EXHIBIT 18

BLANKROME
The Chrysler Building
405 Lexington Avenue | New York, NY 10174
blankrome.com

Phone: *(212) 885-5511*
Fax: *(917) 332-3766*
Email: *JBernstein@BlankRome.com*

March 20, 2018

BY EMAIL

Orin Snyder
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193

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

Dear Orin:

I write on behalf of Plaintiffs to inform you that we consider Defendants' Motion for Leave to Supplement Summary Judgment Briefing, which was filed on NYSCEF on March 7, 2018, to be frivolous. Accordingly, Plaintiffs intend to file a Cross-Motion for Sanctions under 22 NYCRR 130-1.1. I am sending you this letter as a courtesy to notify you of Plaintiffs' position, and to request that Defendants immediately withdraw the Motion for Leave to Supplement Summary Judgment Briefing. If Defendants withdraw the Motion, Plaintiffs will not move for sanctions.

It is unfortunate that I have to write this letter. Sanctions are a strong remedy, and not one that we take lightly. But, after serious consideration, we have concluded that moving for sanctions is necessary to protect our clients' interests, and to address what we believe is serious prejudice to our clients. This is more than our disagreement with Defendants' litigation tactics, or our taking a different view of the law, or of the facts. We believe that Defendants' Motion meets all of the definitions of frivolous conduct under 22 NYCRR 130-1.1, *i.e.*, it is completely without merit in law, it was made primarily to delay this action and—most critically—the Motion asserts material factual statements that are false.

First, Defendants contend on pages 12 to 14 of Defendants' memorandum of law that "in their new complaint, Plaintiffs now concede that an imputed license fee is not a 'transaction' between AMC affiliates." We cannot see how this is anything less than a false statement of material fact, in light of the following.

Plaintiffs allege in Paragraph 38 of their new complaint:

> AMC has taken the position in the Prior Action that Darabont's Affiliate Transaction Provision does not apply to the ILF that AMC Studios imputes for *TWD* because the ILF is not part of any "transaction" between affiliates governed by Darabont's Affiliate Transaction Provision, and no transaction between AMC affiliates ever occurred as to *TWD*. ***This argument is flawed and incorrect, as addressed in Plaintiffs' pending motion for summary judgment in the Prior Action. But, if AMC's position was correct (which it is not), Kirkman's contractual MAGR definition would be substantially "better" than Darabont's—in that the Kirkman Agreement does not allow for an ILF at all but instead requires an actual fair market license fee to be paid by AMC Network to AMC Studios for*** **TWD.** Thus, Darabont would be entitled to the benefit of this "better" language. Indeed, the primary defense AMC raised in the Prior Action is that because the Darabont Agreement uses an ILF instead of an actual license fee, there is no "actual transaction" that occurs between AMC affiliates. Although this defense strains logic as to the ILF, it would not apply at all to an actual license fee.

(Emphasis added.) And, under the Third Cause of Action for a Declaratory Judgment in the new complaint, at Paragraph 56, Plaintiffs allege:

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

(Emphasis added.)

Also, during the February 28 pre-motion conference, I stated as follows:

> As your Honor knows, the issue on the motion for summary judgement [sic] is the Affiliate Transaction Provision applicable to the imputed license fee. That is the only issue that we presented to your Honor by way of motion for summary judgement [sic]. And AMC argued, when we argued this back in September, that, no, actually the Affiliate Transaction Provision doesn't apply to the imputed license fee. Why? Because the imputed license fee is not a transaction. Well, we argued to your Honor—we hope your Honor

> will agree with us—that position is nonsense. And we hope your Honor will grant our motion for summary judgement [sic].

(Feb. 28, 2018 Hr'g Tr. 12:9-20; *see generally id.* 12:8-15:16.)

Plaintiffs made it perfectly clear, both in their new complaint and during the February 28 pre-motion conference: (1) that Plaintiffs continue to assert that their arguments in their motion for partial summary judgment are correct, (2) that Plaintiffs continue to assert that AMC's position that the imputed license fee is not a "transaction" is untenable; and (3) that Plaintiffs' new claim under the Most Favored Nation provision as to Kirkman's contract language is an alternative theory of recovery. As you know, the CPLR expressly permits the pleading of alternative theories. CPLR 3014 ("Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated *alternatively or hypothetically*.") (emphasis added). Thus, Defendants' statement in the Motion that "in their new complaint, Plaintiffs now concede that an imputed license fee is not a 'transaction' between AMC affiliates" is a false statement of material fact.

