

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		<b>FOR COURT USE ONLY</b>
Daniel A. Saunders (SBN 161051) 2029 Century Park East, Suite 2000 Los Angeles, California 90067 Telephone: 424.288.7909 <i>For Plaintiffs Temperance Brennan L.P., Snooker Doodle Productions, Inc., and Bertha Blue, Inc.</i>	Dale F. Kinsella (SBN 063370) 808 Wilshire Boulevard, 3rd Floor Santa Monica, California 90401 Telephone: 310.566.9800 <i>For Plaintiff Wark Entertainment, Inc.</i>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles</b> STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk		
PETITIONER: Wark Entertainment et al. RESPONDENT: Twentieth Century Fox Film Corporation et al.		
<b>PETITION TO</b> <input checked="" type="checkbox"/> <b>CONFIRM</b> <input type="checkbox"/> <b>CORRECT</b> <input type="checkbox"/> <b>VACATE</b> <b>CONTRACTUAL ARBITRATION AWARD</b>		
<b>Jurisdiction (check all that apply):</b> <input type="checkbox"/> <b>Action is a limited civil case</b> Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> <b>Action is an unlimited civil case (exceeds \$25,000)</b>		CASE NUMBER: BC602287, BC602548
<b>NOTICE:</b> You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read Alternative Dispute Resolution form ADR-105, <i>Information Regarding Rights After Attorney-Client Fee Arbitration</i> .		

1. **Petitioner and respondent.** Petitioner (*name each*):

Wark Entertainment, Inc., Temperance Brennan L.P., Snooker Doodle Productions, Inc., and Bertha Blue, Inc. (collectively, "Plaintiffs")

alleges and requests relief against respondent (*name each*):

Twentieth Century Fox Film Corporation, Fox Broadcasting Corporation, Fox Entertainment Group, Inc., and Twenty-First Century Fox, Inc. (collectively, "Fox")

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.

3. **Pending or new action.**

a.  A court case is already pending, and this is a petition filed in that action. (*If so, proceed to item 4.*)

b.  This petition commences a new action. (*If so, complete items 3b(1) through 3b(4).*)

(1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,

except petitioner (*state name and complete one or more of the following*):

- (a)  is a corporation qualified to do business in California.  
(b)  is an unincorporated entity (*specify*):  
(c)  is a representative (*specify*):  
(d)  is (*specify other capacity*):

(2) **Respondent's capacity.** Each respondent named in item 1 is an individual,

except respondent (*state name and complete one or more of the following*):

- (a)  is a business organization, form unknown.  
(b)  is a corporation.  
(c)  is an unincorporated entity (*specify*):  
(d)  is a representative (*specify*):  
(e)  is (*specify other capacity*):

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RESPONDENT: Twentieth Century Fox Film Corporation et al.

3. b. (3) **Amount or property in dispute.** This petition involves a dispute over (check and complete all that apply):
- (a)  the following amount of money (specify amount): \$
  - (b)  property (if the dispute involves property, complete both of the following):
    - (i) consisting of (identify property in dispute):
    - (ii) having a value of (specify value of property in dispute): \$
  - (4)  **Venue.** This court is the proper court because (check (a) or (b)):
    - (a)  this is the court in the county in which the arbitration was held.
    - (b)  the arbitration was not held exclusively in any county of California, or was held outside of California, and (check one or more of the following):
      - (i)  this is the court in the county where the agreement was made.
      - (ii)  this is the court in the county where the agreement is to be performed.
      - (iii)  the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county (name of party):

- (iv)  the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.

4. **Agreement to arbitrate.**

- a. **Date.** Petitioner and respondent entered into a written agreement on or about (date): See Attachment 4(b).
- b.  **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
- c. **Arbitration provision.** Paragraph \_\_\_\_\_ of the agreement provides for arbitration of disputes arising out of the agreement as follows (either copy the arbitration provision in full or summarize the provision):  
See, e.g., Attachment 4(b) Ex. A at ¶ 11(c); Ex. B at p. 6; Ex. E at pp. 3-4; Ex. H at ¶ 10(b); and other agreements as described in Plaintiffs' Memorandum filed concurrently herewith.

5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate (summarize the dispute):

Plaintiffs, the creative force behind the television series *Bones*, alleged that Fox cheated Plaintiffs out of a substantial amount of their profit interests in the series through self-dealing, including in connection with the domestic broadcast network license, certain international licenses, and certain digital streaming licenses.

6. **Arbitrator.** The following person was duly selected or appointed as arbitrator (name of each arbitrator):  
Hon. Peter Lichtman (Ret.)

7. **Arbitration hearing.** The arbitration hearing was conducted as follows (complete both of the following):

- a. **Date** (each date of arbitration): July 9-13, 16-19, 23-27, 2018; August 6-10, 13, 2018; and September 8, 2018.
- b. **Location** (city and state where arbitration was conducted):

Los Angeles, CA

8. **Arbitration award.**

- a. **Date of award.** The arbitration award was made on (date): February 4, 2019
- b. **Terms of award.** The arbitration award (check one or more of the following):
  - (1)  requires  petitioner  respondent to pay the other party this amount: \$ 178,695,778.90
  - (2)  requires neither party to pay the other anything.
  - (3)  is different as to different petitioners and respondents.
  - (4)  provides (specify other terms or check item 8(c) and attach a copy of the award):

- c.  **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).

9. **Service of award.**

- a. The signed award or an accompanying document indicates that the award was served on petitioner on (date): 02/20/2019
- b.  Petitioner alleges that a signed copy of the award was actually served on (date):

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RESPONDENT: Twentieth Century Fox Film Corporation et al.

10. Petitioner requests that the court (check all that apply):

a.  Confirm the award, and enter judgment according to it.

b.  Correct the award and enter judgment according to the corrected award, as follows:

(1) The award should be corrected because (check all that apply):

(a)  the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.

(b)  the arbitrator exceeded his or her authority.

(c)  the award is imperfect as a matter of form.

(2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows (if additional space is required, check here  and submit facts on an attachment labeled 10b(2)):

(3) The award should be corrected as follows (if additional space is required, check here  and describe requested correction on an attachment labeled 10b(3)):

c.  Vacate (cancel) the award.

(1) The award should be vacated because (check all that apply):

(a)  the award was obtained by corruption, fraud, or other unfair means.

(b)  an arbitrator was corrupt.

(c)  the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.

(d)  the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.

(e)  the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.

(f)  an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.

(g)  an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.

(2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows (if additional space is required, check here  and submit facts on an attachment labeled 10c(2)):

(3) Petitioner  does  does not request a new arbitration hearing.

d.  Award petitioner interest from (date): February 4, 2019

(1)  at the statutory rate.

(2)  at rate of \_\_\_ % per year.

e.  Award petitioner costs of suit:

(1)  in the amount of: \$

(2)  according to proof.

f.  Award petitioner attorney fees incurred in this action (check only if attorney fees are recoverable in this action according to statute or the parties' agreement):

(1)  in the amount of: \$

(2)  according to proof.

g.  Award petitioner the following other relief (describe relief requested; if additional space is required, check here  and describe relief on an attachment labeled 10g):

11. Pages and attachments. Number of pages attached: 280

Date: February 27, 2019

Daniel A. Saunders

(TYPE OR PRINT NAME)

/s/ Daniel A. Saunders

(SIGNATURE OF PETITIONER OR ATTORNEY)

# **Attachment 4(b)**

# **Attachment 4(b)**

## **Exhibit A**

**PURCHASE AGREEMENT FOR PURCHASE OF  
LITERARY MATERIAL AND LIFE STORY RIGHTS**

**"MONDAY MOURNING" / KATHLEEN J. REICHS LIFE STORY RIGHTS**

Purchase Agreement dated as of \_\_\_\_\_, between TEMPERANCE BRENNAN LP, a Delaware partnership ("**Lender**") f/s/o KATHLEEN J. REICHS ("**Owner**"), and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, a Delaware corporation ("**Fox**").

1. DEFINITIONS:

(a) Life Story Rights: The life story of Owner limited to the events and experiences contained in the Literary Property and/or her career as a forensic anthropologist, as well as personal and professional events reasonably related to her career as a forensic anthropologist (the "**Life Story Rights**").

(b) Literary Material: That certain published book entitled *Monday Mourning* written by Owner (the "**Book**"), as well as reasonably related personal and professional events outside such timeframe, shall be collectively referred to herein as the "**Literary Property**". The Life Story Rights and, if applicable, the Literary Property, shall sometimes be collectively referred to herein as the "**Work**."

(c) Program: All references herein to "**Program**" shall be deemed to refer to any program produced by Fox based on the Life Story Rights and, if applicable, the Literary Property.

(d) Option Agreement: This Purchase Agreement is incorporated by reference, to the extent referred to therein, into that certain Option Agreement for Purchase of Literary Material and Life Story Rights, with Exhibits, Schedules and attachments thereto, between Lender, Owner and Fox, dated as of September 1, 2004 ("**Option Agreement**"), with respect to Fox's acquisition of an option to acquire all rights to the Life Story Rights and/or the Literary Property ("**Option**") subject to the provisions contained herein and in the Option Agreement regarding Reserved Rights and reversion.

2. GRANT OF RIGHTS: Subject to Owner's reserved rights and the reversion provisions contained herein and in the Option Agreement, Lender and Owner hereby irrevocably grant to Fox, its successors, assigns and licensees, exclusively and in perpetuity throughout the universe all rights of every kind and nature whether now known or hereafter devised, in and to the Life Story Rights and, if applicable, the Literary Property ("**Granted Rights**"). Without limiting the generality of the foregoing, the Granted Rights include all musical and dramatic, live and animated television series, sequel and remake, publishing and merchandising rights.

3. **OWNER'S REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION:** Lender and Owner represent, warrant and agree that as of the date of this Purchase Agreement and continuing thereafter:

(a) **Sole Proprietor:** Lender and Owner are the sole and exclusive proprietors throughout the universe of the Literary Property with sole and absolute right and authority to grant the Granted Rights.

(b) **Sole Writer:** Owner is the sole writer and creator of the Literary Property.

(c) **Marital Status:** At all times during the creation of the Literary Property Owner has been continuously married to Paul A. Reichs ("**Spouse**").

(d) **No Prior Exploitation:** No development of the Life Story Rights or the Literary Property or any part thereof for the purpose of producing a Motion Picture has been previously undertaken or authorized.

(e) **No Prior Grant:** None of the Granted Rights have been granted or assigned by Lender and/or Owner or any Party acting under the authority of or on behalf of Lender and/or Owner to any Party other than to Fox.

(f) **No Infringement or Violation of Third-Party Rights:** The Literary Property is original and has not been adapted from any other literary, dramatic or other material of any kind, nature or description, nor, except for material which is in the public domain (which shall not be a material or substantial part thereof), has the plot, scenes, sequence or story of any other literary, dramatic or other material been copied or used in the Literary Property; insofar as Lender and Owner have knowledge in the exercise of reasonable prudence, (i) the Literary Property does not infringe upon or violate any common law, statutory or other right in any other literary, dramatic or other material; (ii) the material in the Literary Property does not violate the right of privacy or publicity of any person or defame any person and the full use of the Granted Rights will not violate any rights of any Party; and (iii) to the best of Owner's knowledge in the exercise of reasonable diligence the Literary Property is not in the public domain anywhere in the universe.

(g) **Owner's Indemnification:** Lender and Owner hereby agree to indemnify Fox, Fox's subsidiaries, affiliates and parent and related companies, and its and their successors, licensees and assigns, and the respective officers, directors, agents, attorneys and employees of each of the foregoing, from and against any claims, costs, expenses, losses or damages (including reasonable outside attorney's fees) occasioned by or arising out of a breach of any representation, warranty or agreement made by Lender and/or Owner herein. Fox agrees similarly to indemnify Owner with respect to material added to the Literary Property by Fox or at Fox's request and with respect to the development, production, distribution and exploitation of the television program or other production or derivative work thereof based upon the Literary Property by Fox. The provisions of this paragraph shall survive the termination of this Agreement.

4. **PUBLIC DOMAIN MATERIAL/MEMBER OF THE PUBLIC:** Nothing contained in this Purchase Agreement shall at any time limit Fox's right to utilize freely, in any work or production, any material which may be in the public domain, whether included in the Life Story

Rights or Literary Property or derived from some other source, or shall be construed to be prejudicial to or operate in derogation of any rights.

5. "PURCHASE PRICE:"

(a) Life Story Rights: As consideration in full for the Granted Rights in and to the Life Story Rights, all rights, licenses, privileges and property herein conveyed by Lender and Owner to Fox, and for the representations, warranties, covenants and agreements made by Owner, Fox shall pay Lender the sum of [REDACTED], payable upon exercise of the Option as provided in the Option Agreement and signature of this Purchase Agreement by Fox or upon commencement of principal photography for the Pilot, whichever first occurs. The Purchase Price is for initial exploitation as a television series (if initially released as a theatrical motion picture or other format, the Purchase Price shall be negotiated in good faith within Purchaser's customary parameters for such transactions).

(b) Literary Property: As consideration in full for the Granted Rights in and to the Literary Property, all rights, licenses, privileges and property herein conveyed by Lender and Owner to Fox, and for the representations, warranties, covenants and agreements made by Owner, Fox shall pay Lender the sum of [REDACTED], payable upon exercise of the Option as provided in the Option Agreement and signature of this Purchase Agreement by Fox or upon commencement of principal photography for the Pilot, whichever first occurs. In addition, for each of the first five annual broadcast seasons of a television Series which is produced and based in whole or in part on the Literary Property (including the first season), Fox shall pay Lender an additional [REDACTED], provided that the total Purchase Price paid to Lender for the Literary Property shall not exceed [REDACTED]. The Purchase Price is for initial exploitation as a television series (if initially released as a theatrical motion picture or other format, or if another format is to be released prior to payment of the total Purchase Price, the Purchase Price shall be negotiated in good faith within Purchaser's customary parameters for such transactions). For clarity, the Purchase Price above shall be [REDACTED], provided that if fewer than 5 annual broadcast seasons of a television series are produced, and therefore the total of payments above is less than [REDACTED], Fox shall nonetheless have all distribution rights in perpetuity for the episodes produced hereunder.

6. ROYALTY: If Fox produces a Series hereunder based on the Life Story Rights and/or the Literary Property, then Fox shall pay Lender a royalty of [REDACTED] for each original episode produced (excluding the Pilot) ("**Series Royalty**"), payable promptly following production of each such episode.

7. PRODUCER SERVICES:

(a) Pilot Producing Fees and Services: If Fox produces a Pilot based on the Life Story Rights and/or the Literary Property, Fox shall engage Lender to furnish the producing services of Owner as a non-exclusive non-writing Producer and Owner shall render services to Fox at a fee of [REDACTED] ("**Pilot Producer Fee**"). The Option payment set forth in Paragraph 3(a) of the Option Agreement is applicable against the Pilot Producer Fee.

(b) Series: If Fox produces a Series based on the Life Story Rights and/or the Literary Property and Owner completes all Producer services on the Pilot, Fox shall engage Lender f/s/o Owner as a non-exclusive non-writing Producer for all original episodes of the Series produced at a fee of [REDACTED] per original episode produced for the life of the Series

(c) Definition: "Producer services" shall be defined as meaningful services normally and customarily rendered by television producers in the U.S. television industry. Such producing services shall be subject to Owner's reasonable professional availability (provided that Producer services are not passive services and if Owner is unable to render such services Fox is not obligated to pay Owner for services not rendered), rendered in-person when and as required by Fox (and by telephone, fax or other remote means otherwise), and shall include reviewing stories and scripts and submitting meaningful written comments thereon, and Owner must be reasonably available to Fox for consultation generally in connection with the Program. All services hereunder shall be performed consistent with Fox's directions, practices and policies.

(d) Pay-or-Play: All of Owner's services pursuant to this Paragraph 7 are to be rendered on a pay-or-play basis. Fox is not obligated to use Owner's services or to produce or exploit the Programs. Owner may be discharged at any time without cause subject only to Fox's obligation to pay the balance of any compensation which may be due Owner or Lender pursuant to this Agreement or any applicable guild agreement. If Fox exercises its pay-or-play rights, then any compensation earned by Owner in the television industry during the period that Fox could have required Owner's producer services hereunder shall reduce Fox's obligation to pay Lender and Owner compensation hereunder. Owner and Lender shall immediately notify Fox in writing of any such compensation earned by Owner in the television industry.

8. SERIES BONUS: If Fox produces a Series based on the Life Story Rights and/or the Literary Property and Owner completes all material Producer services in connection with the first production year of such Series, in addition to any other sums payable hereunder Fox shall pay Lender a Series Bonus of [REDACTED]. The Series Bonus is based on production of 12 episodes (excluding the Pilot) and shall be reduced proportionately if fewer episodes are produced, except that no Series Bonus shall be payable if fewer than 6 episodes (excluding the Pilot) are produced.

9. SCREEN CREDIT: Provided that Fox exercises the applicable options, and subject to Owner's performance of the terms and conditions of this Agreement, the following shall apply:

(a) Source Material Credit: Owner shall be accorded customary source material credit (e.g., in substantially the form "Based Upon the Book By Kathy Reichs" if the title of the Series is the same as the Literary Property and "Based Upon The Books by Kathy Reichs" if the title is not) on a separate card in the main titles, adjacent to the script writer's card to the extent permitted by applicable guild agreements and in the same size and type as that accorded the writer of the teleplay, provided that any such credit must be in accordance with final WGA determination.

(b) Producer Credit: Owner shall be accorded credit as "Producer" (as "Kathy Reichs") on each Series episode for which Owner actually completes all applicable

services on a separate card in the main or opening titles, as applicable, grouped among and in a type, size, and boldness substantially similar to other non-writing Producer credits (if any).

(c) **Limitations:** Except as otherwise set forth in this Paragraph, all aspects of Owner's credit shall be at Fox's sole discretion. In addition, credit shall be subject to network (or other licensee) and applicable guild approval. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Neither Lender nor Owner shall be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Owner specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure with respect to future copies of the applicable Program.

10. CONTINGENT COMPENSATION:

(a) Subject to Owner's complete performance of all of the material terms and conditions set forth herein, if a Series is produced hereunder based on the Literary Property, Lender shall be entitled to an aggregate sum equal to [REDACTED] of the Modified Adjusted Gross Receipts, if any, derived from the Series ("MAGR"), apportioned [REDACTED] for Life Story Rights and Literary Property Rights (collectively), if applicable, and [REDACTED] for Owner's producing services.

(b) **Vesting:** The percentage of Contingent Compensation participation payable, if at all, to Lender for Owner's producing services (but not the [REDACTED] for Life Story Rights and/or Literary Property Rights, which shall not be subject to vesting) shall vest as follows:

- (i) [REDACTED] upon Owner's completion of all services on the Pilot Script;
- (ii) [REDACTED] upon Owner's completion of all Producer services on the Pilot;
- (iii) [REDACTED] upon Owner's completion of all Producer services with respect to the first production year of the Series; and,
- (iv) [REDACTED] upon Owner's completion of all Producer services with respect to the second production year of the Series.

