt's consent, written or otherwise, to the purported settlement of AT&T's Third Party Claims.

267. The AT&T Claim Certificate is further invalid for failing to specify in reasonable detail the basis of the claims it asserts.

268. Defendant's AT&T Claim Certificate further constitutes a breach of the Merger Agreement to the extent that it seeks indemnification for purely hypothetical potential future claims that it purports to believe “may” be brought or otherwise purports to “reserve” any so-called “right” to amend the Claim Certificate to add claims or otherwise cure any of its defects outside of the escrow

period that ended on July 2, 2014. The Merger Agreement provides no basis for the unilateral extension of the escrow period by making vague and speculative “placeholder” claims now and then amending a Claim Certificate after the escrow period has ended, if and when Defendant possesses the requisite reasonable basis for believing that such claims actually “will” be brought.

269. Defendant’s refusal to work cooperatively and in good faith with Plaintiff Hyatt regarding the use and timely release of escrow funds to pay expenses associated with covered claims, as required by the Merger Agreement, constitutes a material breach of the Agreement.

270. Defendant further materially breached its obligations to Plaintiffs under the Agreement by failing to negotiate in good faith.

271. Plaintiffs have suffered and continue to suffer damages as a result of these breaches.

COUNT IV
BREACH OF CONTRACT
(CBS Claim Certificate)

272. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

273. The Merger Agreement is a lawfully executed and binding contract between Plaintiffs and Defendant.

274. Plaintiffs fully performed their obligations under the Merger Agreement.

275. Defendant materially breached its obligations under Section 8.1 of the Merger Agreement by falsely claiming that certain expenses fall within the enumerated categories of damages for which the General Escrow Account can be used and wrongfully withholding from Plaintiffs the remainder of the Escrow Balance.

276. Defendant materially breached its obligations under Section 8.7 of the Merger Agreement by unreasonably claiming indemnification for non-covered damages, thus preventing the Escrow Agent from disbursing to the Former Members that portion of the Escrow Balance due to them on July 3, 2014.

277. The Merger Agreement fully disclosed the entirety of the CBS dispute. Thus, the existence of the CBS dispute does not reveal any inaccuracies in any of the representations and warranties. Because Section 8.3 of the Merger Agreement does not provide for indemnification of disclosed liabilities, Defendant knowingly filed an invalid Claim Certificate. Defendant therefore materially breached its obligations under the Merger Agreement by filing its CBS Claim Certificate.

278. To the extent that the claim at the center of the CBS dispute constitutes a “Third Party Claim” under the terms of the Merger Agreement despite the fact that the dispute was fully disclosed, Defendant materially breached its obligations under Section 8.10 of the Merger Agreement by failing to provide Plaintiff Hyatt, as Members’ Representative, the right to control the defense against the claim by CBS.

279. Although Section 8.10(a) of the Merger Agreement provides for a narrow set of circumstances in which Defendant would be entitled to control the defense of Third Party Claims, none of those exceptions apply here. Moreover, even if one of the exceptions did apply and Defendant could show, for example, that there were other defenses available to it that might not be available if Plaintiff Hyatt were controlling the defense, such exception does not relieve Defendant of its obligation under the Merger Agreement to allow Plaintiff Hyatt to participate in the defense of these claims, which Defendant did not do.

280. Moreover, to the extent that the CBS dispute involved a Third Party Claim, Defendant’s settlement of that dispute also violated the terms of the Merger Agreement, which provides that only Plaintiff Hyatt, in his capacity as Members’ Representative, can settle such Third Party Claims. Additionally, Section 8.10(c) explicitly provides that, even where one of the exceptions in Section 8.10(a)

applies, meaning that Defendant may properly “assume[] the defense” of a Third Party Claim, Defendant still “shall not agree to any settlement without the written Consent of the Members’ Representative.” Here, Defendant did not obtain Plaintiff Hyatt’s consent, written or otherwise, to the purported settlement of the CBS dispute.