Second, Defendants contend on page 12 of Defendants' memorandum of law that, "Plaintiffs have now adopted the MAGR definition that they previously asked this Court to reject, as indicated by their attempts to enforce the audit provisions of that definition." This contention is premised on two false statements of material fact: (1) that Plaintiffs' reliance on the audit provision in the MAGR exhibit is "new evidence," and (2) that Plaintiffs asked the Court in their motion for partial summary judgment to "reject" the MAGR exhibit.

As a case that Defendants cited in their memorandum of law makes clear, a motion for leave to supplement a summary judgment record is "analogous to one for leave to renew." *Mullin v. Waste Management of N.Y., LLC*, 106 A.D.3d 1484, 1485 (4th Dep't 2013). A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR 2221(e).

Plaintiffs have been relying on their audit rights since October 2013, when Plaintiffs first noticed the audit—even before Plaintiffs commenced this action. Defendants are keenly aware of that fact—indeed, Defendants allowed Plaintiffs to commence the audit in 2015, while this action was pending. Thus, Plaintiffs' reliance on their audit rights is not "new evidence." Defendants' Motion does not even attempt to justify Defendants' failure to raise this argument, and this "evidence," during the initial summary judgment briefing.

And, Plaintiffs' reliance on their audit rights is completely irrelevant. Preliminarily, the statement on page 12 of Defendants' memorandum of law that, "[t]he *only* part of the Darabont's [sic] contract with AMC that contains audit rights is Exhibit A, the MAGR definition," is incorrect. (*See, e.g.*, Aug. 7, 2010 Darabont Agreement ¶ 13(d)(ii)(I).) But even if that statement was correct (which it is not), Plaintiffs' position on the pending summary judgment motions has

never been that the Court should "reject" or "tear up" the MAGR exhibit. In fact, Plaintiffs relied extensively on portions of the MAGR exhibit during oral argument in support of Plaintiffs' motion for partial summary judgment. Plaintiffs' alleged reliance on the audit provision in the MAGR exhibit is not a "contradiction" to Plaintiffs' position on the summary judgment motions, as Defendants contend. Thus, even if Defendants had a reasonable justification for failing to offer this "evidence" on the initial summary judgment briefing, this "evidence" is irrelevant, and would not change the Court's determination of the summary judgment motions.

In light of these false statements of material fact, it is evident that Defendants' motion is completely without merit in law. And, worse yet, it is also apparent that Defendants only filed the motion to delay the Court's decision on the summary judgment motions. In Defendants' memorandum of law, Defendants lay out in detail the basis for why Defendants believe that supplementation of the record is necessary. Notwithstanding that Defendants' asserted basis is premised on false statements of material fact, Defendants conclude their memorandum of law by requesting that the Court permit a briefing schedule that will last seventy-four days: thirty days for AMC to file its initial brief, thirty days for Plaintiffs to file an opposition brief, and fourteen days for AMC to file a reply brief. Because Defendants have already fully set forth their arguments in the Motion for Leave to Supplement, there can be no rational basis for why Defendants want even more time to brief these issues—and there is absolutely no basis for seventy-four days of briefing, which is even longer than the Court-ordered schedule for the initial summary judgment briefing, which was fifty-six days long. (*See* NYSCEF Doc. No. 236.)

This action was commenced nearly four-and-a-half years ago. Defendants' attempts to delay the Court's decision on the summary judgment motions have caused significant prejudice to Plaintiffs. And, Defendants' frivolous Motion has caused Plaintiffs to needlessly incur attorneys' fees and costs in responding to Defendants' pre-motion letters, attending the pre-motion conference, opposing Defendants' Motion, and researching and drafting a Cross-Motion for Sanctions.

This letter does not set forth all of the reasons why Plaintiffs believe that Defendants' Motion for Leave to Supplement is frivolous, and why sanctions are warranted. It is an overview of the key points. To be clear, if Defendants do not notify us by 5:00 p.m. Eastern Time tomorrow (March 21) that they will withdraw their Motion, Plaintiffs will file a Cross-Motion for Sanctions. *See* 22 NYCRR 130-1.1(c) ("In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues . . . whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.").

Very truly yours,

Jerry D. Bernstein

cc: Scott A. Edelman (by email)
John V. Berlinski (by email)
Brian C. Ascher (by email)