(c) For the purposes hereof, MAGR shall be defined, computed, accounted for and paid according to the Definition of MAGR customarily used by Fox, and shall be incorporated herein, subject to good faith negotiations within the customary parameters for persons of Owner's stature in the television industry; provided, however, the Fox Distribution Fees applicable to television distribution will be [REDACTED] except with respect to Gross Receipts derived from the initial U.S. Network license or any extensions or renewals thereof, which shall be [REDACTED]. Notwithstanding the foregoing, in the event that Fox enters into an agreement with a Network for the renewal of a Series following the expiration of the initial Network License ("Network Renewal") and such Network Renewal provides for the Network to pay to Fox, prospectively, an episodic license fee in excess of the pattern budget for such Series ("Premium License Fee"), then Fox shall charge the [REDACTED] Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. All other Distribution Fees are Fox's standard. The Fox

Administrative Charge shall be 15%. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge.

11. **MOTION PICTURE AND ALLIED RIGHTS:** Motion Picture and Allied Rights shall include all rights of every kind, nature and description, solely and exclusively throughout the universe, in and to the Literary Property, including the following exclusive rights:

(a) **Motion Pictures:** Subject to the provisions of the Purchase Agreement regarding Purchase Price, the sole and exclusive right, throughout the universe, to make, produce, adapt, sell, lease, rent, exhibit, perform and generally deal in and with in any manner of exploitation and disposition of Motion Picture versions of every kind, nature and description of the Literary Property, or any part or portion thereof (including Theatrical Motion Pictures, Television Motion Pictures and Home Video Motion Pictures) and to register and obtain copyright and copyright renewal therein throughout the universe, including the right to make, produce, adapt, project, exhibit and/or transmit, visually and/or audibly, Motion Pictures or any other versions of the Literary Property or any part thereof by means of the medium known as home video cassettes and discs or by any process now known or hereafter devised analogous thereto and/or by means of the medium known as television or by any process now known or hereafter devised analogous thereto by any and all means of transmission now known or hereafter devised, including live television (except as otherwise specified herein), free television, pay television, subscription television, cable television, satellite television, public television and educational television and all analogous communication uses and exhibitions pursuant to or on any form or device of electronic communication by which pictures and sound are exhibited or transmitted to the public. Without limiting the generality of the grant of rights to Purchaser in the Literary Property, Purchaser shall have the right to telecast the Literary Property or any part or version thereof (whether direct from living actors or from Motion Pictures or otherwise) in connection with the advertising, publicity or exploitation of any Motion Picture which may be produced hereunder.

(b) **Characters, Adaptations, Title, Remakes, Sequels:** The sole and exclusive right throughout the universe in its sole discretion, without limitation, to use the characters and characterizations contained in the Literary Property and any Motion Picture versions thereof, in any and all languages, with or without sound accompaniment and with or without the interpolation of musical numbers therein, to translate the Literary Property into any and all languages, to adapt, rearrange and make any changes in, deletions from or additions to the Literary Property, to change the sequence thereof, to use a portion or portions of the Literary Property, to change the title of the Literary Property, to use said title or any components thereof in connection with materials, works or Motion Pictures wholly or partially independent of the Literary Property and/or for any musical or lyrical composition whether or not contained in the sound track of any of said Motion Picture versions, to change the characters in the Literary Property, to change the descriptions of said characters, and to use all or any part of the foregoing in new versions, adaptations, other Motion Pictures, Remakes and Sequels (including Additional Motion Pictures, Author Written Sequel Motion Pictures, Studio Sequel Motion Pictures and Remakes), in any and all languages, and to register and secure copyright and copyright renewal therein throughout the universe. Purchaser agrees that to the extent true-life events from

Owner's life are portrayed in a program produced hereunder, it shall not portray Owner herself as engaging in criminal behavior.

(c) **Sound Recordings:** The sole and exclusive right, throughout the universe, to mechanically produce, reproduce and license the reproduction of spoken words, taken from or based upon the text or theme of the Literary Property, on records, films, tapes or other devices designed or used for the purpose of producing and reproducing sound separately or in synchronism with, accompaniment of or supplementary to Motion Pictures, using for that purpose all or a part of the text, theme, title of or dialogue contained in the Literary Property.

(d) **Music:** The sole and exclusive right to include in any version of the Literary Property musical accompaniment, and to further include in any such version interpolations of musical compositions or lyrics to be performed or sung by the performers in any such version.

(e) **Versions:** The sole and exclusive right to make musical comedy, operetta, operatic or dramatico-musical Motion Picture versions of every kind and nature based upon the Literary Property.

(f) **Radio:** The right to broadcast the Literary Property, or any part or version thereof, by means of radio processes to the extent the Literary Property is incorporated into a Motion Picture which may be produced hereunder.

(g) **Publications:** The right to prepare, publish and copyright, or cause to be prepared, published and copyrighted, in any and all languages, in any and all Territories in the universe, in any form or media (including, but not limited to, hard and soft cover books, press books, press notices, trade journals, periodicals, newspapers, heralds, fan magazines, souvenir programs, picture books, comic books, illustration books and/or activity books or booklets), synopses, revised and/or abridged versions of the Literary Property, adapted from the Literary Property or from any Motion Picture or other version thereof; provided that no such synopsis, revised or abridged version shall include more than 7,500 words in the aggregate taken directly from the Literary Property. Purchaser shall have the right to publish and copyright, or cause to be published and copyrighted, screenplays, teleplays and scripts adapted from or based upon the Literary Property; the right to publish novelizations of screenplays, teleplays and scripts adapted from or based upon the Literary Property shall be "frozen" subject to good faith negotiation between Owner and Purchaser if and when Purchaser wishes to exercise such rights.

(h) **Commercial Tie-In/Merchandising:** The right to exclusively use and exploit and to license others to utilize and exploit throughout the universe all Commercial Tie-In Rights and Merchandising Rights of any sort and nature arising out of or connected with any or all of the following: (i) the Literary Property; (ii) any Motion Picture versions of the Literary Property; (iii) the title or any titles of the Literary Property or any Motion Picture versions thereof; (iv) the characters and characterization contained in the Literary Property or any Motion Picture versions thereof; (v) the names, likenesses or characteristics of said characters; and (vi) physical properties or other materials appearing or used in or in connection with all or any part of the Literary Property or any Motion Picture versions thereof. Notwithstanding the foregoing, Purchaser shall not have

the right to merchandise Owner's actual likeness nor shall Purchaser depict Owner herself (as opposed to a fictional character created by Purchaser) as directly endorsing a product or service.

12. **RESERVED RIGHTS:** Without limiting the Granted Rights, Owner does hereby reserve throughout the universe only the following rights ("**Reserved Rights**"), subject to the terms and conditions set forth below.
- (a) **Publication Rights:** All print publication rights in the Literary Property (but not of a motion picture or television program created by Purchaser), including the right to publish the Literary Property, in any and all languages, in any and all Territories in the universe, in hardcover or softcover book form, "e-book" or "book-on-tape" or magazine form, subject to the Granted Rights, shall be considered "Publication Rights."
- (b) **Non-Dramatic Radio Rights:** The right of Owner to exercise Non-Dramatic Radio Rights (e.g., the non-dramatic reading of the Literary Property) in the Literary Property is subject to the following conditions:
- (i) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire ("**Radio Restricted Period**"), Owner shall not exercise, authorize or permit any Party other than Purchaser to exercise such reserved Radio Rights.
- (ii) After the expiration of the Radio Restricted Period, if Owner desires to exercise or dispose of the reserved Radio Rights, Purchaser shall have a Right of First Negotiation and Right of Last Refusal (First Refusal after a "**Holdback Period**" which shall be the earlier to occur of two years following production of the last episode of a Series hereunder or the reversion of the Granted Rights hereunder) with respect to the reserved Radio Rights.
- (c) **Legitimate Stage Rights:** The right of Owner to exercise Legitimate Stage Rights in the Literary Property is subject to the following conditions:
- (i) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire ("**Legitimate Stage Restricted Period**"), Owner shall not exercise, authorize or permit any Party other than Purchaser to exercise such reserved Legitimate Stage Rights.
- (ii) After the expiration of the Legitimate Stage Restricted Period, if Owner desires to exercise or dispose of the reserved Legitimate Stage Rights, Purchaser shall have a right of First Negotiation and Right of Last Refusal (First Refusal after the Holdback Period) with respect to the reserved Legitimate Stage Rights.
- (d) **Author Written Sequel Rights:** The right of Owner to create or write 1 or more Author Written Sequels is subject to the following conditions:

- (i) The right to publish an Author Written Sequel, in any and all languages, in any and all Territories of the universe, in book (including "e books" and other book formats) or magazine form shall be considered "**Author Written Sequel Publication Rights.**"
- (ii) During the period commencing on the date of the Purchase Agreement and ending either 7 years thereafter or 5 years after the Initial Release Date of the Picture (e.g., initial telecast of the pilot or first episode), whichever period shall first expire ("**Author Written Sequel Restricted Period**"), Owner shall not have the right to sell, assign, license or otherwise dispose of any Motion Picture or Allied Rights in or to any Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), to any Party other than to Purchaser, and neither Owner nor any other Party shall have the right to exploit any rights in or to any Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), without Purchaser's prior written consent.
- (iii) After the expiration of the Author Written Sequel Restricted Period, if Owner desires to exercise or dispose of any Motion Picture or Allied Rights in an Author Written Sequel, other than the Author Written Sequel Publication Rights as provided in Paragraph 12(d)(i), (which other rights are herein called the "**Restricted Reserved Author Written Sequel Rights**"), Purchaser shall have a Right of First Negotiation and Right of Last Refusal (First Refusal after the Holdback Period) with respect to the Restricted Reserved Author Written Sequel Rights, provided that if no agreement is reached between Owner and Purchaser pursuant to such negotiation then, subject to the rights of Purchaser set forth herein, the disposition of the Restricted Reserved Author Written Sequel Rights shall not include the right to produce or cause the production of a Motion Picture which contains any of the characters or incidents contained in the Literary Property or the right to exercise any Merchandising Rights or Commercial Tie-In Rights in such characters or incidents, or any other exploitation of such characters or incidents, including the right to license, manufacture, distribute and sell Sound Records which contain any of such characters or incidents.
- (e) **Live Recital Rights:** The right of Owner to authorize the performance of a non-dramatic reading of the Literary Property before a live audience (and/or "live" for television) but not the right to record such performance in any manner except in connection with the exercise of the Reserved Rights set forth herein shall be considered "**Live Recital Rights.**"

### 13. DISTRIBUTION CONTROLS:

- (a) **General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such

parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Owner. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode, including the Pilot.

(b) Dealings with Affiliates: Lender and Owner acknowledge that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so-called "E.Commerce companies," publishers (literary and electronic) and wholesale and retail outlets (individually or collectively "**Affiliated Company or Companies**"). Lender and Owner further acknowledge that Fox has informed them that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot), as, when and where Fox deems it appropriate to do so. Lender and Owner expressly waive any right to object to such distribution and exploitation of any Series episode (including the Pilot) (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliate Company enters into similar transactions with unrelated third party distributors for comparable programs. Lender and Owner agree that their sole remedy against Fox for any alleged failure by Fox to comply with the terms of this Paragraph shall be actual damages, and Lender and Owner hereby waive any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

(c) Arbitration: Any dispute arising under the provisions of this Paragraph shall be arbitrated by, and under the rules of, J.A.M.S./Endispute ("**JAMS**") in binding arbitration in Los Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable attorneys' fees and costs.

14. CHARACTERS, FICTIONALIZATION: It is expressly understood and agreed that a character or characters in any production based on the Life Story Rights or Literary Property may resemble Owner and/or members of Owner's family. Owner hereby grants to Fox, on behalf of herself and her family, the full right and authority to use Owner's, and Owner's family members' names, voices, likenesses and characteristics in and in connection with such character(s). Owner understands the need of producers of television and theatrical motion pictures to fictionalize portions of stories for dramatic interest. Owner agrees that Fox is and shall be free to fictionalize, in whole or in part, adapt, dramatize, rearrange, add to and/or subtract from the Literary Property and any Supporting Information provided by Owner, in the Program and any other productions produced hereunder. Owner understands that said

character(s) may contain some of Owner's characteristics and not others, and that said character(s) may participate in activities in which Owner actually participated, and in others in which Owner did not and that the same holds true with respect to the members of Owner's family. Furthermore, said character(s) may be portrayed by an actor or actors who may or may not resemble Owner or specific members of Owner's family. Owner hereby represents and agrees, on behalf of herself and her family, that Owner will not bring, institute or assert, or consent that others bring, institute or assert, any claim or action against Fox or Fox's Assigns on the grounds that anything contained in any production based on the Literary Property, or the advertising and publicity issued in connection therewith, is defamatory, reflects adversely on Owner, or violates any other rights whatsoever, including, without limitation, rights of privacy and publicity, and Owner hereby releases Fox and Fox's Assigns from and against any claims, demands, actions, causes of action, suits, costs, expenses, liabilities and damages whatsoever that Owner may now or hereafter have against Fox (except only Fox's failure to pay any compensation specifically set forth in this Agreement), in connection with any productions based on the Life Story Rights and/or Literary Property and the preparation, production, performance, broadcast, exhibition, distribution and/or exploitation thereof, or any other use or exploitation of the rights granted to Fox in this Agreement. Purchaser agrees that to the extent true-life events from Owner's life are portrayed in a program produced hereunder, it shall not portray Owner herself (or a member of her family) as engaging in criminal behavior.

15. **RELEASES:** Owner agrees to sign and Owner agrees to help obtain signed documents (provided that the failure to obtain such documents shall not itself be a breach by Owner of this Agreement) from such persons as Fox may require, including, without limitation, Owner's family members and acquaintances. Such releases shall be in the form of the release attached hereto as Exhibit "A" or otherwise in form and substance reasonably satisfactory to Fox's legal counsel. It is agreed that the preceding provisions of this Paragraph are a material covenant of this Agreement. Fox agrees that any payments that may be required to obtain such documents from third parties shall be made by Fox, subject to Fox's approving the amount and conditions of such payment.

16. **LEGAL CLEARANCE:** Upon Fox's request, Owner shall consult (subject to Owner's reasonable professional availability) and cooperate with Fox, or any third party rendering writing services in connection with the Programs, or any attorneys for Fox or any insurance company providing errors and omissions insurance for the Programs, in connection with the legal clearance of the Programs.

17. **SEPARATED RIGHTS:** If Owner is entitled to WGA separation of rights, then Owner agrees that pending execution of Fox's Separation of Rights Agreement, Fox nevertheless shall have the right to acquire any and all separated rights which may otherwise be reserved to Owner by reason of Article 16.B. of the WGA Agreement including, but not limited to, theatrical motion picture, legitimate stage, merchandising, literary publishing, television sequel rights and interactive rights, either separately or together, by payment to Lender, upon Fox's exercise of any such right(s), of the minimum compensation prescribed by the current WGA Agreement.

18. NOTICES AND PAYMENTS:

(a) To Lender and Owner: All written notices from Fox to Lender and/or Owner may be given to Lender, Owner or Owner's representatives by mail overnight delivery, messenger, or facsimile or at Fox's option, Fox may deliver such notice to Owner personally, either orally or in writing. Mailed notices will be effective upon mailing. Faxed, overnight delivery or messengered notices will be effective on the calendar date sent. Any oral notices given by Fox with respect to the suspension, extension or termination of this Option Agreement or the exercise of the Option is effective upon such oral notice but shall be promptly confirmed in writing. Payments and written notices to Lender and/or Owner shall be sent c/o William Morris Agency, 151 El Camino Drive, Beverly Hills, CA 90212, Attention: Lauren Whitney, Facsimile (310) 248-5608 with a courtesy copy to David Taghioff at the same address.

(b) To Fox: All notices from Lender and/or Owner to Fox shall be given in writing by mail, overnight delivery, messenger, or facsimile (and if sent by facsimile such notice shall be concurrently sent by mail) addressed as indicated below. The earlier of (i) actual receipt; (ii) 3 business days after the date of mailing; or (iii) the date of messengering, faxing or of personal service shall be deemed to be the effective date of notice.

Mail: Twentieth Century Fox Television, a unit of  
Twentieth Century Fox Film Corporation  
P.O. Box 900  
Beverly Hills, California 90213  
Attention: Legal Affairs

Messenger: Twentieth Century Fox Television, a unit of  
Twentieth Century Fox Film Corporation  
2121 Avenue of the Stars, Suite 430  
Los Angeles, California 90067  
Attention: Legal Affairs

Facsimile: (310) 369-1872

(c) Notice Dates: Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

19. REVERSION:

(a) General: If Fox develops and/or produces a Presentation and/or Pilot which is not produced as a Series, the Granted Rights (which shall not include any rights in the Presentation and/or Pilot or materials developed by Fox), in and to the Property, shall revert following the later of either: (i) one year following completion of principal photography of a Pilot or Presentation, or (ii) one year following expiration of any applicable network (or other licensee) hold. If a Presentation, Pilot, or Series is not produced, the Granted Rights shall revert following the later of either: (i) expiration of the Option Period, or (ii) expiration of any applicable network (or other licensee) hold (not to exceed 12 months following the expiration of the Option Period).

(b) Series: If a Series is produced, the right to make new derivative productions based solely on the Granted Rights shall revert to Owner as follows:

- (i) Less than 22 Episodes Produced: Eighteen (18) months after the earlier of the initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
  - (ii) 22 to 44 Episodes Produced: Thirty-six (36) months after the earlier of the initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
  - (iii) 45 to 66 Episodes Produced: Ten years (10) after the earlier of the initial U.S. television broadcast of the last episode produced of the Program, or the end of the broadcast season for which such episode was produced.
  - (iv) 67 or more Episodes Produced: There shall be no reversion of the Granted Rights.
  - (v) Nothing contained herein shall limit Fox's right to produce works that are based on material that was not the subject of the Granted Rights, and Owner shall have no right hereunder to any material that was not part of the original Granted Rights.
- (d) If a reversion occurs pursuant to paragraphs (a) or (b) and Owner desires to sell, assign or license Owner's rights in the Granted Rights in and to the Property, for a period of 3 years following such reversion Fox shall have a right of first negotiation and right of first refusal with respect to such sale, assignment or license of Owner's rights.

20. SPIN-OFFS/PREQUELS/SEQUELS/REMAKES OF SERIES: For purposes of this Agreement, "spin-off" shall mean a spin-off, prequel, sequel, or remake of the Series. For (i) a generic spin-off or television prequel or sequel that is based upon or incorporates the Granted Rights, Owner shall receive [REDACTED] of the applicable rate of Royalty and MAGR to which Owner is entitled from the original Series; and (ii) for a planted spin-off or television remake, Owner shall receive no passive payments unless the character that is planted in the original Series is based upon or derived from the Granted Rights, in which case Owner shall receive [REDACTED] of the applicable rate of Royalty and MAGR to which Owner is entitled from the original Series.