281. By not permitting Plaintiff Hyatt to control or at least participate in the defense of the CBS dispute (to the extent that it constituted a Third Party Claim), Plaintiff Hyatt and all of the other Former Members were materially harmed by forever being deprived of this important right. Had Defendant allowed Plaintiff Hyatt to control the defense of the CBS dispute, as it was obligated to do if indeed the dispute constituted a Third Party Claim, Plaintiff Hyatt would have been able to demonstrate that the claim was baseless given his familiarity with the underlying facts. Plaintiff Hyatt would have been able to successfully defend against CBS’s claim without expending the same resources on attorneys and other costs that Defendant has purportedly expended. Therefore, Defendant’s failure to give Plaintiff Hyatt the right to control the defense against CBS’s claim was a material breach of the Merger Agreement and materially prejudiced the Former Members.

282. The CBS Claim Certificate is further invalid for failing to specify in reasonable detail the basis of the claims it asserts.

283. Defendant's refusal to work cooperatively and in good faith with Plaintiff Hyatt regarding the use and timely release of escrow funds to pay expenses associated with covered claims, as required by the Merger Agreement, constitutes a material breach of the agreement.

284. Defendant further materially breached its obligations to Plaintiffs under the agreement by failing to negotiate in good faith.

285. Plaintiffs have suffered and continue to suffer damages as a result of these breaches.

COUNT V
BREACH OF CONTRACT
(Failure to Pay Indemnifiable Defense Costs for
Former Members Matters and Finder's Fee Litigation)

286. Plaintiffs repeat and re-allege each and every allegation contained in the paragraphs above as if fully set forth herein.

287. The Merger Agreement is a lawfully executed and binding contract between Plaintiffs and Defendant.

288. Plaintiffs fully performed their obligations under the Merger Agreement.

289. The Former Members Matters and Finder's Fee Litigation are "Third Party Claims" under the terms of the Merger Agreement.

290. Plaintiff Hyatt elected to control the defense of the Former Members Matters and Finder's Fee Litigation pursuant to Section 8.10 of the Merger Agreement.

291. Throughout the pendency of the Former Members Matters and Finder's Fee Litigation, Plaintiff Hyatt has submitted valid Claim Certificates seeking indemnification of defense costs associated with these Third Party Claims in accordance with the requirements of the Merger Agreement.

292. Defendant has never objected to any of the Claim Certificates submitted by Plaintiff Hyatt with regard to the Former Members Matters and Finder's Fee Litigation.

293. Prior to June 17, 2014, Defendant paid all defense costs sought via the Claim Certificates submitted by Plaintiff Hyatt for the Former Members Matters and Finder's Fee Litigation (although not on a timely basis) in accordance with its obligations under the Merger Agreement, and was simultaneously reimbursed for these payments from the General Escrow Account.

294. Plaintiff Hyatt submitted Claim Certificates for the latest set of defense costs associated with the Former Members Matters and Finder's Fee Litigation to Defendant on June 17, 2014.

295. To date, Defendant has not objected to the June 17, 2014 Claim Certificates. And the time permitted in the Merger Agreement for any such objection has long since passed.

296. Defendant has materially breached its obligations under the Merger Agreement by unreasonably refusing to pay the defense costs sought via the June 17, 2014 Claim Certificates.

297. Defendant further materially breached its obligations under the Merger Agreement by serving Plaintiff Hyatt with a Claim Certificate on June 27, 2014 in which it sought to "reserve the right to decline to provide further such indemnification" for the Former Members Matters and Finder's Fee Litigation.

298. Defendant argues that, despite the fact that it has heretofore paid all defense costs sought via the Claim Certificates submitted by Plaintiff Hyatt for the Former Members Matters and Finder's Fee Litigation, it is now entitled to refuse indemnification for these Third Party Claims because other "claims have been made against the General Indemnity Escrow Account that exceed the amount

available in that account.” These other “claims,” of course, are those found in Defendant’s own June 27, 2014 Claim Certificates. But the Merger Agreement provides no basis for Defendant to be relieved of its obligations to pay defense costs for the Former Members Matters and Finder’s Fee Litigation – Third Party Claims for which Claim Certificates (which Defendant never objected to) were served on it nearly two months ago – simply because it has filed its own Claim Certificates (all of which Plaintiff Hyatt timely objected to).

299. Defendant’s refusal to work cooperatively and in good faith with Plaintiff Hyatt regarding the use and timely release of escrow funds to pay expenses associated with covered claims, as required by the Merger Agreement, constitutes a material breach of the agreement.

300. Defendant further materially breached its obligations to Plaintiffs under the agreement by failing to negotiate in good faith.

