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January 24, 2018

## BY NYSCEF AND BY HAND

The Honorable Eileen Bransten  
Supreme Court of the State of New York  
County of New York  
60 Centre Street, Room 442  
New York, NY 10007

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

Dear Justice Bransten:

I write in response to the January 23, 2018 letter from Defendants' new counsel at the law firm of Gibson, Dunn & Crutcher LLP. Defendants' decision to change law firms following the Court's hearing on the parties' motions for summary judgment apparently has not changed Defendants' primary strategy in this action: Delay.

Defendants seem to be so intent on preventing the Court from ruling on the motions for summary judgment that they are prepared to resort to the extreme remedy of requesting a temporary restraining order staying the Court's determination of the motions. There is absolutely no basis for Defendants' request to delay the Court's decision on the pending motions for summary judgment, which were fully submitted and argued months ago.

Defendants' new counsel has chosen to use his first appearance in this case to pull a stunt. He has not only threatened to delay this action by filing an order to show cause for a stay, with temporary restraint, but he has also filed a misleading and improper sur-reply on the pending motions for summary judgment, rehashing arguments already made by Defendants both in their motion papers, and at the September 15, 2017 hearing. New counsel ignores the history of this case:

- This action was commenced on December 17, 2013. (Doc. No. 1.)
- The note of issue was filed on September 26, 2016. (Doc. No. 230.)
- In accordance with a briefing schedule set forth in a so-ordered stipulation dated October 17, 2016 (Doc. No. 236), the parties' motions for summary judgment were fully briefed as of December 23, 2016.

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*Darabont v. AMC Network Entertainment LLC*

Index No. 654328/2013

Page 2 of 2

- Following two hearings on the parties' motions to seal, held on April 28, 2017 and June 9, 2017, the Court ordered the parties to file their summary judgment papers on July 13, 2017.
- On September 15, 2017, the Court heard several hours of oral argument on the motions for summary judgment.
- On January 23, 2018, over four years since this action was commenced, nearly a year and a half since the note of issue was filed, over a year since the Court ordered the parties to complete their summary judgment briefing, and over four months since the Court held its hearing on the summary judgment motions, Defendants are now apparently planning to request a stay, and a temporary restraining order, to prevent the Court from ruling on the motions for summary judgment.

Defendants' motivations could not be more transparent: they have no defense but delay. They have offered the Court no compelling reason whatsoever for halting the Court's determination of the motions for summary judgment in this four-year-old case, which the parties—and the Court—have invested countless hours toward resolving. Contrary to counsel's argument, the new complaint does not raise any new facts or legal issues that would affect the summary judgment issues already fully submitted and heard by the Court in this action.

Rather, counsel's letter ignores that the new complaint concerns Plaintiffs' audit claims, and seeks \$10 million wrongfully withheld from Plaintiffs under Plaintiff Darabont's agreement, which provides a contractual right to audit Defendants' books and records. Plaintiffs' audit was only recently completed, after having been unconscionably delayed by Defendants for years. These new claims are above and beyond, and separate, from the damages being sought in this action. The new complaint also addresses a violation of the "most favored nation" provision in Darabont's contract, based on language in Robert Kirkman's contract with Defendants. But none of this has any bearing on the discrete issue before the Court on Plaintiffs' motion for partial summary judgment: whether the Affiliate Transaction Provision in Darabont's contract applies to the imputed license fee.

If Defendants carry out their threat to file an order to show cause, with temporary restraint, seeking a stay of this action, the Court should refuse to sign it. There is no need for any "emergency" relief. Defendants are free to move to dismiss the new action, or move to consolidate the new action with this action, on a properly-noticed motion, to which Plaintiffs will gladly respond. But the Court should firmly reject Defendants' new counsel's attempt to delay the Court's ruling on the motions for summary judgment.

Respectfully submitted,

*/s/ Jerry D. Bernstein*

Jerry D. Bernstein

cc: All counsel of record (via NYSCEF)