21. THEATRICAL RELEASE: [REDACTED] of fees for the Pilot or Series episode released theatrically in accordance with Fox's customary [REDACTED] definition.

22. MISCELLANEOUS:

(a) Assignment: This Purchase Agreement is non-assignable by Lender or Owner, however, it may be assigned freely by Fox, in whole or in part, to any Party, without restriction, and such assignment shall be binding upon Lender and Owner but no such assignment shall relieve Fox of its obligations to Owner under this Agreement unless the assignee is a Major Motion Picture Studio, Mini-Major Motion Picture Studio or Network or other financially responsible party that assumes such obligations to Owner hereunder in writing.

(b) **Owner's Remedies:** Each of Lender and Owner confirms that in the event of any failure or omission by Fox constituting a breach of any of Fox's obligations under this Purchase Agreement, whether or not material, the damage, if any, caused Lender and/or Owner is not irreparable or sufficient to entitle Owner to injunctive or other equitable relief. Consequently, Lender's and/or Owner's rights and remedies shall be limited to the right, if any, to obtain damages at law and Lender and/or Owner shall not have any right in such event to terminate or rescind this Purchase Agreement or any of the rights granted to Fox hereunder or to enjoin or restrain any development and pre-production activities in connection with any Program and the production, advertising, promotion, distribution, exhibition or exploitation of any Program if the Option is exercised. Additionally, each of Lender and Owner agrees not to institute any action on the grounds that any changes, deletions, additions, or other use of the Literary Property has violated Owner's so-called "moral rights of authors".

(c) **Travel:** If Fox requires Owner to travel in connection with Owner's services hereunder, Fox shall provide Owner with first-class air travel, first-class hotel accommodations, ground transportation and [REDACTED] per diem, all in accordance with Fox's then customary policies for persons of Owner's stature.

(d) **Insurance:** Lender and Owner shall be insured by Purchaser's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Purchaser obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

(e) **Amendments:** This Purchase Agreement may be amended or modified only by the written agreement of Lender, Owner and Fox.

(f) **Relationship:** This Purchase Agreement does not constitute a joint venture or partnership of any kind between the Parties.

23. **ENTIRE AGREEMENT:** This document ("**Purchase Agreement for Purchase of Literary Material**"), together with the Option Agreement and Its Exhibits, the Standard Terms and Conditions thereto and Schedule 1 "Glossary," and the Personal Release which is Exhibit "A" hereto (all incorporated herein by this reference) expresses the binding and entire agreement ("**Purchase Agreement**") between Fox and Owner and shall replace and supersede all prior arrangements and representations, either oral or written, as to the subject matter hereof.

By signing in the spaces provided below, Owner and Fox accept and agree to all of the terms and conditions hereof.

**TEMPERANCE BRENNAN LP.**  
("Lender")

**TWENTIETH CENTURY FOX TELEVISION, a**  
unit of Twentieth Century Fox Film Corporation  
("Fox")

By *Kathleen J. Reich*  
its *authorized member*

By *Samuel Kamradt*  
its *SVI*

Federal I.D. [REDACTED]

**ACKNOWLEDGMENT AND CONSENT**

I hereby represent and warrant that Lender is authorized to enter into the above Agreement and I agree to be bound by the terms and conditions thereof to the same extent as though I were a party thereto, and, if I fail to do so, Fox shall have the same rights against me personally as if I had entered into the Agreement directly with Fox.

*Kathleen J. Reich*  
KATHLEEN J. REICHS ("Owner")  
Social Security No. [REDACTED]

**EXHIBIT "A"**

**PERSONAL RELEASE**

Twentieth Century Fox Television  
P.O. Box 900  
Beverly Hills, CA 90213  
Attention: Legal Affairs

Ladies and Gentlemen:

Reference is made to that certain agreement ("**Agreement**") dated as of September 1, 2004 between Twentieth Century Fox Television ("**you**") and TEMPERANCE BRENNAN LP. f/s/o KATHY REICHS ("**Grantor**") relating to the option and acquisition of the exclusive motion picture, television and allied rights in and to the life and experiences of Grantor and the members of Grantor's immediate family and Grantor's acquaintances, including the undersigned (the "**Life Story**").

1. For good and valuable consideration, receipt of which is hereby acknowledged, I hereby irrevocably grant to you, your successors, licensees, agents and assigns, perpetually, exclusively and throughout the universe, the right to use my name, likeness and biography, and the right to fictionalize same, and to portray, impersonate or simulate me in any way whatsoever, and to make use of any incidents or episodes of my life that have occurred relating to the Life Story, factually, or any combination thereof, in the preparation, production, performance, broadcast, exhibition, distribution and exploitation of one or more motion pictures or other productions or works based in whole or in part upon the Life Story, and any ancillary and allied rights therein and thereto (hereinafter all of said motion pictures, productions and works, and the ancillary and allied rights therein and thereto being collectively referred to as the "**Productions**"), subject to the terms and conditions of the Agreement.
2. You may employ any actor to portray me in the Productions and you may include in the Productions such actual and/or fictional incidents, scenes, situations, dialogue, events, characters and other material as you, in your sole discretion, shall determine.
3. The Productions, and any parts thereof, may be broadcast, exhibited, distributed and exploited in any and all media and technology, now known, or hereafter devised, throughout the universe, in perpetuity, without any obligation of any kind whatsoever to me. This grant shall apply and extend to advertising, promotion, publicity and merchandising relating to the Productions.
4. I hereby represent and agree that I will not bring, institute or assert, or consent that others bring, institute or assert, any claim or action against you or your subsidiaries, affiliates, parent and related companies and your and their successors, assigns, licensees, officers, directors, shareholders, employees, agents or attorneys (collectively, "**Assigns**") on the ground that anything contained in the Productions, or the advertising and publicity issued in connection therewith, is defamatory, reflects adversely on me, violates any other rights whatsoever, including, without limitation, rights of privacy and publicity, and I hereby release you and your Assigns from and against any claims, demands, actions, causes of action, suits, costs,

expenses, liabilities and damages whatsoever that I may now or hereafter have against you or your Assigns, in connection with the Productions and the preparation, production, performance, broadcast, exhibition, distribution and/or exploitation thereof, or any other use or exploitation of the rights granted to you hereunder.

5. I represent and warrant that I am free to enter into this agreement and grant to you all rights herein granted and to release all matters herein released; that I have not entered into any agreements or commitments inconsistent with the provisions of this agreement and I will not enter into any such agreements or commitments; that I have in no way conveyed, transferred, hypothecated, assigned or otherwise disposed of the rights granted hereunder or matters released hereunder to any person, firm or corporation; and that I have not done or permitted to be done any act or thing by which any of the rights granted hereunder have been or would in any way be impaired or diminished.

6. Nothing contained herein shall in any way obligate you to use any of the rights granted hereunder or to prepare, produce, exhibit, distribute or exploit any Productions, or to otherwise use any of the rights granted herein.

7. You shall not be obligated to obtain any further consent from me, or make any additional payment to me, to exercise any or all of the rights granted to you hereunder.

8. You shall have the right to assign this agreement, and any of your rights hereunder, in whole or in part, to any person, firm or corporation.

9. Nothing contained herein shall be construed to be or operate in derogation or limitation of any rights to which you may be entitled as a member of the public even if this agreement was not in existence.

Very truly yours,

Kathleen J. Perchs  
NAME (Please Print)

Kathleen J. Perchs  
Signature

AGREED TO AND ACCEPTED:

TWENTIETH CENTURY FOX TELEVISION,  
a unit of Twentieth Century Fox Film  
Corporation

Address 

By Samuel Marshall  
its SM

Date: 4/22/05

OPTION AGREEMENT FOR PURCHASE OF  
LITERARY MATERIAL AND LIFE STORY RIGHTS

**"MONDAY MOURNING" / KATHLEEN J. REICHS LIFE STORY RIGHTS**

Option Agreement dated as of September 1, 2004, between TEMPERANCE BRENNAN LP a Delaware partnership ("**Lender**") f/s/o KATHLEEN J. REICHS ("**Owner**"), and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, a Delaware corporation ("**Fox**").

1. PROPERTY:

(a) Literary Property: That certain published book entitled *Monday Mourning* written by Owner, shall be referred to herein as the "**Literary Property**".

(b) Life Story Rights: The life story of Owner limited to the events and experiences contained in the Literary Property and/or her career as a forensic anthropologist, as well as personal and professional events reasonably related to her career as a forensic anthropologist (the "**Life Story Rights**"). The Literary Property and the Life Story Rights are hereafter sometimes individually and collectively referred to as the "**Work**".

2. GRANT OF OPTION: Lender and Owner hereby grant to Fox, its successors and assigns, the exclusive and irrevocable right and option ("**Option**"), for the Option Period(s) and consideration specified in Paragraph 3, to purchase from Lender and Owner, upon the terms and conditions set forth in that certain Purchase Agreement for Purchase of Literary Material between Lender f/s/o Owner and Fox, together with all Exhibits, Schedules and attachments thereto ("**Purchase Agreement**") (as specified and subject to the reversion and Reserved Rights provisions set forth therein), all rights of every kind and nature whether now known or hereafter devised, in and to the Literary Property ("**Granted Rights**") as such rights are more particularly set forth herein and in the Purchase Agreement.

3. OPTION PERIOD AND CONSIDERATION: As consideration in full for the grant by Lender and Owner to Fox of the Option and for all the representations, warranties and agreements made by Owner hereunder, Fox shall pay to Lender the following amounts and the Option shall be effective during the following periods:

(a) Initial Option Period: The Option shall be effective during the one year period commencing on the date hereof and ending August 31, 2005 ("**Initial Option Period**"). Fox shall pay Lender [REDACTED] for the Literary Property and [REDACTED] for the Life Story Rights for the Initial Option Period (i.e., [REDACTED] total and as a single Option) payable upon receipt by Fox of this Option Agreement and the Purchase Agreement and the Exhibits signed by Owner. These sums shall be fully applicable against Owner's Pilot Producing Fee (but not the Purchase Price) set forth in the Purchase Agreement.

(b) Extended Option Period: Fox shall have the right to extend the period during which the Option shall be effective for an additional period of one year following the Initial

Option Period ("**Extended Option Period**") by serving upon Owner written notice of the extension thereof ("**Extension Notice**") in the manner set forth in Paragraph 11 on or before the date the Initial Option Period would otherwise expire. Fox shall pay Lender [REDACTED] for the Literary Property and [REDACTED] for the Life Story Rights for the Extended Option Period, payable forthwith upon the date of service of the Extension Notice. Said sum shall not be applicable against the Purchase Price.

(c) **Event of Force Majeure/Claims Extension:** If there is any event of Force Majeure, during the Initial Option Period and/or the Extended Option Period, as applicable, which materially affects the development and/or production of a program based on the Work, then the Initial Option Period and/or the Extended Option Period, as applicable, shall be extended by a period equal to the duration of such event of Force Majeure (not to exceed 90 days aggregate). In addition, if during the Initial Option Period and/or the Extended Option Period, as applicable, there shall be any claim (other than a claim of a frivolous or meritless nature as determined by Fox in its reasonable discretion), whether or not such claim shall result in or be followed by litigation, which would constitute a breach of any of Lender and/or Owner's warranties, representations or agreements herein contained or incorporated herein by reference that materially affects the development and/or production of a program based on the Work ("**Program**"), the Initial Option Period and/or the Extended Option Period, as applicable, shall be extended for a period of time equal to the period of time such claim is outstanding or unresolved.

The Initial Option Period, together with any extension pursuant to Paragraphs 3(b) and 3(c) shall be deemed the "**Option Period**".

4. **DEVELOPMENT DURING OPTION PERIOD:**

(a) **Fox Customary Development:** Fox shall have the right throughout the Option Period to engage in all customary development and pre-production activities in connection with the Work, including the preparation and submission of treatments, screenplays, teleplays and all other writings based in whole or in part upon the Work for use in connection with any of the Granted Rights. All of the results and proceeds of any such activities shall at all times be the sole and exclusive property of Fox whether or not the Option is exercised.

(b) **Owner's Development Consultation:** During the Option Period, Lender shall furnish Owner's non-writing, non-exclusive consultation services to Fox as and if requested by Fox.

5. **OWNER'S REPRESENTATIONS AND WARRANTIES:** The representations and warranties set forth in Paragraph 3 of the Purchase Agreement are incorporated herein by reference. Lender and Owner represent, warrant and agree that to the best of their knowledge and reasonable ability to determine as of the date hereof all such representations and warranties are true and correct and shall survive throughout the Option Period and expiration or termination of this Option Agreement, irrespective of whether the Option is exercised by Fox.

6. **EXERCISE OF OPTION:**

(a) **Notice of Exercise:** If Fox elects to exercise the Option, Fox, at any time during the Option Period, shall serve upon Owner notice of the exercise in the manner set forth

in Paragraph 11 and shall specify in such notice whether the Option is exercised for the Literary Property and the Life Story Rights or just the Life Story Rights. Whether or not Fox serves such notice as specified in Paragraph 11, commencement of taping or principal photography of any Program based on the Work during the Option Period shall be deemed to be the exercise of the Option for those rights incorporated in the Work and shall automatically constitute proper notice thereof and shall require prompt payment of the applicable Purchase Price.

(b) Signature of Purchase Agreement: Concurrently herewith Lender and Owner are signing the undated Purchase Agreement. If Fox exercises the Option, then Fox shall insert the date of the exercise of the Option as the date of the Purchase Agreement and shall sign the Purchase Agreement and deliver a fully signed original to Owner, and the signature of the Purchase Agreement by Lender, Owner and Fox shall be deemed final and effective, and the Purchase Agreement shall be a valid and binding instrument and shall irrevocably vest in Fox all of the Granted Rights (subject to the Reserved Rights and reversion provisions hereof). If Fox does not exercise the Option, then the Purchase Agreement shall be deemed void and of no force or effect whatsoever and Fox will execute such documents as are reasonably necessary to evidence such effect.

(c) Signature of Short Form Assignments: Concurrently herewith, Lender and Owner shall execute and deliver to Fox, with notarial acknowledgment, the attached short-form assignment in the form of Exhibit "A" ("**Short Form Assignment**") attached hereto, which assignment may be recorded with the United States Copyright Office; provided, however, that in the event the Option is not exercised by Fox in accordance with the terms hereof, the executed copy of the Short Form Assignment shall be deemed void and of no force or effect whatsoever and Fox shall execute documents reasonably required by Owner confirming the same. It is agreed that notwithstanding the failure of Lender and/or Owner to execute copies of the Purchase Agreement and Exhibit "A", the Rights granted to Fox under said agreements shall be deemed vested in Fox as of the date of the exercise of the Option, if full and timely payment of all compensation payable by Fox to Lender has been made; it being understood that a payment shall be deemed timely for purposes of this Paragraph if made within 10 days after receipt by Fox of a written notice by Owner that such payment is due and has not been received.

7. RESTRICTIONS: During the Option Period, neither Lender nor Owner shall exercise or otherwise utilize any of the Granted Rights, nor shall Lender or Owner use or permit the use of any other rights Lender and/or Owner has of any kind, in any manner or for any purpose that would unfairly compete with, interfere with or conflict with the full and unrestricted use of the Granted Rights.

8. PUBLIC DOMAIN MATERIAL/MEMBER OF THE PUBLIC: Paragraph 4 of the Purchase Agreement is incorporated herein by reference.

9. FURTHER DOCUMENTATION: At Fox's request, Lender and Owner agree to procure for Fox properly executed documents and other proof of a clear chain of title in Owner of the rights herein granted. If Fox exercises the Option, Lender and Owner, without cost to Fox (other than the consideration provided for herein or in the Purchase Agreement), shall execute, acknowledge and deliver to Fox, or shall cause the execution, acknowledgement and delivery to Fox of, such further agreements, documents or other materials as Fox may reasonably require

in order to evidence, support or effectuate the purposes of this Agreement, including, without limitation, a "Publisher's Release" in the form of Exhibit "B" attached hereto. If Lender and/or Owner shall fail to execute, acknowledge and deliver or to cause the execution, acknowledgment and delivery to Fox of any documents required by Fox hereunder after a reasonable opportunity to review and comment on such documents, Fox is hereby irrevocably granted the power coupled with an interest, with rights of substitution and delegation, to sign such instruments and to take such other steps and proceedings as may be necessary in the name and on behalf of Lender and Owner as Lender and Owner's attorney-in-fact if Lender and/or Owner has not complied with Fox's request within 7 days thereafter (or such shorter period as Fox shall reasonably require). Copies of any such documents executed by Fox shall be provided to Owner.

10. SUPPORTING INFORMATION: Owner further agrees to furnish to any persons designated as Fox's representatives, for such period(s) of time as Fox determines to be reasonably necessary, all information, data, documents, clippings, photographs, records and other material (all of the foregoing to be referred to hereinafter as the "**Supporting Information**") in Owner's possession or under Owner's control, relating to the Work or to any other matter depicted or referred to in the Program(s), excluding material subject to a journalistic privilege (if any such privilege applies). The Supporting Information may include anecdotes, information, stories, and other oral or written material. To the extent any of the Supporting Information is physical in nature (e.g., diaries, photographs, etc.), Fox agrees to protect, with all reasonable ability, all such Supporting Information; and to return same, or any portion possible thereof, to Owner at its request. It is expressly understood and agreed that Fox shall be free to use the Supporting Information in and in connection with the Program or any other production based in whole or in part on the Work in any manner that Fox reasonably deems appropriate or may refrain from using the Supporting Information, all in its sole discretion.

11. NOTICES AND PAYMENTS:

(a) To Owner: All written notices from Fox to Lender and/or Owner may be given to Owner or Owner's representatives by mail, overnight delivery, messenger, or facsimile or at Fox's option, Fox may deliver such notice to Owner personally, either orally or in writing. Mailed notices will be effective upon mailing. Faxed, overnight delivery or messengered notices will be effective on the calendar date sent. Any oral notices given by Fox with respect to the suspension, extension or termination of this Option Agreement or the exercise of the Option shall be effective upon such oral notice but shall be promptly confirmed in writing. Payments and written notices to Owner shall be sent c/o William Morris Agency, 151 El Camino Drive, Beverly Hills, CA 90212, Attention: Lauren Whitney, Facsimile (310) 248-5806 with a courtesy copy to David Taghioff at the same address.

(b) To Fox: All notices from Lender and Owner to Fox shall be given in writing by mail, overnight delivery, messenger, or facsimile (and if sent by facsimile such notice shall be concurrently sent by mail) addressed as indicated below. The earlier of (i) actual receipt; (ii) 3 business days after the date of mailing; or (iii) the date of messengering, faxing or of personal service shall be deemed to be the effective date of notice.