301. Plaintiffs have suffered and continue to suffer damages as a result of these breaches, and this Claim Certificate should be held invalid.

COUNT VI
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

302. Plaintiffs repeat and re-allege each and every allegation contained in the paragraphs above as if fully set forth herein.

303. The purpose of the escrow provisions in the Merger Agreement included ensuring that there would be sufficient funds to cover liabilities and litigation costs that properly arose from the Merger Agreement.

304. Defendant knew the purpose of the Merger Agreement when it was executed.

305. The Merger Agreement contains an implied covenant that Defendant will not encourage claims against the escrow, which Defendant has done to curry favor with the distributors.

306. Defendant further knowingly and intentionally deprived Plaintiffs of the benefits of the parties' bargain by knowingly ignoring in bad faith the clear requirements of the Merger Agreement, particularly as pertains to the prescribed manner for handling Third Party Claims. By defending against those Third Party Claims on its own, without honoring its contractual obligation to give Plaintiff Hyatt the right to control the defense, Defendant either (i) intended to botch the defense; or (ii) admits its knowledge that those Third Party Claims were without any substantive merit, thereby making false the Claim Certificates alleging

[REDACTED]

307. As a result of Defendants' conduct, Plaintiffs have suffered and continue to suffer damages.

COUNT VII
DECLARATORY JUDGMENT

308. Plaintiffs repeat and re-allege each and every allegation contained in the paragraphs above as if fully set forth herein.

309. Plaintiffs seek a declaratory judgment stating that all of Defendant's purported Claim Certificates are facially invalid.

310. Plaintiffs seek a further declaratory judgment stating that Defendant does not have a right to claim money in the General Escrow Account based on its unsupported claim that it expended [REDACTED] in terminating the uneconomic AJE-TWC Agreement.

311. Plaintiffs seek a further declaratory judgment stating that Defendant materially breached the terms of the Merger Agreement by failing to provide Plaintiff Hyatt with timely written notice and the ability to control or at least participate in the defense of Dish's claim for [REDACTED]

312. Plaintiffs seek a further declaratory judgment stating that Defendant materially breached the terms of the Merger Agreement by failing to provide Plaintiff Hyatt with timely written notice and the ability to control or at least participate in the defense of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] must be borne by Defendant without recourse to the General Escrow Account or to the Former Members.

313. Plaintiffs seek a further declaratory judgment stating that Defendant materially breached the terms of the Merger Agreement by failing to provide Plaintiff Hyatt with timely written notice and the ability to control or at least participate in the defense of AT&T's [REDACTED] [REDACTED] and its resulting termination claim.

314. Plaintiffs seek a further declaratory judgment stating that Defendant materially breached the terms of the Merger Agreement by settling AT&T's termination claim without the consent of Plaintiff Hyatt, and that by virtue of this breach of the Merger Agreement, Defendant is not entitled to any damages resulting from such settlement.

315. Plaintiffs seek a further declaratory judgment stating that CBS's licensing agreement claim was a fully disclosed liability for which Defendant cannot make claims against the escrow account.

316. Plaintiffs seek a further declaratory judgment stating that, to the extent that CBS's licensing agreement claim is a valid "Third Party Claim" under the

Merger Agreement, Defendant materially breached the terms of the Merger Agreement by failing to provide Plaintiff Hyatt with the ability to control or at least participate in the defense of it.

317. Plaintiffs seek a further declaratory judgment stating that Defendant materially breached the terms of the Merger Agreement by settling CBS's licensing agreement claim without the consent of Plaintiff Hyatt, and that by virtue of this breach of the Merger Agreement, Defendant is not entitled to any damages resulting from such settlement.

318. Plaintiffs seek a further declaratory judgment stating that the letter Defendant served on Plaintiff Hyatt on August 6, 2014 (more than one month after the close of the escrow period) purporting to provide him with notice and the right to control the defense of a lawsuit DirecTV filed against Defendant on July 11, 2014 is without legal effect because it was served on Plaintiff Hyatt well outside the escrow period; or, in the alternative, that this letter related to the same Third Party Claim [REDACTED] discussed in the DirecTV Claim Certificate, which Defendant first learned about no later than April 23, 2014, and is therefore grossly tardy under the terms of the Merger Agreement's notice requirement, with such tardiness having materially prejudiced Plaintiffs.

