

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
THE WEINSTEIN COMPANY HOLDINGS LLC, et al.,	:	Case No. 18-10601 (MFW)
Debtors.	:	(Jointly Administered)
	:	Re: Docket No. 8

**RESERVATION OF RIGHTS OF INTERESTED PARTY A+E TELEVISION
NETWORKS, LLC AND ITS RELATED ENTITIES**

A+E Television Networks, LLC (together with its related entities, including Lifetime Entertainment Services, “AETN”), an interested party in the above-captioned chapter 11 cases of The Weinstein Company Holdings, LLC (“TWC”) and its affiliated debtors (the “Debtors”), hereby submits this *Reservation of Rights* with respect to the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, et al.*, [Docket No. 8] (the “Motion”), the *Asset Purchase Agreement* attached as Exhibit B to the Motion (the “APA”), and the *Disclosure Schedule to the APA* provided to AETN upon request (the “Disclosure Schedule”),¹ and respectfully represents as follows:

1. Prior to January 10, 2018, AETN (and/or its related entities) and TWC (and/or its related entities) were party to, *inter alia*, the following agreements: (a) *Television Series Production and License Agreement Deal Memorandum*, dated as of February 7, 2008, (together with any amendments thereto, the “Project Runway Deal Memo”), (b) *Television Series License Agreement-Standard Terms and Conditions*, dated as of September 8, 2008 (as amended, the “Standard Terms” and, together with the Project Runway Deal Memo, the “Project

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such term in the Motion or the APA as applicable.

Runway Agreement”), and (c) the *Motion Picture License Agreement Deal Memorandum* dated as of February 7, 2008 (together with any amendments thereto, the “**Movie Agreement**”).

2. On November 1, 2017, AETN sent TWC a letter putting it on notice that Mr. Weinstein’s actions, which were reportedly known by TWC, constituted material breaches and defaults under the Project Runway Agreement and Movie Agreement (the “**November 1 Letter**”). On January 10, 2018, AETN provided TWC with written notice of AETN’s termination of the Project Runway Agreement and the Movie Agreement (the “**Termination Notice**”), based on TWC’s material breaches and defaults. AETN’s termination expressly terminated (a) all AETN obligations with respect to any future seasons of the television program Project Runway (including Seasons 17 and 18), as well as television programs derived from Project Runway (including any seasons beyond Season 7 of Project Runway All-Stars), and (b) all AETN obligations under the Movie Agreement, including any further funding obligations under that agreement.

3. As of January 10, 2018, TWC was in default of at least three provisions of the Project Runway Agreement and Movie Agreement, including Sections 1(c), 1(e), and 3 of the Standard Terms, which, *inter alia*, obligated TWC to discharge all of its obligations as an employer and/or contracting party under federal, state, and local laws; represent that it knew of no claims or pending litigation that would adversely affect the agreement; and conform Project Runway to AETN’s program practices and standards. Indeed, on October 5, 2017, the New York Times published an article detailing several accounts of sexual harassment and other misconduct by Harvey Weinstein over the course of three decades. Following the October 5, 2017 article, dozens of women came forward with accusations against Mr. Weinstein. Many of Mr. Weinstein’s victims implicated TWC and the TWC Board, alleging that TWC knew of Mr. Weinstein’s misconduct, yet knowingly or negligently allowed it to continue. These allegations

resulted in numerous lawsuits against TWC, members of the TWC Board, and Mr. Weinstein.²

4. In Section 3.10(f) of the Disclosure Schedule, the Debtors acknowledged their receipt of the November 1 Letter and the Termination Notice. Despite AETN's termination of the Project Runway Agreement and the Movie Agreement, the Debtors listed these agreements as "Material Contracts" in Section 3.12 of the Disclosure Schedule.³ The Debtors also listed certain agreements related to two television programs derived from Project Runway as "Material Contracts": Project Runway Junior and Project Runway All-Stars (the "**Runway-Related Agreements**").⁴ Pursuant to Section 2.8 of the APA, the "Material Contracts" included in Section 3.12 of the Disclosure Schedule are each purportedly "executory Contracts relating to the Business or the Purchased Assets to which one or more of Seller Parties are party" that are available to be assumed and assigned to the Buyer. While AETN notes that the Debtors appear to limit the "Available" Project Runway titles to Seasons 15 and 16, the "Available" Project Runway Junior titles to Seasons 2 and 3, and the "Available" Project Runway All-Stars titles to Season 6,⁵ the Debtors' intent with regard to assumption of the agreements is unclear given that they are nevertheless included on the schedule of contracts available to be assumed and assigned.

5. To the extent that Debtors represent that the terminated Project Runway Agreement, Movie Agreement, and/or the Runway-Related Agreements are available for the Debtors to assume and assign to the Buyer, AETN hereby expressly reserves all of its rights with respect to the same.⁶

² See, e.g., Compl., *Noble v. Harvey Weinstein, et al.*, 1:17-cv-09260 (S.D.N.Y. Nov. 27, 2017); *Geiss, et al., v. The Weinstein Company Holdings, LLC, et al.*, 1:17-cv-09554 (S.D.N.Y. Dec. 6, 2017).

³ See "Top Titles," Disclosure Schedule § 3.12, at ¶ 17(a) (Project Runway Deal Memo); "Contracts Pertaining to Multiple Top Pictures," Disclosure Schedule § 3.12, at ¶ 3 (Movie Picture License Agreement).

⁴ *Id.* at ¶ 18(a) (Project Runway Junior); *Id.* at ¶ 19(a) (Project Runway All-Stars).

⁵ See "Top Titles," Disclosure Schedule § 3.12, at ¶¶ 17(a), 18(a), and 19(a).

⁶ See *In re Triangle Laboratories, Inc.*, 663 F.2d 463, 467-68 (3d Cir. 1981) (terminated contract cannot be assumed under section 365); *In re Nemko, Inc.*, 163 B.R. 927, 938 (Bankr. E.D.N.Y. 1994) ("[W]here an executory contract

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Wilmington, Delaware

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has been terminated in accordance with its terms prior to bankruptcy, section 365(e)(1) does not authorize the bankruptcy court to reach beyond the veil of the petition to reinstate the contract.”)(internal citations omitted); *In re B&K Hydraulic Co.*, 106 B.R. 131, 132-33 (Bankr. E.D. Mich. 1989) (an expired contract “does not require any further performance by either party and is therefore not an executory contract”).