**Mail:** Twentieth Century Fox Television, a unit of  
Twentieth Century Fox Film Corporation  
P.O. Box 900  
Beverly Hills, California 90213  
Attention: Legal Affairs

**Messenger:** Twentieth Century Fox Television, a unit of  
Twentieth Century Fox Film Corporation  
2121 Avenue of the Stars, Suite 430  
Los Angeles, California 90067  
Attention: Legal Affairs

**Facsimile:** (310) 369-1872

(c) **Notice Dates:** Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

12. **MISCELLANEOUS:**

(a) **Assignment:** This Agreement is non-assignable by Lender or Owner, however it may be assigned freely by Fox, in whole or in part, to any Party without restriction, and such assignment shall be binding upon Lender and Owner, but no such assignment shall relieve Fox of its obligations to Owner under this Agreement unless the assignee is a Major Motion Picture Studio, Mini-Major Motion Picture Studio or Network or other financially responsible party that assumes such obligations to Owner hereunder in writing.

(b) **Owner's Remedies:** Lender and Owner confirm that in the event of any failure or omission by Fox constituting a breach of any of Fox's obligations under this Agreement, whether or not material, the damage, if any, caused Lender and/or Owner is not irreparable or sufficient to entitle them to injunctive or other equitable relief. Consequently, Lender's and Owner's rights and remedies shall be limited to the right, if any, to obtain damages at law and neither Lender nor Owner shall have any right in such event to terminate or rescind this Agreement or any of the rights granted to Fox hereunder or to enjoin or restrain any development and preproduction activities in connection with the Work or the production, advertising, promotion, distribution, exhibition or exploitation of production based on the Work if the Option is exercised.

(c) **Amendments:** This Agreement may be amended or modified only by the written agreement of Lender, Owner and Fox.

(d) **Relationship:** This Agreement does not constitute a joint venture or partnership of any kind between the Parties.

13. **ENTIRE AGREEMENT:** This Option Agreement, together with the following which are incorporated herein by reference: (a) the Purchase Agreement; (b) the Short Form Assignment, which is Exhibit "A"; (c) the Publisher's Release, which is Exhibit "B"; (d) Fox's Standard Terms and Conditions for Option and Purchase of Literary Material, which is Exhibit "C"; and (e)

Schedule "1" – Glossary, expresses the binding and entire Agreement between Fox, Lender and Owner and shall replace and supersede all prior arrangements and representations, either oral or written, as to the subject matter hereof.

By signing in the spaces provided below, Owner and Fox accept and agree to all of the terms and conditions hereof.

**TEMPERANCE BRENNAN LP.**  
("Lender")

**TWENTIETH CENTURY FOX TELEVISION, a**  
unit of Twentieth Century Fox Film Corporation  
("Fox")

By *Kathleen Reich*  
its *Authorized Member*

By *Samuel A. Randall*  
its *SVP*

Federal I.D. [REDACTED]

**ACKNOWLEDGMENT AND CONSENT**

I hereby represent and warrant that Lender is authorized to enter into the above Agreement and I agree to be bound by the terms and conditions thereof to the same extent as though I were a party thereto, and, if I fail to do so, Fox shall have the same rights against me personally as if I had entered into the Agreement directly with Fox.

*Kathleen Reich*  
KATHLEEN J. REICHS ("Owner")

Social Security No [REDACTED]

**EXHIBIT "A"**

**SHORT FORM ASSIGNMENT**

**"MONDAY MOURNING"**

**ASSIGNMENT:** For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, TEMPERANCE BRENNAN LP ("Owner"), hereby transfers and assigns to TWENTIETH CENTURY FOX TELEVISION, a division of Twentieth Century Fox Film Corporation ("Purchaser"), its successors and assigns forever, certain rights in and to that certain book written by Owner entitled "MONDAY MOURNING" and owned by Owner ("Literary Property") as more specifically set forth in that certain AGREEMENT FOR PURCHASE OF LITERARY MATERIAL between Owner and Purchaser dated as of September 1, 2004.

**WARRANTIES:** Owner represents and warrants that said Literary Property was published by Simon & Schuster, Inc. on June 7, 2004 and was registered for copyright in the name of Owner under copyright registration number TX-5-997-943 in the Office of the United States Register of Copyrights, Washington, D.C.

**CONTROLLING DOCUMENT:** This transfer and assignment is subject to all the terms and conditions of the Agreement for Purchase of Literary Property dated as of September 1, 2004 [{"Purchase Agreement Date"}] between Owner and Purchaser.

IN WITNESS WHEREOF, the undersigned has executed this document on \_\_\_\_\_, 2005, effective as of the date of exercise of the Option pursuant to the aforesaid Agreement for Purchase of Literary Material.

**TEMPERANCE BRENNAN LP.**  
("Lender")

By *Kathleen M. [Signature]*  
its *authorized member*

Federal I.D. [REDACTED]

State of North Carolina  
County of Rocky Mount

On 4/22/05, before me, Marion Epperson  
Date Name of Notary

personally appeared Kathleen J. Reichs  
Name(s) of Signer(s)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature (seal)

Marion Epperson  
Signature of Notary Public  
My Commission Expires October 25, 2005

EXHIBIT "B"

PUBLISHER'S RELEASE

TWENTIETH CENTURY FOX TELEVISION, a  
division of Twentieth Century Fox Film  
Corporation  
P.O. Box 900  
Beverly Hills, California 90213

Re: "MONDAY MOURNING"

Gentlemen:

Please be advised that the undersigned, SIMON & SCHUSTER, INC. specifically acknowledges and agrees, for the express benefit of TWENTIETH CENTURY FOX TELEVISION, a division of Twentieth Century Fox Film Corporation, and its representatives, successors, assigns, licensees and grantees, that the undersigned has no claim to or interest in the worldwide motion picture rights (silent or sound) for any medium now known or hereafter devised, including without limitation rights of theatrical, television, video cassette, video disc, and Internet exhibition and distribution; radio rights; sound recording rights, legitimate stage rights, merchandising and commercial tie-up rights (including comic strips, picture books, coloring books, photo novels, "making of" books and the like) or any other rights of any kind in or to that certain literary work written by KATHY REICHS entitled MONDAY MOURNING ("**Work**") which was first published by SIMON & SCHUSTER, INC. on June 7, 2004 other than the publication rights heretofore granted to the undersigned by KATHY REICHS.

The undersigned hereby consents to, and agrees that it will make no objection to, the publication and copyright by you or your successors, assigns or licensees, forever, in any and all languages, in any and all countries of the world and in any form or media (including but not limited to hard cover, soft cover, press books, press notices, trade journals, periodicals, newspapers, heralds, fan magazines, small separate book lists and pictorial versions) of synopses, revised and/or abridged versions of the Work or any motion picture or other version thereof based in whole or in part upon the Work for any and all purposes; provided that no such synopses, revised or abridged versions shall include more than 7,500 words taken from the Work.

Notwithstanding anything to the contrary set forth above, the undersigned hereby consents to, and agrees that it will make no objection to, the publication and copyright, in any and all languages, in any and all countries in the world, in any form or media, by you or your successors, assigns or

licensees, forever, of screenplays, teleplays and scripts adapted from or based in whole or in part upon the Work or of novelizations of any screenplays, teleplays and scripts adapted from or based in whole or in part upon the Work.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

SIMON & SCHUSTER, INC.

By \_\_\_\_\_  
Title

**EXHIBIT "C"**

**STANDARD TERMS AND CONDITIONS**

**FOR OPTION AND PURCHASE OF LITERARY MATERIAL**

**"MONDAY MOURNING"**

Standard Terms and Conditions of the Option Agreement for Purchase of Literary Material ("**Option Agreement**") dated as of September 1, 2004 and the Purchase Agreement for Purchase of Literary Material ("**Purchase Agreement**") (the Option Agreement and/or the Purchase Agreement, as applicable, shall be referred to herein as the "**Main Agreement**") dated as of the exercise of the Option pursuant to the Option Agreement, between TEMPERANCE BRENNAN LP. f/s/o KATHLEEN J. REICHS ("**Owner**") and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation ("**Purchaser**"), a Delaware corporation.

1. **INDEMNIFICATION:** Owner hereby agrees to indemnify Purchaser, Purchaser's successors, licensees and assigns, and the respective officers, directors, agents and employees of each of the foregoing (collectively, "**Indemnified Party(ies)**"), from and against any claims, costs, expenses, losses or damages (including reasonable attorneys' fees) occasioned by or arising out of a breach of any representation, warranty or agreement made by Owner herein. If any claim or action is asserted or filed by a third Party against any Indemnified Party, which written claim or action ("**Claim**") if true would constitute a breach of Owner's representations, warranties, and/or agreements hereunder, Purchaser shall give Owner prompt written notice thereof and Purchaser may, at Owner's expense, defend against any such Claim with counsel selected and retained by Purchaser, or, at Purchaser's election, Owner will defend Purchaser against any such Claim using counsel retained by Owner with the approval of Purchaser and such counsel shall consult fully with Purchaser concerning all aspects of such defense. Purchaser may compromise or settle such Claim upon such terms as Purchaser may deem reasonable for payment unless Owner shall furnish Purchaser with a surety bond or letter of credit in such form and in an amount and by a surety or financial institution satisfactory in all respects to Purchaser's Legal Department for the payment to Purchaser of such Claim. Pending determination of any such Claim, Producer may withhold all amounts due Owner hereunder in an amount related to the reasonable maximum exposure of such Claim; provided that, Purchaser shall not so withhold such amounts if Owner posts a bond or letter of credit as aforesaid. Purchaser shall release amounts so withheld if no formal legal proceedings are commenced within 1 year after such Claim is made or taken. Purchaser agrees similarly to indemnify Owner with respect to material added to the Literary Property by Purchaser or at Purchaser's request and with respect to the development, production, distribution and exploitation of the television program or other production or derivative thereof based upon the Literary Property by Purchaser. The provisions of this paragraph shall survive the termination of this Agreement.
2. **MOTION PICTURE AND ALLIED RIGHTS:** As set forth in the Purchase Agreement.
3. **VERSIONS OF THE LITERARY PROPERTY:** All rights granted to Purchaser hereunder may be exercised by Purchaser without the payment of any additional consideration by

Purchaser with respect to the Literary Property as presented to Purchaser and all other existing and future drafts, revisions, arrangements, adaptations, dramatizations, translations and other versions of the Literary Property which may heretofore have been written or which may hereafter be written by or with the sanction of Owner and all references to the Literary Property, including all of Owner's representations and warranties, shall be deemed to refer to all such existing and future versions of the Literary Property.

4. **INSTITUTION OF LEGAL ACTION:** Provided Purchaser has exercised its Option and paid the applicable Purchase Price, Owner hereby grants Purchaser the free and unrestricted right, at Purchaser's own cost and expense, to institute in the name and on behalf of Owner any and all suits and proceedings at law or in equity to enjoin and restrain any infringements of the rights herein granted. Owner does hereby assign to Purchaser any and all causes of action arising or resulting by reason of or based upon such infringements and any and all recoveries obtained in any such action. Owner agrees that Owner will not compromise, settle or in any manner interfere with any such litigation, if instituted; and Purchaser does hereby agree to indemnify and save harmless Owner from any costs or damages which Owner may suffer as a direct result of any such suits or proceedings instituted by Purchaser.

5. **ADDITIONAL DOCUMENTATION:** Owner agrees to execute and procure any other and further instruments consistent with the provisions of the Agreement necessary to convey, assign and copyright the rights in the Literary Property granted by Owner to Purchaser in any Territory throughout the universe. If it shall be necessary under the Laws of any Territory that copyright registration be acquired in the name of Owner, Purchaser is authorized by Owner to apply for said copyright registration in the name of Owner; and, in such event, subject to exercise of the Option by Purchaser, Owner shall and does hereby assign and transfer the same unto Purchaser. Owner further agrees to duly execute, acknowledge, procure and deliver to Purchaser such short form assignments as may be requested by Purchaser for the purpose of recording in the United States or elsewhere. If Owner shall fail to so execute and deliver or to cause the execution and delivery to Purchaser of the assignments or other instruments herein referred to after a reasonable opportunity to review and provide comments, Purchaser is hereby irrevocably granted the power coupled with an interest with rights of substitution and delegation to execute such assignments and instruments in the name and on behalf of Owner and as Owner's attorney-in-fact. Copies of any documents executed by Purchaser shall be provided to Owner.

6. **COPYRIGHT OF LITERARY PROPERTY:** If the Literary Property is hereafter published in any Territory in the universe, Owner shall take and complete, and shall require any Party operating under Owner's authority to take and complete, any and all steps and proceedings required by the Laws of any Territory within which such publication occurs to secure copyright in the Literary Property and to prevent the Literary Property from falling into the public domain by reason of such publication. Owner shall take such reasonable steps and proceedings as may be necessary to renew or extend any and all copyrights now or hereafter secured upon the Literary Property. As a material part of the consideration moving to Purchaser for its exercise of the Option, Owner, without the payment of any further consideration by Purchaser, shall (promptly upon any such renewal or extension) assign to Purchaser for such renewed or extended term all of the rights in the Literary Property which are granted to Purchaser under this Purchase Agreement. If Owner shall fail to do any of the things specified in this Paragraph, Purchaser is hereby irrevocably granted the power coupled with an interest with rights of

substitution and delegation and the right and authority to perform such acts and take such proceedings in the name and on behalf of Owner and as Owner's attorney-in-fact.

7. **PUBLICITY RESTRICTIONS:** Owner shall not, individually or by means of press agents or publicity or advertising agencies employed or paid by Owner, or otherwise, authorize, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity of any kind relating directly or indirectly to the subject matter of this Purchase Agreement or the Picture. As between Purchaser and Owner, Purchaser shall be the owner and copyright proprietor of all such news stories, articles, books and other publicity. Nevertheless, Owner may disseminate publicity which contains Owner's name and identifies the Picture so long as such publicity is not an advertisement for the Picture and does not contain any language which is derogatory to the Picture or Purchaser.

8. **PURCHASER'S EXERCISE OF RIGHTS:** All rights, licenses, privileges and other property granted herein shall be cumulative and Purchaser may exercise or use any of them separately or in conjunction with any one or more of the others. Purchaser shall be under no obligation to exercise or put to use any of the rights acquired by Purchaser hereunder.

9. **REMEDIES:** All remedies accorded herein or otherwise available to any Party hereto shall be cumulative and no one such remedy shall be exclusive of any other. Except as may be limited in the Main Agreement and/or in these Standard Terms and Conditions and without waiving any rights or remedies under this Purchase Agreement or otherwise (a) any Party hereto may from time to time seek to recover by action, any damages arising out of any breach of this Purchase Agreement by any other Party hereto, and may institute and maintain subsequent actions for additional damages which may arise from the same or other breaches; (b) the commencement or maintaining of any action or actions by any Party hereto shall not constitute or result in the termination hereof unless such Party shall expressly so elect by written notice to the other Party; and (c) the pursuit of any remedy under this Purchase Agreement or otherwise shall not be deemed to waive any other or different remedy which may be available under this Purchase Agreement or otherwise, either at law or in equity.

10. **WAIVER:** A waiver by either Party of any term or condition of this Purchase Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future or any subsequent breach thereof.

11. **MISCELLANEOUS:**

(a) **Severability:** Nothing contained herein shall require the commission of any act or the payment of any compensation which is contrary to any Law. If there shall exist any conflict between this Purchase Agreement and any such Law, the latter shall prevail; and the provision or provisions hereof affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict; and as so modified, this Purchase Agreement shall continue in full force and effect.

(b) **Captions:** The captions used in connection with the paragraphs and subparagraphs of this Purchase Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions hereof; nor shall such captions otherwise be given any legal effect.

(c) Relationship: This Purchase Agreement does not constitute a joint venture or partnership of any kind between the Parties.

END OF STANDARD TERMS AND CONDITIONS

EXHIBIT "D"

CERTIFICATE OF ENGAGEMENT

"UNTITLED KATHY REICHS / HART HANSON PROJECT"

I, KATHLEEN J. REICHS ("Writer"), hereby certify that I have rendered and will continue to render services in connection with the television pilot, presentation or episode currently untitled and referred to as the UNTITLED KATHY REICHS / HART HANSON PROJECT within the scope of my employment as an employee of TEMPERANCE BRENNAN LP. ("Lender"), who is furnishing my services pursuant and subject to all of the terms and conditions of that certain borrowing agreement between Lender and TWENTIETH CENTURY FOX TELEVISION, a unit of Twentieth Century Fox Film Corporation, ("Producer"), entered into as of September 1, 2004 ("Agreement"). In connection therewith, I hereby represent, warrant and agree that (a) my services are rendered for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; (b) the results and product of such services are being especially ordered from Lender by Producer for use as part of a television pilot, presentation or episode; (c) such results and product shall be considered a "work-made-for-hire" for Producer; and (d) Producer shall be considered, forever and for all purposes throughout the universe, the author thereof and the sole copyright owner thereof and the owner of all rights therein and of all proceeds derived therefrom and in connection therewith, with the right to make such changes therein and such uses and disposition thereof, in whole or in part, as Producer may from time to time determine as the author and owner thereof. I further represent, warrant and agree that, subject to Article 28. of the current WGA Agreement, if applicable, and except with respect to materials supplied to me by Producer and materials in the public domain (which shall not be a material or substantial part of the results and product of my services), (i) the results and product of my services hereunder were original with me; and (ii) to the best of my knowledge (including that which I should have known, in the exercise of reasonable prudence), the results and product of my services do not and will not defame, infringe or violate the rights of privacy or any other rights of any third party and are not the subject of any actual or threatened litigation or claim. I shall indemnify Producer, its affiliated entities, assigns and licensees against any loss, cost or damage (including reasonable outside attorneys' fees) arising out of or in connection with any breach of any of the aforesaid representations, warranties or agreements, and I shall sign such documents and do such other acts and deeds as may be reasonably necessary to further evidence or effectuate Producer's rights hereunder. Except with respect to matters constituting a breach by me of any of the above representations, warranties and/or agreements, Producer shall indemnify and defend me, Lender and our my successors-in-interest against any loss, cost or damage, claim or liability (including reasonable outside attorneys' fees), but not including any loss or cost or damage relating to any settlement entered into without Producer's written consent, arising out of the development, production, distribution and/or exploitation of the Program, and/or any other uses of the results and proceeds of my services under the Agreement. The Agreement may be assigned freely by Producer and such assignment shall be binding upon the undersigned and inure to the benefit of such assignee and such assignment shall be deemed a novation forever releasing and discharging Producer from any further liability or obligation to me, provided, however, that Producer shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Producer, or which succeeds to substantially all of the assets of Producer,

or to a major or so-called "mini-major" production or distribution company, or to a television network, or to a similarly financially responsible entity which assumes all of Producer's obligations hereunder in writing. In the event of any conflict between the executed Agreement and this Certificate of Authorship, the executed Agreement shall control.