319. Plaintiffs seek a further declaratory judgment stating that Defendant has an obligation to provide continuing indemnification to Plaintiffs in accordance with the indemnification provisions of the Merger Agreement, the Current Media Operating Agreement and all other agreements between the parties.

320. Plaintiffs seek a further declaratory judgment that all of the hypothetical, purely speculative, non-existent future “Claims” asserted in Defendant’s Dish, DirecTV and AT&T Claim Certificates are invalid under the terms of the Merger Agreement and represent an improper basis upon which to retain any portion of the Escrow Balance.

COUNT VIII
FRAUDULENT MISREPRESENTATION

321. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

322. Defendant had a duty not to make false and misleading statements during acquisition negotiations.

323. Defendant falsely represented to Plaintiffs that, immediately after the sale of the network, it intended to take Current TV off the air and run AJE programming in its place until AJAM was ready to launch several months later.

324. Defendant knew, or was recklessly indifferent to, the falsity of its representation because Defendant had no plans to take Current TV off the air and

run AJE programming in its stead prior to AJAM's launch. In fact, Defendant continued to run Current TV programming until the very day that AJAM launched.

325. Defendant also falsely represented to Plaintiffs that, given its plan of running AJE programming on an interim basis on all of the distributors whose Current TV distribution agreements Defendant would be taking over, it needed to terminate the AJE-TWC Agreement because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

326. Defendant knew, or was recklessly indifferent to, the falsity of its representation because Defendant had no plans to take Current TV off the air and run AJE programming in its stead prior to AJAM's launch, and thus there was no risk that [REDACTED]. In fact, Defendant continued to run Current TV programming until the very day that AJAM launched.

327. Defendant also falsely represented to Plaintiffs that terminating the AJE-TWC Agreement would entail only minimal legal expenses.

328. Defendant knew, or was recklessly indifferent to, the falsity of its representation because Defendant planned on claiming significant expenses related

to terminating the AJE-TWC Agreement in order to raid funds from the escrow account.

329. By making these false representations, Defendant intended to induce Plaintiffs to agree to indemnify it for half of the expenses associated with the termination of the AJE-TWC Agreement. Furthermore, Defendant intended to induce Plaintiffs to end negotiations and consummate the acquisition. This is corroborated by the fact that Defendant made the representations during the final stages of negotiations.

330. Plaintiffs acted with justifiable reliance on these false representations, believing that Defendant actually intended to run AJE programming in place of Current TV until AJAM was ready to launch. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendant then never even launched AJE on Comcast, DirecTV or any of Current TV's other former distributors during the interim period between the sale of Current TV and the launch of AJAM, and instead kept Current TV's programming on the air until the August 2013 launch of AJAM.

331. Plaintiffs also justifiably relied on these false representations in believing that the cost of terminating the AJE-TWC Agreement would be minimal. After all, no scenario existed for which TWC could have claimed any damages for non-performance of the agreement given that it had never exercised its free option to broadcast AJE and the agreement provided no economic benefits to TWC.

332. These inducements caused Plaintiffs damages, including but not limited to the money in the General Escrow Account that Defendant is claiming but which rightfully belongs to the Plaintiffs.

COUNT IX
FRAUDULENT CONCEALMENT

333. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

334. Defendant had a duty not to make false and misleading statements during acquisition negotiations.

335. Defendant concealed from Plaintiffs the fact that it intended to run Current TV programming until it was prepared to launch AJAM. Instead, Defendant affirmatively misrepresented to Plaintiffs that, immediately after the sale of the network, it intended to take Current TV off the air and run AJE programming in its place until AJAM was ready to launch several months later.

336. Defendant also affirmatively misrepresented to Plaintiffs that, given its plan of running AJE programming on an interim basis on all of the distributors whose Current TV distribution agreements Defendant would be taking over, it needed to terminate the AJE-TWC Agreement because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

337. Defendant also concealed the fact that it intended to claim significant expenses related to terminating the AJE-TWC Agreement in order to raid funds from the escrow account. Instead, Defendant affirmatively misrepresented to Plaintiffs that terminating the AJE-TWC Agreement would require only minimal legal expenses.