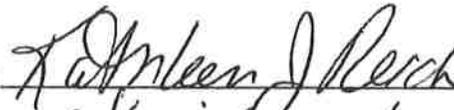
IN WITNESS WHEREOF, this document has been signed this \_\_\_\_\_ day of \_\_\_\_\_, 2005

  
KATHLEEN J. REICHS ("Artist")

The undersigned Lender confirms that (a) material heretofore and hereafter written by Artist under and pursuant to the Agreement are being specially ordered from Lender by Producer for use as part of a television pilot, presentation or episode and shall be considered a "work-made-for-hire" for Producer; (b) Producer shall be considered, forever and for all purposes throughout the universe, the author thereof and the sole copyright owner thereof; and (c) Lender agrees to be bound by the representations, warranties, agreement, covenants and indemnities of Artist set forth above.

IN WITNESS WHEREOF, I, the \_\_\_\_\_ of Lender have on this \_\_\_\_\_ day of \_\_\_\_\_, 2004 signed this confirmation.

TEMPERANCE BRENNAN LP. ("Lender")

By:   
Its: authorized member

# **Attachment 4(b)**

## **Exhibit B**

EXECUTED

ORIGINAL

AGREEMENT FOR PILOT WITH SERIES OPTIONS

PLAYER: DAVID BOREANAZ LENDER (If Loan-Out): BERTHA BLUE, INC DATE: AS OF 3/2/2005
MINOR: NO U.S. CITIZEN: YES
ROLE: "AGENT BOOTH" TITLE: "BRENNAN" a/k/a "BONES" LENGTH: 1 HOUR

I. PLAYER'S SERVICES IN PILOT

Player agrees to render services in the Pilot, on a pay-or-play basis. All of Twentieth's obligations hereunder are expressly conditioned upon Twentieth finalizing a Pilot license agreement with the Licensee ("License Fee Contingency"); provided, however, that in the event that Twentieth directs Player to commence actual Pilot performing services hereunder, Player shall be deemed pay-or-play for the Pilot.

START DATE: TBD; but currently scheduled to commence in March 2005. COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Pilot (including one run only thereof except with respect to foreign telecasts as set forth below), [redacted] plus an additional [redacted] payment\*\*\*\* for 20 consecutive work days plus 3 non-consecutive make-up/hair/wardrobe/rehearsal days plus 2 non-consecutive post production (i.e., looping, dubbing, retakes, added scenes and the like) days which shall be scheduled to reasonably accommodate Player's professional commitments prior to the Agreement plus non-consecutive travel days as required. Compensation for additional days requested by Twentieth, if any, shall be calculated on a pro-rata basis based on Player's above-referenced work days.

II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):

SERIES OPTIONS: Player grants Twentieth exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Option for the First Contract Year is for episodes produced pursuant to the initial order in accordance with the guarantee/episodic compensation provision set forth below with an option for additional episodes produced in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Twentieth's option for Player's services in the additional episodes shall be exercised no later than 10 business days after Twentieth's written acceptance of the Licensee order for such additional episodes; provided, however, that if Twentieth requires Player to commence rendering actual services in connection with such additional episodes, Twentieth's option for Player's services in such additional episodes shall be deemed exercised. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

FIRST CONTRACT YEAR SERIES OPTION PERIOD: 6/30/05. Twentieth may extend such option period through 12/15/05 by written notice to Player no later than 6/30/05 and additional payment of [redacted] to Player which shall be paid no later than 10 business days following the date of such written notice. Player agrees that during the Series Option Period SAG TV 23.(c) shall apply.

OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS: June 30 of the applicable year ; provided, however, if the Series premiere is telecast late midseason (i.e., on or after April 15, 2006), Twentieth may extend the option period for the Second Contract Year through September 15th, 2006 by written notice to Player no later than June 30, 2006 and payment in an amount equal to 1 episodic fee at the last episodic rate paid to Player, which shall be non-recoupable against Player's Second Contract Year Guarantee and shall be paid no later than 10 business days following the date of such written notice.

GUARANTEE/EPISODIC COMPENSATION: In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only of each Series episode except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Twentieth does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. In the First Contract Year, Twentieth may treat the Pilot as 1 episode. If Twentieth makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

Contract Year Minimum Number Ratio Episodic Compensation\*

Table with 4 columns: Contract Year, Minimum Number, Ratio, Episodic Compensation\*. Rows include First, Second, Third, Fourth, Fifth, Sixth, Seventh with values like 6\*\*, 13\*\*\*, ASP, 13, etc.



\*Twentieth shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation. If the Series is a midseason start, the Episodic Compensation for services rendered on the first 13 episodes produced for the Second Contract Year shall be the same Episodic Compensation paid for the initial midseason Series order in the First Contract Year; provided, however, that in such event the total number of episodes paid at the First Contract Year Episodic Compensation shall not exceed 13 episodes. Regardless of the number of episodes produced during the First & Second Contract Years, the Episodic Compensation for the Third & subsequent Contract Years shall be as set forth.

\*\*If the initial order is more than 6, then the Minimum Number shall be 7.
\*\*\*If the Series is a midseason start, then the Minimum Number shall be 7.
"ASP" = All Shows Produced

Network cancellation of the Series shall not relieve Twentieth of the obligation to pay Episodic Compensation for the Minimum Number of episodes indicated.

III. TERMS AND CONDITIONS

RESIDUALS: \*\*\*\*To the extent permitted by SAG, the additional [redacted] payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Twentieth shall have the right at its sole election at any time and from time to time to pay the additional [redacted] payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the [redacted] prepayment of foreign residuals and shall be quoted as [redacted] Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-[redacted] Supplemental Markets-SAG Minimum.

**SCREEN CREDIT:** On the Pilot (if telecast) and each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Twentieth's discretion.

**RIGHTS AND SERVICES:** Twentieth owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Twentieth as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days. Player consents to the use of Player's name, voice, **approved (as set forth in the Rider)** likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography in merchandising. For merchandise that includes Player, Twentieth shall pay Player [REDACTED] of Merchandising Net Receipts reducible by amounts payable to royalty-bearing Series regular actors to a floor of [REDACTED] of Merchandising Net Receipts if Twentieth is obligated to make payments to another person in connection with the same merchandising item.

**EXCLUSIVITY:** Maximum required by the applicable Licensee as permitted by SAG. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Twentieth (which shall at all times be in first position) or with any rights granted to Twentieth pursuant to this Agreement. Player shall give Twentieth reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Twentieth in taking such action as Twentieth deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: provided Player is not in material default, Player may render unlimited non-identifiable voice over services, and make U.S. (subject to Twentieth obtaining Licensee approval, which Twentieth shall use good faith efforts to obtain but its failure to obtain same shall not be a breach of this Agreement), and non-U.S. telecast commercials (including, without limitation, infomercials); radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other television guest appearances (including MOWs and mini-series if not longer than 4 telecast hours in the aggregate) during each 13-week period so long as such appearances are not in the Role or as a character substantially similar to the Role; are not in a role which is a continuing role; are not during production periods; are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15<sup>th</sup> in any Series Contract Year or during the regularly scheduled first run telecast time period of the Pilot or Series; and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Twentieth in a timely manner).

**PROMOS:** During production periods and, subject to Player's professional availability, outside production periods, Player will do Promos, at double SAG scale; residuals at scale. There shall be no crediting of such "overscale" compensation payable in connection with Player's services for Promos against other amounts payable under this Agreement or under SAG. There shall be no direct endorsement by Player of products/services in such promos.

**PUBLICITY & RELATED SERVICES:** During Series production periods, and, subject to Player's professional availability, outside Series production periods, Player will: (1) do standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews and other promotional footage (collectively, "Promotional Footage") for no additional compensation; (2) make not less than, as Twentieth may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Twentieth's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Twentieth or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. If Player is required to travel in connection with the foregoing services, Twentieth will provide/reimburse such first class travel, accommodations, and expenses as required by SAG.

**CONSENTS:** Player consents to the use of Player's name, voice, **approved (as set forth in the Rider)** likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography, with no additional compensation to Player, in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Twentieth, its affiliated companies and its licensees; (5) the advertising of products or services of Twentieth's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, replay, interactive, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Twentieth require Player's additional services beyond those required hereunder, Twentieth and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

**LAW:** Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

**PRODUCER'S REMEDIES:** Twentieth will have the maximum rights available at law, equity and under SAG for Player's incapacity, default or material breach. For production interruptions due to causes beyond Twentieth's control, Twentieth's and Player's rights shall be in accordance with the provisions of Article 61. of the 2001 SAG Television Agreement. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Twentieth irreparable injury and damage. If Twentieth in its discretion believes that Player may fail or refuse to perform hereunder, Twentieth may require written assurance of Player's intent to perform the requested services. If Twentieth does not receive such assurance within 24 hours (or less, if production exigencies exist),

then Player is in default and Twentieth reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Twentieth shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Twentieth may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Twentieth has exercised its option and to perform any other obligation which has accrued hereunder prior to such election.

**SPECIAL PROVISIONS:**

This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Twentieth in its sole discretion. In that regard, the parties acknowledge that Twentieth may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Pilot and Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code. This Agreement shall be effective for all purposes as a binding agreement. If the Licensee is ABC, CBS, FBC, NBC, the WB or UPN, Player's services hereunder shall be pursuant to Licensee's customary requirements for Series regular actors, subject to the SAG Agreement. Player's services hereunder shall be conducted at all times by Player in a professional manner, and performed consistent with Twentieth's directions, practices and policies that reasonably relate to the services being provided. Incorporated in this Agreement by reference are Twentieth's Standard Terms which shall be subject to good faith negotiations within Twentieth's normal parameters for a performer of Player's stature in the TV industry. All of Twentieth's obligations are expressly conditioned upon Player's completion to Twentieth's satisfaction of Employment Eligibility Verification Form I-9.

**NOTICES:** All written notices from Twentieth to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and shall be sent to the address and/or fax number (as applicable) set forth below. Fax, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

**This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.**

**AGREED:**

\_\_\_\_\_  
David Boreanaz ("Player")

Redacted  
Player's Social Security Number

\_\_\_\_\_  
BERTHA BLUE, INC ("Lender")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Redacted  
Federal I.D. Number

**TWENTIETH CENTURY FOX TELEVISION,**  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

By:   
Samuel E. Bramhall  
Its: SVP, Business Affairs

Player's Agent and Address: \_\_\_\_\_

Michael Katcher

Creative Artists Agency LLC

9830 Wilshire Boulevard

Beverly Hills, CA 90212

(310) 288-4545 (310) 288-9512  
(Phone) (Fax)

cc:  
Eric Suddleson  
Nelson Felker Toczek & Davis  
10880 Wilshire Boulevard, Suite 2070  
Los Angeles, CA 90024

**RIDER TO THE AGREEMENT FOR TEST WITH PILOT AND SERIES OPTIONS  
DATED AS OF MARCH 2, 2005 BETWEEN TWENTIETH CENTURY FOX  
TELEVISION AND BERTHA BLUE, INC. f/s/o DAVID BOREANAZ**

**License Fee Contingency:** If Twentieth does not conclude a license fee agreement with the applicable Licensee or make Lender unconditionally pay-or-play within 30 days following the date Twentieth exercises its Pilot option hereunder, this Agreement shall be in second position to bona fide, third party offers for pilot and/or series or other employment ("Third Party Offer(s)"); provided, however, Player shall notify Twentieth in writing of any such Third Party Offer(s) and Twentieth shall have one (1) business day following such notice to pre-empt said offer(s) by making Lender pay-or-play hereunder. Should Twentieth thereafter make Lender pay-or-play, Twentieth will be in first position, subject only to such pre-existing Third Party Offer(s), if any, for which Twentieth has not exercised its pre-emption rights as set forth above.

**Payment of Pilot Compensation:** In the event Twentieth exercises its Pilot option hereunder, subject to the License Fee Contingency, [REDACTED] of the Pilot compensation shall be payable no later than April 15, 2005 and the remainder no later than the earlier of June 30, 2005 or promptly following the completion of Pilot principal photography.

**Producer Credit:** Subject to network/licensee approval and subject to Twentieth exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the Third Contract Year, Twentieth shall accord Player "Co-Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Twentieth. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Twentieth will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

**Contingent Compensation:**

- a) **MAGR:** With respect to the Pilot/Series produced hereunder and subject to Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to [REDACTED] of the Defined Modified Adjusted Gross Receipts ("MAGR"). The percentage of contingent compensation participation payable, if at all, to Lender shall vest 1/2 upon completion of Player's services in the First Contract Year and 1/2 upon completion of Player's services with respect to the Second Contract Year.

**Definition:** Lender's MAGR shall be computed, determined and paid pursuant to Twentieth's standard Television Definition of MAGR (with a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Twentieth enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Twentieth, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Twentieth shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following The remainder of the MAGR definition shall be good faith negotiation within Fox's customary parameters for persons of Artist's stature as of the date of this agreement. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Artist's stature as of the date of this agreement, but said definition shall include, among other things, the following:

- i. Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.
- ii. The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge.
- iii. Production costs will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.
- iv. "Back-end" agency commissions (i.e., percentages of contingent compensation and/or deferrals payable out of contingent compensation) will be deducted in the same manner as distribution expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of production costs.

**b) Distribution Controls:**

- i. **General:** Twentieth shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot or Presentation), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Twentieth in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Twentieth in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good

faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Twentieth makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot or Presentation) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot or Presentation), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Twentieth does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode (including the Pilot or Presentation).

ii. **Dealings with Affiliates:** Each of Lender and Player acknowledges that Twentieth is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Twentieth intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot or Presentation), as, when and where Twentieth deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (including the Pilot or Presentation) (or aspects thereof) or assert any claim that Twentieth should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Twentieth agrees that Twentieth's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Twentieth for any alleged failure by Twentieth to comply with the terms of this paragraph shall be actual damages, and each of Lender and Twentieth hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

iii. **Arbitration:** Any dispute arising under the provisions of this Paragraph shall be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable outside attorneys' fees and costs.

**Dressing Room:** While Player is rendering services hereunder, Twentieth shall provide Player with a private, first class dressing room (exclusive during periods of production), which shall be

no less than a star wagon and which shall include customary first class amenities and, provided a hard line exists, a phone (Player to pay all non-Series related long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room shall be no less favorable than the dressing rooms provided to other Series regulars.

**Domestic Photo/Likeness/Biography Approval:** With respect to Twentieth's use of Player's likeness and biography (and Twentieth's provision of Twentieth-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Twentieth in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Twentieth specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Twentieth; provided that such redrawing can be completed within the time guidelines reasonably specified by Twentieth. If Player elects not to have the non-photographic likeness redrawn, Twentieth will select one of the existing likenesses.
- c. **Biographical Data:** Player's biographical data released by Twentieth, provided that Player gives Twentieth specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Twentieth's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of

the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

**Paid Ads:** Subject to Twentieth's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Twentieth shall accord Player credit in all paid ads issued by Twentieth or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Twentieth fails to comply with any paid ad provision of the Agreement, Twentieth agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

**Hair/Make-up/Wardrobe:** Subject to applicable union guidelines and budgetary limitations, while Player is rendering Pilot and Series services hereunder, Twentieth shall consult with Player regarding Player's hair, make-up, and wardrobe.

**Series Payment:** Excluding the First Contract Year, if Twentieth exercises its option for Player's Series services for a Contract Year, Twentieth shall commence Lender's episodic payments no later than September 1 of the applicable year (excepting only the Second Contract Year if Twentieth has exercised its extension option, in which event payments shall start no later than October 1), regardless of whether actual production of the Series has begun, subject to Twentieth's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Twentieth's control.

**Worker's Compensation:** Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

**Videocassette:** Upon Player's request following telecast of the Pilot, Twentieth shall provide Player with a ½ inch videocassette or DVD (at Twentieth's sole election) copy of any Pilot hereunder in which Player recognizably appears for Player's personal, non-commercial use.

**Assignment and Lending:** The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Twentieth's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Twentieth and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Twentieth shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Twentieth, or which succeeds to substantially all of the assets of Twentieth, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a financially responsible entity which assumes all of Twentieth's obligations hereunder. Twentieth shall have the right to lend Player's services

hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Twentieth the right to distribute the Series. No such lending of Player's services shall relieve Twentieth of its obligations hereunder.

**Insurance:** Lender and Player shall be insured by Twentieth's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Twentieth obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

**Consents Exclusions:** Twentieth agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, or firearms, undergarments or feminine or personal hygiene products.

**Guild/Pension, Health & Welfare:** Twentieth shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

**Indemnification:**

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Twentieth, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Twentieth:** Twentieth agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Twentieth of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Twentieth for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except to the extent not covered by Lender's and/or Player's indemnification of Twentieth (as set forth in subparagraph (a) above).

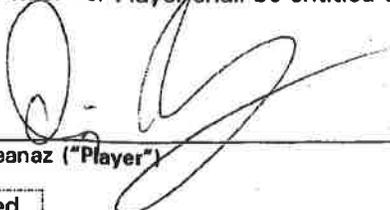
**Work Visa(s)/Permit(s):** Player's services and Twentieth's obligations hereunder shall be subject to Twentieth obtaining all appropriate work visa(s), work permit(s) and union

permissions requested by law for Player deemed necessary by Twentieth. Player will provide Twentieth with all required information and cooperate fully with Twentieth's efforts to obtain said work visa(s), work permit(s) and union permissions.

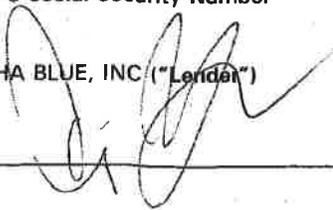
**SOUNDTRACK ALBUM AGREEMENT**  
**As of March 3, 2005**

Twentieth Century Fox Television ("Twentieth") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of March 2, 2005 between Bertha Blue, Inc. ("Lender") f/s/o David Boreanaz ("Player") and Twentieth. Twentieth shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be [REDACTED] of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Twentieth and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use.

AGREED:

  
\_\_\_\_\_  
David Boreanaz ("Player")

Redacted  
\_\_\_\_\_  
Player's Social Security Number

  
\_\_\_\_\_  
BERTHA BLUE, INC. ("Lender")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Redacted  
\_\_\_\_\_  
Federal I.D. Number

TWENTIETH CENTURY FOX TELEVISION,  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

By:   
\_\_\_\_\_  
Samuel E. Bramhall  
Its: SVP, Business Affairs

Player's Agent and Address: \_\_\_\_\_

Michael Katcher  
\_\_\_\_\_

Creative Artists Agency LLC  
\_\_\_\_\_

9830 Wilshire Boulevard  
\_\_\_\_\_

Beverly Hills, CA 90212  
\_\_\_\_\_

(310) 288-4545                      (310) 288-9512  
\_\_\_\_\_  
(Phone)                                      (Fax)

cc:  
Eric Suddleson  
Nelson Felker Toczek & Davis  
10880 Wilshire Boulevard, Suite 2070  
Los Angeles, CA 90024

# **Attachment 4(b)**

## **Exhibit C**

**AGREEMENT FOR SERIES SERVICES WITH OPTIONS**

**PLAYER:** DAVID BOREANAZ      **LENDER (If Loan-Out):** BERTHA BLUE, INC.      **DATE:** AS OF AUGUST 13, 2008  
**MINOR:** NO      **U.S. CITIZEN:** YES  
**ROLE:** "AGENT BOOTH"      **TITLE:** "BONES"      **LENGTH:** 1 HOUR

**I. TERMINATION AND NOVATION OF PRIOR AGREEMENT**

Reference is hereby made to the Agreement for Pilot With Series Options dated March 2, 2005 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement is terminated as of August 13, 2008 as to Twentieth, Lender and Player's respective rights and obligations for the Fourth and subsequent Contract Years (as set forth therein). It is intended by Twentieth, Lender and Player that upon signature hereof this Agreement shall constitute a novation of the Prior Agreement with respect to Player's services for the First (2008-09) and (if applicable) the Second (2009-10), Third (2010-11), Fourth (2011-12) and Fifth (2012-13) Contract Years for the Series as set forth below. Notwithstanding the foregoing, the Soundtrack Album Agreement between the parties dated as of March 3, 2005 shall remain in full force and effect and is not terminated.

**II. PLAYER'S SERVICES IN SERIES ("Series"):**

**SERIES OPTIONS:** Fox hereby engages Player, on a pay-or-play basis, to render services in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

**OPTION EXERCISE FOR CONTRACT YEARS:** June 30 of the applicable year.

**GUARANTEE/EPISODIC COMPENSATION:** In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only of each Series episode except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Fox does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. In the First Contract Year, Fox may treat the Pilot as 1 episode. If Fox makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

**Contract Year    Minimum Number    Ratio    Episodic Compensation\***

<b>First:</b>	13	ASP
<b>Second:</b>	13	ASP
<b>Third:</b>	13	ASP
<b>Fourth:</b>	13	ASP
<b>Fifth:</b>	13	ASP



\*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation.  
 "ASP" = All Shows Produced  
 Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

**Seasons 4-5 pickup bonus:** Fox will pay Lender f/s/o Artist the total sum of [REDACTED] payable one-half [REDACTED] upon full signature of this Agreement by Lender and Artist and the other half [REDACTED] upon Fox's acceptance of a written network order for the production of new, original episodes of the Series for the 2009-2010 broadcast season.

**III. TERMS AND CONDITIONS**

**RESIDUALS:** \*\*\*\*To the extent permitted by SAG, the additional [REDACTED] payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional [REDACTED] payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the [REDACTED] prepayment of foreign residuals and shall be quoted as [REDACTED] Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-[REDACTED] Supplemental Markets-SAG Minimum.

**SCREEN CREDIT:** On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Twentieth's discretion.

**RIGHTS AND SERVICES:** Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days. Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography in merchandising. For merchandise that includes Player, Fox shall pay Player [REDACTED] of Merchandising Net Receipts reducible by amounts payable to other Series regular actors in connection with merchandising to a floor of [REDACTED], of Merchandising Net Receipts if Fox is obligated to make payments to another person in connection with the same merchandising item.

**EXCLUSIVITY:** Maximum required by the applicable Licensee as permitted by SAG. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially

conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deems necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials, Player may render unlimited non-identifiable voice over services, make U.S. (subject to Twentieth obtaining Licensee approval, which Twentieth shall use good faith efforts to obtain but its failure to obtain same shall not be a breach of this Agreement) and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other television guest appearances (including MOWs and mini-series if not longer than 4 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15<sup>th</sup> in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Pilot or Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner).

**PUBLICITY & RELATED SERVICES:** Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews, Promotional Films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation; (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January (the "TCAS") and the May up-front presentations in New York (the "Up-Fronts") and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. Except with respect to Player's services (If and as required) for the TCAS, the Up-fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2) and (3) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first class travel, accommodations, and expenses as required by SAG.

**CONSENTS:** Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only) and biography, with no additional compensation to Player, in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Fox require Player's additional services beyond those required hereunder, Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

**LAWS:** Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

**PRODUCER'S REMEDIES:** Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. On a non-precedential, non-citeable basis, if Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services (e.g., periods for which Fox engaged Player or exercised an option hereunder) under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

**SPECIAL PROVISIONS:** This agreement shall be governed by the SAG collective bargaining agreement. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be: (i) if the Licensee is ABC, CBS, FBC, NBC, the WB, UPN or a major cable network (e.g., FX, TNT), pursuant to Licensee's customary requirements for Series regular actors, subject to the SAG Agreement; (ii) conducted at all times by Player in a professional manner; and (iii) performed consistent with Fox's reasonable directions, practices and policies that reasonably relate to the services being provided (except as to creative matters, to which the "reasonable" restriction shall not apply). Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature within the television industry as of the date of this agreement. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

**NOTICES:** All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.



AGREED

David Boreanaz ("Player")

Player's Social Security Number

BERTHA BLUE, INC ("Lender")

By:

Title:

Federal I.D. Number

TWENTIETH CENTURY FOX TELEVISION,  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

By: Samuel E. Bramhall  
Samuel E. Bramhall  
Its: SVP, Business Affairs

Player's Agent and Address:

Michael Katcher

Creative Artists Agency LLC

2000 Avenue of the Stars

Los Angeles, CA 90067

(424) 288-2000  
(Phone)

(424) 288-2900  
(Fax)

e-mail: mkatcher@caa.com

cc: Patti Felker / Bruce Gellman  
Felker Toczek Gellman Suddleson LLP  
10880 Wilshire Boulevard, Suite 2070  
Los Angeles, CA 90024  
Phone: (310) 441-8000; Fax: (310) 441-8010;  
e-mail: bruce@ftgslaw.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS DATED AS OF  
AUGUST 13, 2008 BETWEEN TWENTIETH CENTURY FOX TELEVISION AND BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ**

**Producer Credit:** Subject to network/licensee approval and subject to Twentieth exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Twentieth shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Twentieth. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Twentieth will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur. Notwithstanding the foregoing, Artist's Co-Producer credit for episodes titled prior to Lender's and Artist's full signature of this Agreement shall remain unaffected and subject to the terms and conditions of the Prior Agreement, provided that Artist shall receive only one such credit (Co-Producer or Producer) on any single episode of the Series.

**Contingent Compensation:** The Paragraph entitled "Contingent Compensation" set forth in the Prior Agreement shall remain in full force and effect notwithstanding the termination of the Prior Agreement, subject to Lender's and Artist's complete performance of all of the material terms and conditions of this Agreement as well as the Prior Agreement.

**Dressing Room:** While Player is rendering services hereunder, Twentieth shall provide Player with a private, first class dressing room (exclusive during periods of production), which shall be no less than a star wagon and which shall include customary first class amenities and, provided a hard line exists, a phone (Player to pay all non-Series related long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room shall be no less favorable than the dressing rooms provided to other Series regulars.

**Domestic Photo/Likeness/Biography Approval:** With respect to Twentieth's use of Player's likeness and biography (and Twentieth's provision of Twentieth-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Twentieth in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
  
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Twentieth specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player

shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Twentieth; provided that such redrawing can be completed within the time guidelines reasonably specified by Twentieth. If Player elects not to have the non-photographic likeness redrawn, Twentieth will select one of the existing likenesses.

- c. **Biographical Data:** Player's biographical data released by Twentieth, provided that Player gives Twentieth specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Twentieth's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

**Paid Ads:** Subject to Twentieth's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Twentieth shall accord Player credit in all paid ads issued by Twentieth or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Twentieth fails to comply with any paid ad provision of the Agreement, Twentieth agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

**Hair/Make-up/Wardrobe:** Subject to applicable union guidelines and budgetary limitations, while Player is rendering Pilot and Series services hereunder, Twentieth shall consult with Player regarding Player's hair, make-up, and wardrobe.

**Series Payment:** Excluding the First Contract Year, if Twentieth exercises its option for Player's Series services for a Contract Year, Twentieth shall commence Lender's episodic payments no later than September 1 of the applicable year (excepting only the Second Contract Year if Twentieth has exercised its extension option, in which event payments shall start no later than October 1), regardless of whether actual production of the Series has begun, subject to Twentieth's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Twentieth's control.

**Worker's Compensation:** Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

**Videocassette:** Upon Player's request following telecast of the Pilot, Twentieth shall provide Player with a ½ inch videocassette or DVD (at Twentieth's sole election) copy of any Pilot hereunder in which Player recognizably appears for Player's personal, non-commercial use.

**Assignment and Lending:** The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Twentieth's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Twentieth and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Twentieth shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Twentieth, or which succeeds to substantially all of the assets of Twentieth, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a financially responsible entity which assumes all of Twentieth's obligations hereunder. Twentieth shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Twentieth the right to distribute the Series. No such lending of Player's services shall relieve Twentieth of its obligations hereunder.

**Insurance:** Lender and Player shall be insured by Twentieth's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Twentieth obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

**Consents Exclusions:** Twentieth agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, or firearms, undergarments or feminine or personal hygiene products.

**Guild/Pension, Health & Welfare:** Twentieth shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

**Indemnification:**

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Twentieth, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Twentieth:** Twentieth agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising

out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Twentieth of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Twentieth for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except to the extent not covered by Lender's and/or Player's indemnification of Twentieth (as set forth in subparagraph (a) above).

**Work Visa(s)/Permit(s):** Player's services and Twentieth's obligations hereunder shall be subject to Twentieth obtaining all appropriate work visa(s), work permit(s) and union permissions requested by law for Player deemed necessary by Twentieth. Player will provide Twentieth with all required information and cooperate fully with Twentieth's efforts to obtain said work visa(s), work permit(s) and union permissions.

# **Attachment 4(b)**

## **Exhibit D**

**AGREEMENT FOR SERIES SERVICES WITH OPTIONS**

**PLAYER:** DAVID BOREANAZ      **LENDER (if Loan-Out):** BERTHA BLUE, INC.      **DATE:** AS OF December 24, 2012  
**MINOR:** NO      **ELIGIBLE TO WORK IN THE US:** YES  
**ROLE:** "AGENT BOOTH"      **TITLE:** "BONES"      **LENGTH:** 1 HOUR

**I. TERMINATION OF PRIOR AGREEMENT**

Reference is hereby made to the Agreement for Series Services with Options dated as of August 13, 2008 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement was terminated as of December 21, 2012 as to Fox, Lender and Player's respective rights and obligations for the Fifth and subsequent Contract Years (e.g., the Eighth and subsequent Series broadcast years, as set forth therein, provided that any payments made under the Prior Agreement in connection with the Eighth Series broadcast year are creditable against payments due hereunder); Fox's ownership of the Series (including the Pilot) and the results and proceeds of Player's services thereunder (including ancillary rights thereto as set forth in the Prior Agreement), as well as the provisions of the Prior Agreement regarding insurance, indemnification, payment of residuals and credit, survive such termination. Lender and Player represent and warrant that neither has entered into any obligation or undertaking since the termination of the Prior Agreement, including any obligation or undertaking that would interfere or conflict with any of the terms and conditions of this Agreement. It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall define the respective rights and obligations of the parties hereto with respect to Player's services for the First (2012-13) and (if applicable) the Second (2013-14) and Third (2014-15) Contract Years for the Series as set forth below.

**II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):**

**SERIES OPTIONS:** Fox hereby engages Player, on a pay-or-play basis, to render services in the First and Second Contract Years in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in the Third Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

**OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS:** June 30 of the applicable year.

**GUARANTEE/EPISODIC COMPENSATION:** In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In each Contract Year for which an option is exercised, Player is guaranteed, pay-or-play, the following Ratio of original episodes produced, but no less than the Minimum Number. If Fox produces multi-segment episodes, each original full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

<u>Contract Year</u>	<u>Minimum Number</u>	<u>Ratio</u>	<u>Episodic Compensation*</u>
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First:	22**	ASP	
Second:	22**	ASP	
Third:	22**	ASP	

\*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation (provided that Exclusivity shall not be increased).

\*\* Subject to Player not being in default and the provisions hereof regarding Force Majeure and Fox Disability.

ASP = All Original Episodes Produced. If Fox produces a clip/compilation episode that includes new, original material for which Player renders acting services, Player's fee for such episode will be negotiated in good faith taking into consideration the amount of such new material and the license fee received by Fox for the episode, but in no event greater than the fees set forth herein.

Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee's order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

**III. TERMS AND CONDITIONS**

**RESIDUALS:** \*\*\*\*To the extent permitted by SAG, the additional [redacted] payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional [redacted] payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the [redacted] prepayment of foreign residuals and shall be quoted as [redacted] Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of [redacted] or SAG minimum; Supplemental Markets-SAG Minimum.

**SCREEN CREDIT:** On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) first position among Series regular actors or in a "Laveme & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Brennan"; in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

**RIGHTS AND SERVICES:** Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, approved (as set forth in the Rider) likeness (actual or simulated, in character only or in or from the Promotional Footage) and approved (as set forth in the Rider) biography in merchandising. For merchandise that includes Player, Fox shall pay Player [redacted] of Merchandising Net Receipts (the definition of which shall be subject to good faith negotiation within Fox's usual parameters for persons of Player's

stature in the television industry at the time of this Agreement) reducible, on a dollar-for-dollar basis, to [REDACTED] of Merchandising Net Receipts if Fox is obligated to make payments to other royalty-receiving Series regulars in connection with the same merchandising item.

**EXCLUSIVITY:** Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials (which Fox shall make reasonable, good-faith efforts to obtain), Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOVs and mini-series if not longer than 8 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast or otherwise exhibited during the premiere week of the Series, at any time prior to November 15<sup>th</sup> in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner). "Major sponsor" (as used herein) shall be defined in accordance with the definition set forth in Fox's licensing agreement with the Licensee.

**PUBLICITY & RELATED SERVICES:** For each Contract Year for which Fox exercises or intends to exercise its Series option Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Series and episodic trailers, behind-scene shots, on-set interviews promotional films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation, which services shall be subject to Player's professional availability outside production periods (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Fox shall not use footage which shows Player in an embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and international screenings in L.A.) for no additional compensation; (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may require in connection with the Series for no additional compensation; and (4) make such other promotional appearances and participate in such other promotional efforts for the Series as Fox may reasonably require, it being understood and agreed that Player's participation in such efforts is a material provision of Player's engagement hereunder; Player may occasionally decline individual promotional appearances (except for those specifically set forth in (1), (2) and (3)) that conflict with Player's other obligations provided that Player renders a reasonable number of additional promotional appearances each Contract Year. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2), (3) and (4) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first-class travel, first-class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence.

**CONSENTS:** Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless otherwise specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Series or elements thereof; (2) any ancillary and subsidiary uses of the Series or elements thereof; (3) the advertising, promotion and marketing of the Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Series or elements thereof; (7) literary and music publishing related to the Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Series or elements thereof. Should Fox request Player's additional services beyond those required hereunder (including, without limitation, in connection with television commercial advertising), Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

**LAW:** Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

**PRODUCER'S REMEDIES:** Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its good faith discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

**SPECIAL PROVISIONS:** This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code or pursuant to AFTRA Exhibit "A" (as applicable); and Player further consents to the use of any Series except containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable (except as to creative matters as to which no "reasonable" qualifier shall apply) directions, practices and policies that reasonably relate to the services being provided. Personal photography of cast, crew or the sets (and the posting of any such photographs) is strictly prohibited without the prior written permission of Fox's publicity department. Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's usual parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

**NOTICES:** All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

**AGREED:**

**TWENTIETH CENTURY FOX TELEVISION,  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872**

  
\_\_\_\_\_  
David Boreanaz ("Player")

By:   
\_\_\_\_\_  
Samuel Bramhall  
Its: Senior Vice President, Business Affairs

Bertha Blue, Inc. ("Lender")

By:   
\_\_\_\_\_  
Title: \_\_\_\_\_

Player's Agent and Address: \_\_\_\_\_  
Michael Katcher  
Creative Artists Agency LLC  
2000 Avenue of the Stars  
Los Angeles, CA 90067  
(424) 288-2000 (424) 288-2900  
(Phone) (Fax)  
e-mail: mkatcher@caa.com

cc: Patti Felker / Bruce Gellman  
Felker Toczek Gellman Suddleson LLP  
10880 Wilshire Boulevard, Suite 2070  
Los Angeles, CA 90024  
Phone: (310) 441-8000; Fax: (310) 441-8010;  
e-mail: bruce@ftglaw.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS  
DATED AS OF DECEMBER 24, 2012  
BETWEEN TWENTIETH CENTURY FOX TELEVISION AND  
BERTHA BLUE, INC. f/s/o DAVID BOREANAZ**

**Producer Credit:** Subject to network/licensee approval (approval by FBC is hereby acknowledged) and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

**Dressing Room:** While Player is rendering series regular acting services for the Series hereunder, Fox shall provide Player with a private, first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon (provided, if any episode of the Series is on location, Player's dressing room may be a honeywagon if and as production exigencies so require and provided that all of the Series regulars providing services at that particular location on that production day also are in honeywagons) and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be no less favorable than the dressing rooms and amenities provided to all other Series regulars.

**Parking:** During production periods for which Player is engaged, Fox will provide Player with parking for one car, either by an assigned parking space on the Fox lot (or the primary production location, if the Series is moved from the Fox lot) in reasonable proximity to the stage or by providing someone to park Player's car for them.

**Contingent Compensation:**

**MAGR:** Instead of any MAGR granted under the Prior Agreement, with respect to the Series produced hereunder and subject to full signature and Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to 1% of 100% of the MAGR derived from the Series (Fox acknowledges this amount is fully vested upon signature of this Agreement by Lender and Artist).

**Second Contract Year:** Subject to full signature of this Agreement and Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Second Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Second Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

**Third Contract Year:** Upon Fox's exercise of its option for Player's services for the Third Contract Year (Tenth Series season), and subject to Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Third Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Third Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

**Definition:** Lender's MAGR shall be computed, determined and paid pursuant to Fox's Television Definition of MAGR (with, on a CONFIDENTIAL, NON-PRECEDENTIAL AND NON-CITEABLE BASIS a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge, applicable to the entirety of Lender's share of MAGR). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Fox enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, among other things, the following:

Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.

Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.

The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.

"Back-end" agency commissions (i.e., percentages of contingent compensation or deferrals payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.

In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

#### **DISTRIBUTION CONTROLS:**

**General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode or aspects thereof, separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode, nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode.