338. Defendant made these omissions with knowledge or with reckless indifference that they would mislead Plaintiffs into believing that Defendant intended to run AJE programming until it launched AJAM and that terminating the AJE-TWC Agreement would entail only minimal legal expenses.

339. By making these omissions, Defendant intended to induce Plaintiffs to agree to indemnify it for damages associated with the termination of the AJE-TWC Agreement. Furthermore, Defendant intended to induce Plaintiffs to end

negotiations and consummate the acquisition. This is corroborated by the fact that Defendant made the representations during the final stages of negotiations.

340. Plaintiffs justifiably relied on these omissions, believing that Defendant actually intended to run AJE programming in place of Current TV until AJAM was ready to launch. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendant then never even launched AJE on Comcast, DirecTV or any of Current TV's other former distributors during the interim period between the sale of Current TV and the launch of AJAM, and instead kept Current TV's programming on the air until the August 2013 launch of AJAM.

341. Plaintiffs also justifiably relied on these omissions in believing that the cost of terminating the AJE-TWC Agreement would be minimal. After all, no scenario existed for which TWC could have claimed any damages for non-performance of the agreement given that it had never exercised its free option to broadcast AJE and the agreement provided no economic benefits to TWC.

342. Plaintiffs also acted with justifiable reliance on the omission because Defendant insisted during negotiations that it was merely concerned with terminating the AJE-TWC Agreement, not with incentivizing TWC to carry AJAM. These inducements caused Plaintiffs damages, including but not limited to the money in the General Escrow Account that Defendant is claiming but which rightfully belongs to the Plaintiffs.

COUNT X
EQUITABLE FRAUD

343. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

344. Defendant had a duty not to make false and misleading statements during acquisition negotiations.

345. Defendant falsely represented to Plaintiffs that, immediately after the sale of the network, it intended to take Current TV off the air and run AJE programming in its place until AJAM was ready to launch several months later. Defendant failed to exercise reasonable care in making this false representation because Defendant had no plans to take Current TV off the air and run AJE programming in its stead prior to AJAM's launch. In fact, Defendant continued to run Current TV programming until the very day that AJAM launched.

346. Defendant also falsely represented to Plaintiffs that, given its plan of running AJE programming on an interim basis on all of the distributors whose Current TV distribution agreements Defendant would be taking over, it needed to terminate the AJE-TWC Agreement because [REDACTED]

[REDACTED]. Defendant failed to exercise reasonable care in making this false representation because Defendant had no plans to take Current TV off the air and run AJE programming in its stead prior to AJAM's launch, and thus there was no risk that [REDACTED]

[REDACTED]. In fact, Defendant continued to run Current TV programming until the very day that AJAM launched.

347. By making these representations, Defendant intended to induce Plaintiffs to agree to indemnify it for damages associated with the termination of the AJE-TWC Agreement. Furthermore, Defendant intended to induce Plaintiffs to end negotiations and consummate the acquisition. This is corroborated by the fact that Defendant made the representations during the final stages of negotiations.

348. Plaintiffs acted with justifiable reliance on these false representations, believing that Defendant actually intended to run AJE programming in place of Current TV until AJAM was ready to launch. [REDACTED]

[REDACTED] Defendant then never even launched AJE on Comcast, DirecTV or any of Current TV's other former distributors during the interim period between the sale of Current TV and the launch of AJAM, and instead kept Current TV's programming on the air until the August 2013 launch of AJAM.

349. Plaintiffs also justifiably relied on these false representations in believing that the cost of terminating the AJE-TWC Agreement would be minimal. After all, no scenario existed for which TWC could have claimed any damages for non-performance of the agreement given that it had never exercised its free option to broadcast AJE and the agreement provided no economic benefits to TWC.

350. These inducements caused Plaintiffs damages, including but not limited to the money in the General Escrow Account that Defendant is claiming but which rightfully belongs to the Plaintiffs.

COUNT XI
PROMISSORY ESTOPPEL

351. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

352. Defendant had a duty not to make false and misleading statements during acquisition negotiations.

353. Defendant promised Plaintiffs that, immediately after the sale of the network, it intended to take Current TV off the air and run AJE programming in its place until AJAM was ready to launch several months later.