**Dealings with Affiliates:** Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes, as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (or aspects thereof) or assert any claim that Fox should have offered the applicable

distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

**Reference:**

a. Any claims, disputes, disagreements or other matters in question arising out of or relating to Fox's distribution of the Series ("Claim") shall be submitted to a general, non-jury reference ("Referee") to hear and decide all matters relating to the Claim pursuant to California Code of Civil Procedure Sec. 638 ("638 Reference"). Without limiting the foregoing, if for any reason any cause of action asserted as part of a Claim, or the entire Claim, is not capable of being decided by means of a 638 Reference, then the parties agree to have that cause of action resolved by means of binding arbitration in Los Angeles County, California before a single, neutral arbitrator with experience handling entertainment industry matters who is a former or retired judge of any California State or Federal Court under the JAMS Comprehensive Arbitration Rules and Procedures, including Rules 16.1 and 16.2, and the parties further elect the JAMS Optional Arbitration Appeal Procedures with respect to any resulting arbitration judgment or award (collectively, the "JAMS Rules"). The parties agree that any issue or dispute involving the interpretation of this Agreement, or any issue or dispute as to whether a particular Claim is subject to this Reference provision, shall be determined by the Referee (or Arbitrator) selected as provided for below. For avoidance of doubt, the parties note their intent that any cause of action or dispute requiring interpretation of this Agreement, regardless of whether based on State or Federal law, and any proceedings on remand or following a reversal or grant of a new trial, shall be considered a Claim subject to these Reference provisions. The parties further agree that the Referee (or Arbitrator) shall follow the California Rules of Evidence except as otherwise provided herein, and the Reference Trial (or Arbitration) and any depositions shall be transcribed, with the transcription costs borne equally by each side. The Referee (or Arbitrator) shall provide a written decision, which shall include a written statement of reasoning for the decision. In connection with any proceeding under this provision, the parties agree to take reasonable efforts, consistent with all applicable laws, rules and regulations, to preserve the confidentiality of information, documents, testimony and proceedings that relate to a Claim.

b. In the event a party refuses to participate in a 638 Reference (or Arbitration) as provided for herein, the party seeking to enforce the 638 Reference (or Arbitration) may do so by filing an action to enforce this dispute resolution provision. If any lawsuit is filed asserting a Claim, the parties intend and agree that the State or Federal Court where that action is filed shall be authorized to enforce this dispute resolution provision, and a party seeking to enforce this provision may file a motion for enforcement in lieu of a responsive pleading. Where the matters falling within this provision involve federal law issues that otherwise could only be heard in federal court, the motion to enforce the reference shall be brought in federal court.

c. The Referee's (or Arbitrator's) fees and expenses shall be paid by the losing party, but each party shall bear its own attorneys' fees and related costs except as otherwise provided for by law. The Referee shall be selected by mutual agreement between the parties, but if the parties cannot agree upon a Referee within 5 business days of a written request therefore, then within 10 business days of the written request, each side shall exchange its own list of four retired Judges of the California state or federal courts whom it wishes to nominate as potential Referees and shall rank the potential Referees by number in order of preference (in descending order, assigning "1" to the lowest choice). If any name appears on both lists, that Judge shall act as Referee. If there is more than one match, the Judge with the highest combined ranking shall serve as Referee. If there are no matches, then each side has the option to veto one name from the other side's list, and shall rank the remaining potential Referees by number in order of that side's preference (in descending order, assigning "1" to the lowest choice). The lists shall be exchanged and the single Judge with the highest combined rating shall serve as Referee. In the event of a tie, the names of the tied Judges shall be placed in a hat and one name will be drawn to serve as Referee. If the highest-rated or agreed-upon Judge declines to serve or becomes unable to serve after selection, then the procedures set forth above shall be repeated to select a new Referee. Prior to the appointment of the Referee (or

Arbitrator), any party may seek provisional remedies or preliminary injunctive relief not otherwise prohibited by this Agreement in a court of competent jurisdiction without thereby waiving its rights under this Paragraph. Arbitrators shall be selected as provided in the JAMS Rules subject to the qualifications set forth in a.

**Domestic Photo/Likeness/Biography Approval:** With respect to Fox's use of Player's likeness and biography (and Fox's provision of Fox-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses, excluding the first such likeness.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

**Paid Ads:** Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit; if any Series regular actor, other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

**Hair/Make-up/Wardrobe:** Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

**Series Payment:** If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual

production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

**Worker's Compensation:** Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

**Assignment and Lending:** The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity, which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

**Insurance:** Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

**Consents Exclusions:** Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, firearms (including toy versions), drugs (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

**Indemnification:**

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.

**Guild/Pension, Health & Welfare:** Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

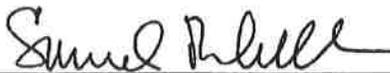
**SOUNDTRACK ALBUM AGREEMENT**  
**As of December 26, 2012**

Twentieth Century Fox Television ("Fox") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of December 24, 2012 between Bertha Blue, Inc. ("Lender") f/s/o David Boreanaz ("Player") and Fox. Fox shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records, provided that Fox's rights shall be limited to using Player's voice and performance from and/or in connection with the Pilot and/or Series. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be \_\_\_\_\_ of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Fox and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use, excepting only minimum required applicable guild or union payments, if any.

**AGREED:**

**TWENTIETH CENTURY FOX TELEVISION,**  
**a unit of TWENTIETH CENTURY FOX FILM CORP.**  
**P.O. Box 900, Beverly Hills, CA 90213**  
**Attn: Legal Department; Fax 310.369.1872**

  
\_\_\_\_\_  
David Boreanaz ("Player")

By:   
\_\_\_\_\_  
Samuel Bramhall  
Title: Senior Vice President, Business Affairs

Bertha Blue, Inc. ("Lender")

  
\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Player's Agent and Address: \_\_\_\_\_  
\_\_\_\_\_  
Michael Katcher  
\_\_\_\_\_  
Creative Artists Agency LLC  
\_\_\_\_\_  
2000 Avenue of the Stars  
\_\_\_\_\_  
Los Angeles, CA 90067  
\_\_\_\_\_  
(424) 288-2000 (424) 288-2900  
(Phone) (Fax)  
e-mail: mkatcher@caa.com

cc:

Patti Felker, Esq.  
Felker Toczek Gellman Suddleson LLP  
10880 Wilshire Boulevard, Suite 2070  
Los Angeles, CA 90024  
Phone: (310) 441-8000; Fax: (310) 441-8010;  
e-mail: [patti@ftgslaw.com](mailto:patti@ftgslaw.com)

# **Attachment 4(b)**

## **Exhibit E**

**AGREEMENT SERIES SERVICES WITH OPTIONS**

**PLAYER:** EMILY DESCHANEL    **LENDER (if Loan-Out):** SNOOKER DOODLE PRODUCTIONS, INC.    **DATE:** AS OF 11/25/08  
**MINOR:** NO    **U.S. CITIZEN:** YES    **TEST DATE:** N/A  
**ROLE:** TEMPERANCE BRENNAN    **TITLE:** "BONES"    **LENGTH:** 1 HOUR

**I. TERMINATION AND NOVATION OF PRIOR AGREEMENT**

Reference is hereby made to the Agreement for Test with Pilot With Series Options dated March 4, 2005 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") and the Borrowing Agreement dated as of July 12, 2005 (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement is terminated as of August 13, 2008 as to Fox, Lender and Player's respective rights and obligations for the Fourth and subsequent Contract Years (as set forth therein). It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall constitute a novation of the Prior Agreement with respect to Player's services for the First (2008-09) and (if applicable) the Second (2009-10), Third (2010-11), Fourth (2011-12) and Fifth (2012-13) Contract Years for the Series as set forth below. Notwithstanding the foregoing, the Soundtrack Album Agreement between the parties dated as of March 7, 2005 (the "Soundtrack Album Agreement") shall remain in full force and effect and is not terminated.

**II. PLAYER'S SERVICES IN SERIES ("Series"):**

**SERIES OPTIONS:** Fox hereby engages Player, on a pay-or-play basis, to render services in the First Contract Year in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in each Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

**OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS:** June 30 of the applicable year

**GUARANTEE/EPISODIC COMPENSATION:** In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof, except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In the First Contract Year, Player guaranteed, pay or play, the following Ratio of episodes produced during the First Contract Year, but no less than the Minimum Number; provided, however, that if Fox does not exercise its option for additional episodes, said guarantee instead shall be the Ratio of episodes produced pursuant to the initial order, but no less than the Minimum Number. In subsequent Contract Years for which an option is exercised, Player guaranteed, pay-or-play, the following Ratio of episodes produced, but no less than the Minimum Number. If Fox makes multi-segment episodes, each full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

<u>Contract Year</u>	<u>Minimum Number</u>	<u>Ratio</u>	<u>Episodic Compensation*</u>
First:	13	ASP	
Second:	13	ASP	
Third:	13	ASP	
Fourth:	13	ASP	
Fifth:	13	ASP	

\*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation.

\*ASP = All Original Shows Produced

Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

**SEASONS 4-5 PICKUP BONUS:** Fox will pay Lender f/s/o Player the total sum of  payable one-half (i.e., ) upon full signature of this Agreement by Lender and Player and the other half (i.e., ) upon Fox's acceptance of a written network order for the production of new, original episodes of the Series for the 2009-2010 broadcast season.

**III. TERMS AND CONDITIONS**

**RESIDUALS:** \*\*\*\*To the extent permitted by SAG, the additional  payment is not Episodic Compensation, but is a prepayment of foreign residuals for the each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional  payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the  prepayment of foreign residuals and shall be quoted as  for the First Contract Year. Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of  or SAG Minimum; Supplemental Markets-SAG Minimum.

**SCREEN CREDIT:** On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) either last (preceded by "and") position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Agent Booth" (Fox acknowledges that Player's credit is currently accorded in such "Laverne & Shirley" format); in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

**RIGHTS AND SERVICES:** Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Pilot, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Pilot or Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with the Pilot and each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage) and biography in merchandising. For merchandise that includes Player, Fox shall pay Player  of Merchandising Net Receipts reducible on a dollar for dollar

basis to a floor of [REDACTED] of Merchandising Net Receipts to the extent that Fox is obligated to make payments to another person in connection with the same merchandising item.

**EXCLUSIVITY:** Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's material obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deems necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials, Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOWs and mini-series if not longer than 6 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast during the premiere week of the Series, at any time prior to November 15<sup>th</sup> in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner).

**PUBLICITY & RELATED SERVICES:** For each Contract Year for which Fox exercises or intends to exercise its Series option, Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Pilot, Series and episodic trailers, behind-scene shots, on-set interviews, Promotional Films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Twentieth shall not use footage which shows Player in a subjectively embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January (the "TCAS") and the May up-front presentations in New York (the "Up-Fronts") and international screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may reasonably require in connection with the Pilot and/or Series for no additional compensation. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2) and (3) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first class travel, first class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence.

**CONSENTS:** Player consents to the use of Player's name, voice, likeness (actual or simulated, in character or otherwise related to Player's services hereunder only, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Pilot/Series or elements thereof; (2) any ancillary and subsidiary uses of the Pilot/Series or elements thereof; (3) the advertising, promotion and marketing of the Pilot/Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Pilot/Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Pilot/Series or elements thereof; (7) literary and music publishing related to the Pilot/Series or elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Pilot/Series or elements thereof. Should Fox require Player's additional services beyond those required hereunder, Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

**LAWS:** Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

**PRODUCER'S REMEDIES:** Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In any such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its reasonable, good faith business judgment believes that Player may fail or refuse to perform material services (including publicity and related services as set forth above) hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity (for purposes of this 24 hour turnaround only, any notice that is mailed as opposed to sent via messenger, overnight delivery or fax, shall be deemed received within 2 days of Twentieth's mailing such notice). Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on the Pilot and each Series episode in which Player recognizably appears, and to pay Player the Total Compensation (as defined above) with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the (non-precedentially) television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the (non-precedentially) television industry.

**SPECIAL PROVISIONS:** This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in

which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Pilot and Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code; and Player further consents to the use of any Pilot or Series excerpt containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable directions, practices and policies that reasonably relate to the services being provided (except as to creative matters, to which the "reasonable" restriction shall not apply). Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

**NOTICES:** All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

**AGREED:**

**TWENTIETH CENTURY FOX TELEVISION,**  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

EMILY DESCHANEL ("Player")

Redacted  
Player's Social Security Number

By: \_\_\_\_\_  
Samuel Bramhall  
Its: Sr. Vice-President, Business Affairs

SNOOKER DOODLE PRODUCTIONS, INC. ("Lender")

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Redacted  
Federal I.D. Number

Player's Agent and Address: \_\_\_\_\_  
Rhonda Price  
The Gersh Agency  
41 Madison Avenue, 33rd Floor  
New York, New York 10010  
212.634.8139 425.675.4444  
(Phone) (Fax)  
e-mail: rprice@gershny.com

cc: Adam Kaller, Esq.  
Hansen, Jacobson, Teller, Hoberman,  
Newman, Warren & Richman, LLP  
450 N. Roxbury Drive, 8<sup>th</sup> Floor  
Beverly Hills, California 90210-4222  
Phone: 310.248.3154; Fax: 310.550.5525  
e-mail: ak@hjth.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS  
DATED AS OF NOVEMBER 25, 2008 BETWEEN TWENTIETH CENTURY FOX TELEVISION AND  
SNOOKER DOODLE PRODUCTIONS, INC. f/s/o EMILY DESCHANEL**

**Producer Credit:** Subject to network/licensee approval and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Player, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits accorded to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits to any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur. Notwithstanding the foregoing, Player's Co-Producer credit for episodes titled prior to Lender's and Player's full signature of this Agreement shall remain unaffected and subject to the terms and conditions of the parties prior agreement for Fox to accord such Co-Producer credit, provided that Player shall receive only one such credit (Co-Producer or Producer) on any single episode of the Series.

**Dressing Room:** While Player is rendering services hereunder, Fox shall provide Player with a private, exclusive (during production periods), first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be substantially similar to the dressing rooms and amenities provided to other Series regulars.

**Domestic Photo/Likeness/Biography Approval:** With respect to Fox's use of Player's likeness in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all such still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.

- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

**Paid Ads:** Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit (other than a marquee value star); if any Series regular actor, other than a marquee value star and other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

**Hair/Make-up/Wardrobe:** Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

**Series Payment:** If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's and/or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

**Contingent Compensation:**

- a. **MAGR:** Subject to (i) Fox's receipt of an original of this Agreement fully-executed by Lender and Player and (ii) Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to [REDACTED] of the Defined Modified Adjusted Gross Receipts ("MAGR") derived from the Series hereunder.
- b. **Definitions:** Lender's MAGR shall be computed, determined and paid pursuant to Fox's Pre-Negotiated Television Definition of Defined MAGR (with Television Distribution Fees of [REDACTED] and a Fox Administrative Charge of [REDACTED]). The Television Distribution Fees will not be charged with respect to Defined Gross Receipts derived from the initial network license or any extensions or renewals thereof for a U.S. Network; provided, however, in the event that Fox enters into an agreement with such a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for such network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge such Television Distribution Fees on the amount by which the Premium License Fee exceeds the pattern budget. The Television Definition of Defined MAGR shall apply, subject only to those changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, inter alia, the following:
- i. Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.
  - ii. Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.
  - iii. The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on

Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

- iv. Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.
- v. "Back-end" agency commissions (i.e., percentages of contingent compensation or deferrals payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.
- vi. In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

**Distribution Controls:**

- a. **General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode (including the Pilot).
- b. **Dealings with Affiliates:** Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot), as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (including the Pilot) (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.
- c. **Arbitration:** Any dispute arising under the provisions of this "Distribution Controls" Paragraph shall be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration in Los

Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable outside attorneys' fees and costs.

**Worker's Compensation:** Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

**Assignment and Lending:** The Agreement is non-assignable by Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

**Insurance:** Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

**Consents Exclusions:** Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, drugs, firearms or other weaponry, medications (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

**Guild/Pension, Health & Welfare:** Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

**Indemnification:**

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Pilot or Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.

**Confidentiality:** The timing, content and manner of dissemination of the terms of this Agreement (including the initial press release) shall be subject to the prior, mutual approval of Fox, Lender and Player. In this connection the parties agree not to disclose financial terms of this Agreement to any third parties, other than (a) as required by subpoena, court order, SEC or other administrative agencies, (b) to attorneys, accountants and agents representing Lender and Player, Fox or affiliates of Fox (c) to third party auditors in connection with a participations audit, (d) to financial institutions lending or contemplating lending to Lender and/or Player or Fox or any affiliates of Fox, and/or (e) for quote purposes.

# **Attachment 4(b)**

## **Exhibit F**

**AGREEMENT FOR SERIES SERVICES WITH OPTIONS**

**PLAYER:** EMILY DESCHANEL      **LENDER (if Loan-Out):** SNOOKER DOODLE PRODUCTIONS, INC.      **DATE:** AS OF December 24, 2012  
**MINOR:** NO      **ELIGIBLE TO WORK IN THE US:** YES  
**ROLE:** "TEMPERANCE BRENNAN"      **TITLE:** "BONES"      **LENGTH:** 1 HOUR

**I. TERMINATION OF PRIOR AGREEMENT**

Reference is hereby made to the Agreement for Series Services with Options dated as of November 25, 2008 (if and as subsequently revised and amended), together with the Rider and Standard Terms thereto (Exhibit "A") (collectively the "Prior Agreement") with respect to Player's Series services. The Prior Agreement was terminated as of December 21, 2012 as to Fox, Lender and Player's respective rights and obligations for the Fifth and subsequent Contract Years (e.g., the Eighth and subsequent Series broadcast years, as set forth therein, provided that any payments made under the Prior Agreement in connection with the Eighth Series broadcast year are creditable against payments due hereunder); Fox's ownership of the Series (including the Pilot) and the results and proceeds of Player's services thereunder (including ancillary rights thereto as set forth in the Prior Agreement), as well as the provisions of the Prior Agreement regarding insurance, indemnification, payment of residuals and credit, survive such termination. Lender and Player represent and warrant that neither has entered into any obligation or undertaking since the termination of the Prior Agreement, including any obligation or undertaking that would interfere or conflict with any of the terms and conditions of this Agreement. It is intended by Fox, Lender and Player that upon signature hereof this Agreement shall define the respective rights and obligations of the parties hereto with respect to Player's services for the First (2012-13) and (if applicable) the Second (2013-14) and Third (2014-15) Contract Years for the Series as set forth below.

**II. OPTIONS FOR PLAYER'S SERVICES IN SERIES ("Series"):**

**SERIES OPTIONS:** Fox hereby engages Player, on a pay-or-play basis, to render services in the First and Second Contract Years in accordance with the guarantee/episodic compensation provision set forth below. Player grants Fox exclusive, irrevocable, consecutive, dependent options to require Player to render services in the Third Contract Year of the Series. Series Options for subsequent years are for the Ratio of all episodes produced in each applicable year.

**OPTION EXERCISE FOR SUBSEQUENT CONTRACT YEARS:** June 30 of the applicable year.

**GUARANTEE/EPISODIC COMPENSATION:** In consideration of all rights granted and services rendered by Player hereunder in connection with the Series (including one run only thereof except with respect to foreign telecasts as set forth below), Player shall be paid the Episodic Compensation set forth hereinbelow. In each Contract Year for which an option is exercised, Player is guaranteed, pay-or-play, the following Ratio of original episodes produced, but no less than the Minimum Number. If Fox produces multi-segment episodes, each original full segment will constitute 1 episode for purposes of Guarantee, and Episodic Compensation for 1 episode will be payable for each such segment.