354. Defendant also promised Plaintiffs that terminating the AJE-TWC Agreement would entail only minimal legal expenses.

355. By making these promises, Defendant reasonably expected to induce Plaintiffs to agree to indemnify it for damages associated with the termination of the AJE-TWC Agreement. Furthermore, Defendant reasonably expected to induce Plaintiffs to end negotiations and consummate the acquisition. This is corroborated by the fact that Defendant made the representations during the final stages of negotiations.

356. Plaintiffs acted with reasonable reliance on these promises, believing that Defendant actually intended to run AJE programming in place of Current TV until AJAM was ready to launch. [REDACTED]

COUNT XII
CONTRACTUAL ATTORNEYS' FEES

359. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

360. Pursuant to Section 8.9(d) of the Merger Agreement, a substantially prevailing party shall be entitled to an award of fees and expenses, including attorneys' fees and costs.

361. Accordingly, in the event Plaintiffs prevail in this action, they are entitled to recover their fees and expenses, including attorneys' fees, costs and expenses under this provision.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- (a) Ordering the immediate turnover of the entirety of the Escrow Balance to Plaintiffs, less any amount needed to cover indemnification related to the Former Members Matters and Finder's Fee Litigation, for which Claim Certificates were properly filed prior to the close of the escrow period on July 2, 2014;
- (b) Awarding Plaintiffs general and/or compensatory damages in an amount to be determined at trial for all injuries suffered as a result of Defendant's wrongdoing;
- (c) Declaring that (i) all of Defendant's purported Claim Certificates are facially invalid; (ii) Defendant does not have a right to claim money in the General Escrow Account based on its unsupported claim that it expended ██████████ in terminating the uneconomic AJE-TWC Agreement; (iii) Defendant materially breached the terms of the Merger Agreement by failing to provide Plaintiff Hyatt with timely written notice and the ability to control or at least participate in the

defense of (x) Dish's claim for a [REDACTED]

(y) DirecTV's [REDACTED]

and (z) AT&T's [REDACTED]

and resulting termination claim;

(iv) Defendant materially breached the terms of the Merger Agreement by claiming the right to indemnification for the fully disclosed CBS dispute or, if CBS's licensing agreement claim constitutes a Third Party Claim under the Merger Agreement, by failing to provide Plaintiff Hyatt with the ability to control or at least participate in the defense of that claim; (v) Defendant materially breached the terms of the Merger Agreement by settling both the AT&T termination claim and the CBS dispute without the consent of Plaintiff Hyatt, and that by virtue of these breaches Defendant is not entitled to any damages resulting from these settlements; (vi) the letter Defendant served on Plaintiff Hyatt on August 6, 2014 purporting to provide him with notice and the right to control the defense of a lawsuit DirecTV filed against Defendant on July 11, 2014 is without legal effect or, in the alternative, relates to the same Third Party Claim for [REDACTED] discussed in the DirecTV Claim Certificate, and is therefore grossly tardy, with such tardiness having materially prejudiced Plaintiffs; (vii) Defendant has an obligation to provide continuing indemnification to Plaintiffs in accordance with the indemnification provisions of the Merger Agreement, the Current Media Operating Agreement and all other agreements between the parties; and (viii) all of the hypothetical, purely speculative, non-existent future "Claims" in Defendant's Claim Certificates are invalid under the terms of the Merger Agreement and represent an improper basis upon which to retain any portion of the Escrow Balance;

- (d) Awarding Plaintiffs pre-judgment and post-judgment interest at the maximum rate allowable by law;
- (e) Awarding Plaintiffs the costs of suit as incurred in this action and attorneys' fees, as provided for in Section 8.9(d) of the Merger Agreement; and
- (f) All other relief as may be appropriate.

OF COUNSEL:

David Boies
Boies, Schiller & Flexner LLP
333 Main Street
Armonk, New York 10504
(914) 749-8200

Christopher E. Duffy
Boies, Schiller & Flexner LLP
575 Lexington Avenue
New York, New York 10022
(212) 446-2300

Dated: August 15, 2014

/s/ Rudolf Koch

Gregory V. Varallo (#2242)
Rudolf Koch (#4947)
Kevin M. Gallagher (#5337)
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

*Attorneys for Plaintiffs Albert A. Gore,
Jr. and Joel Hyatt, as Members'
Representative on behalf of the Former
Members of Current Media, LLC*

DEADLINE.COM