<u>Contract Year</u>	<u>Minimum Number</u>	<u>Ratio</u>	<u>Episodic Compensation*</u>
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<b>First:</b>	22**	ASP	
<b>Second:</b>	22**	ASP	
<b>Third:</b>	22**	ASP	

\*Fox shall have the right at its sole election at any time and from time to time to increase the Episodic Compensation (provided that Exclusivity shall not be increased).

\*\* Subject to Player not being in material default and the provisions hereof regarding Force Majeure and Fox Disability.

\*ASP\* = All Original Episodes Produced. If Fox produces a clip/compilation episode that includes new, original material for which Player renders acting services, Player's fee for such episode will be negotiated in good faith taking into consideration the amount of such new material and the license fee received by Fox for the episode, but in no event greater than the fees set forth herein.

Except as otherwise specifically set forth herein, licensee cancellation of Series (or reductions of the licensee order) shall not relieve Fox of the obligation to pay episodic compensation for the Minimum Number of episodes indicated for any Contract Year for which Fox exercises its option.

**III. TERMS AND CONDITIONS**

**RESIDUALS:** \*\*\*\*To the extent permitted by SAG, the additional  payment is not Episodic Compensation, but is a prepayment of foreign residuals for the Pilot and each episode of the Series. Fox shall have the right at its sole election at any time and from time to time to pay the additional  payment as Episodic Compensation in which case such payment will not be treated as a prepayment of foreign residuals. The "Total Compensation" is defined as the Episodic Compensation plus, if applicable, the  prepayment of foreign residuals and shall be quoted as  Foreign TV-SAG Minimum; U.S. & Canada-SAG Minimum; Theatrical Use-Greater of  or SAG minimum; Supplemental Markets-SAG Minimum.

**SCREEN CREDIT:** On each Series episode in which Player recognizably appears, Player shall be accorded credit in the main/opening titles; on a separate card; grouped among the cards accorded to other Series regular actors; in (at Fox's election) either last (preceded by "and") position among Series regular actors or in a "Laverne & Shirley" format (e.g., two names on one card, but not stacked, in first position) for the credits of Player and the actor playing "Agent Booth" (Fox acknowledges that Player's credit is currently accorded in such "Laverne & Shirley" format); in a type, size, boldness and duration (except as set forth in the previous clause) no less favorable than the credit accorded any other Series regular actor. All other aspects of such credit are at Fox's discretion. Inadvertent or casual failure to accord credit as provided herein shall not be deemed to be a breach of this Agreement. Player shall not be entitled to seek injunctive relief for a failure to accord credit. Fox agrees, upon receipt of written notice from Player specifying any such failure, to promptly take such steps as are reasonably practicable to cure such failure on a prospective basis.

**RIGHTS AND SERVICES:** Fox owns all rights in Player's services, name, likeness and voice in connection with the Role, Series and each episode and Player grants Fox as a "work made for hire" all such rights in all material furnished, suggested or performed by Player or material owned or controlled by Player and incorporated or used in the Series, to use and exploit in all media now known or hereafter devised, throughout the universe, in perpetuity. If Episodic Compensation exceeds the amounts set forth in SAG TV 14.(b), Episodic Compensation includes buy out of overall production and work time for full production season. To the extent permitted by SAG, the compensation payable in connection with each episode of the Series shall be deemed a prepayment of overtime and premium days (there shall be no buyout of forced calls or meal penalties). Player consents to the use of Player's name, voice, approved (as set forth in the Rider) likeness (actual or simulated, in character only or in or from the Promotional Footage) and approved (as set forth in the Rider) biography in merchandising. For merchandise that includes Player, Fox shall pay Player  of

Merchandising Net Receipts (the definition of which shall be subject to good faith negotiation within Fox's usual parameters for persons of Player's stature in the television industry at the time of this Agreement) reducible, on a dollar-for-dollar basis, to [redacted] of Merchandising Net Receipts if Fox is obligated to make payments to other royalty-receiving Series regulars in connection with the same merchandising item.

**EXCLUSIVITY:** Maximum required by the applicable Licensee as permitted by SAG in television and series programming. Player warrants that Player has no outstanding commitments which will materially interfere with the complete performance of all of Player's obligations nor shall Player enter into any commitment which materially conflicts or interferes with Player's obligations to Fox (which shall at all times be in first position) or with any rights granted to Fox pursuant to this Agreement. Player shall give Fox reasonable advance notice of any and all legal obligations of Player mandated by federal, state or local authority (e.g., jury duty) which might interfere with Player's services hereunder. In the event of any such obligation, Player shall cooperate fully with Fox in taking such action as Fox deem necessary to reschedule the obligation. Player's services shall be exclusive in television and series programming, subject to the following: Provided Player is not in material default and subject to Licensee approval with respect to Player's services in connection with U.S. commercials (which Fox shall make reasonable, good-faith efforts to obtain), Player may render unlimited non-identifiable voice over services, make U.S. and non-U.S. telecast commercials (including, without limitation, infomercials), make radio, talk, game, news, panel and award show guest (non-host, non-recurring) appearances and up to 3 other series guest appearances (including MOVs and mini-series if not longer than 6 telecast hours in the aggregate) during each 13-week period; provided any of such permitted services or appearances are not in the Role or as a character substantially similar to the Role, are not in a role which is a continuing role, are not during production periods, are not on programs known at the time such engagement is accepted by Player to be scheduled to be telecast or otherwise exhibited during the premiere week of the Series, at any time prior to November 15<sup>th</sup> in any Series Contract Year, during so called "sweeps" periods or during the regularly scheduled first run telecast time period of the Series, and, are not on a program which, to the best of Player's knowledge, has as any sponsor, a sponsor whose products are a competitor with any product of a major sponsor of the Series (Player shall use reasonable efforts to obtain such program telecast information and inform Fox in a timely manner). "Major sponsor" (as used herein) shall be defined in accordance with the definition set forth in Fox's licensing agreement with the Licensee.

**PUBLICITY & RELATED SERVICES:** For each Contract Year for which Fox exercises or intends to exercise its Series option Player will: (1) render services in connection with standard openings, closings, lead-ins, lead-outs, Series and episodic trailers, behind-scene shots, on-set interviews promotional films, and other enhanced or added value material and promotional footage (collectively, "Promotional Footage") for no additional compensation, which services shall be subject to Player's professional availability outside production periods (with respect to behind the scenes shots, on-set interviews and the other promotional footage set forth above, Fox shall not use footage which shows Player in an embarrassing or derogatory light); (2) make not less than, as Fox may request, five promotional and institutional non-performing Series-related appearances per each Contract Year for non-paying audiences (including, at Fox's election and without limitation, the Television Critics Association Press Tour in July and January and the May up-front presentations in New York and International screenings in L.A.) for no additional compensation; and (3) do the Licensee's still photo gallery shoot, the Licensee's "on-air" image campaign, the Licensee's satellite press tour and such other publicity and related services as Fox or the Licensee may require in connection with the Series for no additional compensation; and (4) make such other promotional appearances and participate in such other promotional efforts for the Series as Fox may reasonably require, it being understood and agreed that Player's participation in such efforts is a material provision of Player's engagement hereunder. Player may occasionally decline individual promotional appearances (except for those specifically set forth in (1), (2) and (3)) that conflict with Player's other obligations provided that Player renders a reasonable number of additional promotional appearances each Contract Year. Except with respect to Player's services (if and as required) for the TCAS, the Up-Fronts, and in the month preceding the Series season premieres, Player's services under subparagraphs (1), (2), (3) and (4) above shall be subject to Player's professional availability outside of production periods. If Player is required to travel in connection with the foregoing services, Fox will provide/reimburse such first-class travel, first-class accommodations, and expenses as required by SAG; provided that Fox shall use reasonable efforts to ensure that, on an "if available" and "if used" basis, Player's travel, accommodations and expenses in connection with an occurrence for which Player renders the foregoing services are substantially similar to the travel, accommodations and expenses provided by Fox to any other Series regular actor in connection with the same occurrence.

**CONSENTS:** Player consents to the use of Player's name, voice, likeness (actual or simulated, in character only or in or from the Promotional Footage, subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider) and biography (subject, with respect to publicity and promotional uses, to Player's approval rights as set forth in the Rider), with no additional compensation to Player (unless otherwise specified herein or in the Soundtrack Album Agreement), in any and all media now known or hereafter developed, throughout the universe and in perpetuity, in connection with (1) the exploitation of the Series or elements thereof; (2) any ancillary and subsidiary uses of the Series or elements thereof; (3) the advertising, promotion and marketing of the Series or elements thereof; (4) the "institutional" advertising of Fox, its affiliated companies and its licensees; (5) the advertising of products or services of Fox's and its Licensee's commercial sponsors (including, without limitation, commercial tie-ins, product placement and point-of-purchase campaigns), provided that such advertising occurs in conjunction with the publicizing, promotion, production or distribution of the Series or elements thereof and does not constitute a direct endorsement of such product or service; (6) computer, Internet, CD Rom, DVD, BD-ROM, Blu-ray and other high definition formats, replay, games, interactive, wireless applications, and other "new media" exploitation, and e-commerce related to the Series or elements thereof; (7) literary and music publishing related to the Series and elements thereof; and (8) sound recordings and jacket covers (whether or not Player's performance is contained therein) related to the Series or elements thereof. Should Fox request Player's additional services beyond those required hereunder (including, without limitation, in connection with television commercial advertising), Fox and Player will negotiate in good faith with respect to Player's compensation for such additional services as, when and to the extent required by SAG. For purposes of this Paragraph, "or elements thereof" shall include, without limitation, the use of Promotional Footage.

**LAWS:** Player agrees that the state and federal courts in Los Angeles County, California will have personal jurisdiction over Player, and will be the exclusive forum for any lawsuits arising out of this Agreement, and that California law (as governs contracts entered into and fully performed in California) will apply. If any provisions hereof are contrary to law, they will be modified to conform. Player will abide by "anti-payola" requirements.

**PRODUCER'S REMEDIES:** Fox will have all rights available at law, equity and under SAG for Player's incapacity, default, material breach or if Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any disruptive events (including, but not limited to, a labor dispute). In such event, the Minimum Number for the applicable Contract Year may be reduced at Fox's sole election by 1 for each episode for which production is not commenced or completed due to said event to not less than 7. Player acknowledges that the services and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that Player's default or material breach will cause Fox irreparable injury and damage. If Fox in its good faith discretion believes that Player may fail or refuse to perform hereunder, Fox may require written assurance of Player's intent to perform the requested services. If Fox does not receive such assurance within 24 hours (or less, if production exigencies exist), then Player is in default and Fox reserves its rights and remedies pursuant to this agreement, at law and in equity. Player agrees that Fox shall be entitled to seek injunctive and other equitable relief if Player commits or threatens to commit a default or otherwise threatens to materially breach this Agreement. Fox may at any time, without legal justification or excuse, elect not to use Player's services or to have any further obligations to Player except any continuing obligations by Fox to insure and indemnify Player as set forth hereinafter, to pay residuals required by SAG, to accord Player credit on each Series episode in which Player recognizably appears, and to pay Player the Episodic Compensation with respect to the applicable employment period or Contract Year for which Fox has exercised its option. If Fox elects not to use Player's services as set forth in the preceding sentence, then any compensation earned by Player in the television industry during the period that Fox could have required Player to render services under this Agreement shall reduce Fox's

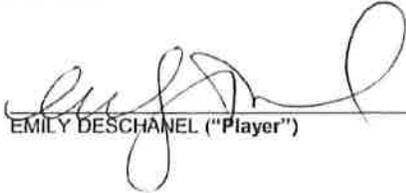
obligation to pay Player compensation hereunder, and Player shall immediately notify Fox in writing of any such compensation earned by Player in the television industry.

**SPECIAL PROVISIONS:** This agreement shall be governed by either the SAG or AFTRA collective bargaining agreement as determined by Fox in its sole discretion. In that regard, the parties acknowledge that Fox may elect to have the AFTRA Code be applicable in lieu of the SAG Agreement, in which case references herein to SAG shall refer to AFTRA. In connection therewith, Player recognizes that certain rights granted under the SAG Agreement must be specifically consented to under AFTRA and, accordingly, Player consents to exhibition of the Series in Supplemental Markets, use of excerpts containing Player's performances for minimum AFTRA program fees pursuant to Paragraphs 73.(d)(2), 73(d)(8) and 73(d)(10) of the Network TV Code, and crediting of Player's over-scale compensation against overtime, rest time, overall production and work time to the maximum extent permitted under Paragraph 56 of the Network TV Code or pursuant to AFTRA Exhibit "A" (as applicable); and Player further consents to the use of any Series excerpt containing Player's performance to the full extent permitted under the AFTRA Agreement, at the applicable minimum fee, if any, set forth therein for each such use. This Agreement shall be effective for all purposes as a binding agreement. Player warrants and represents that Player is and shall during the term of this Agreement continue to be a member in good standing of all applicable collective bargaining units having jurisdiction over Player's services under this Agreement. Player's services hereunder shall be pursuant to Licensee requirements, conducted at all times by Player in a professional manner, and performed consistent with Fox's reasonable (except as to creative matters as to which no "reasonable" qualifier shall apply) directions, practices and policies that reasonably relate to the services being provided. Personal photography of cast, crew or the sets (and the posting of any such photographs) is strictly prohibited without the prior written permission of Fox's publicity department. Incorporated in this Agreement by reference are Fox's Standard Terms (including the definition of "Merchandising Net Receipts") which shall be subject only to such changes thereto as may be mutually agreed upon in writing following good faith negotiation within Fox's usual parameters for persons of Player's stature within the television industry as of the date of this agreement. In the event of a conflict between the Agreement and attached Rider, on the one hand, and the Standard Terms, on the other hand, the Agreement and attached Rider will control. All of Fox's obligations are expressly conditioned upon Player's completion to Fox's satisfaction of Employment Eligibility Verification Form I-9.

**NOTICES:** All written notices from Fox to Player may be given by mail (effective upon mailing), by messenger, overnight delivery or fax and/or e-mail transmission and shall be sent to the address and/or e-mail address and/or fax number (as applicable) set forth below. Fax, e-mail, overnight or messengered delivery will be effective on the calendar date sent. Any notice date which is a non-business day (i.e., Saturday, Sunday or industry holiday), or any notice period which expires on a non-business day, shall be automatically extended to the next business day.

This Agreement (including the Rider attached hereto and incorporated herein by this reference) constitutes the entire understanding between the parties concerning the subject matter hereof and shall not be modified or amended except by the written agreement of the parties. In the event of a conflict between this Principal Agreement and the Rider, the Rider shall control.

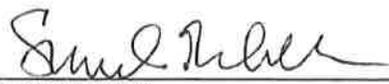
**AGREED:**

  
\_\_\_\_\_  
EMILY DESCHANEL ("Player")

SNOOKER DOODLE PRODUCTIONS, INC. ("Lender")

By:   
\_\_\_\_\_  
Title: \_\_\_\_\_

TWENTIETH CENTURY FOX TELEVISION,  
a unit of TWENTIETH CENTURY FOX FILM CORP.  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

By:   
\_\_\_\_\_  
Samuel Bramhall  
Its: Sr. Vice-President, Business Affairs

Player's Agent and Address: \_\_\_\_\_

Rhonda Price \_\_\_\_\_

The Gersh Agency \_\_\_\_\_

41 Madison Avenue, 33rd Floor \_\_\_\_\_

New York, New York 10010 \_\_\_\_\_

212.634.8139 (Phone) 425.675.4444 (Fax)

e-mail: rprice@gershny.com \_\_\_\_\_

cc: Adam Kaller, Esq.  
Hansen, Jacobson, Teller, Hoberman,  
Newman, Warren, Richman, Rush & Kaller, LLP  
450 N. Roxbury Drive, 8<sup>th</sup> Floor  
Beverly Hills, California 90210-4222  
Phone: 310.248.3154; Fax: 310.550.5525  
e-mail: ak@hjt.com

**RIDER TO THE AGREEMENT FOR SERIES SERVICES WITH OPTIONS  
DATED AS OF DECEMBER 24, 2012  
BETWEEN TWENTIETH CENTURY FOX TELEVISION AND  
SNOOKER DOODLE PRODUCTIONS, INC. t/s/o EMILY DESCHANEL**

**Producer Credit:** Subject to network/licensee approval (approval by FBC is hereby acknowledged) and subject to Fox exercising the applicable option, for each Series episode produced and broadcast for which Player has completed all material services commencing with the first original episode for which final credits are submitted following full signature of this Agreement by Lender and Artist, Fox shall accord Player "Producer" credit on a separate card, in the main, opening or end titles wherever other producer credits appear (excluding the credits to any showrunners or Barry Josephson), in the same size, style and duration as other producer credits accorded in connection with the Series, excluding the credits accorded any showrunners and/or Barry Josephson. Except as expressly stated above, all characteristics of Player's credit will be determined by Fox. Any failure to accord Player credit will not be considered a breach of this Agreement and will not entitle Player to terminate this Agreement or seek injunctive relief. Upon written notice from Player, Fox will make reasonable efforts to correct future copies of the applicable episode for any credit error that may occur.

**Dressing Room:** While Player is rendering services hereunder, Fox shall provide Player with a private, exclusive (during production periods), first class dressing room, which, if not a stage dressing room, shall be no less than a star wagon and which shall include customary first class amenities such as TV, VCR, sofa, bathroom, heat/air conditioner, microwave, and, provided a hard line exists, a phone (Player to pay all long-distance and toll charges - no cell phones), as are available at the particular production facility/site. Such dressing room and amenities shall be substantially similar to the dressing rooms and amenities provided to other Series regulars.

**Parking:** During production periods for which Player is engaged, Fox will provide Player with parking for one car, either by an assigned parking space on the Fox lot (or the primary production location, if the Series is moved from the Fox lot) in reasonable proximity to the stage or by providing someone to park Player's car for them.

**Contingent Compensation:**

**MAGR:** Instead of any MAGR granted under the Prior Agreement, with respect to the Series produced hereunder and subject to full signature and Lender's and Player's complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to 1% of 100% of the MAGR derived from the Series (Fox acknowledges this amount is fully vested upon signature of this Agreement by Lender and Artist).

**Second Contract Year:** Subject to full signature of this Agreement and Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Second Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Second Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

**Third Contract Year:** Upon Fox's exercise of its option for Player's services for the Third Contract Year (Tenth Series season), and subject to Lender's and Player's continuing complete performance of all of the material terms and conditions of this Agreement, Lender shall be entitled to receive an amount equal to an additional [REDACTED] of the MAGR derived from the Series, vesting on a pro rata basis based on the number of episodes produced for the Third Contract Year for which Player completes all material services. In the event a Participation Statement is issued to Lender during the Third Contract Year, such statement shall reflect Lender's vested MAGR for the applicable Statement Period.

**Definition:** Lender's MAGR shall be computed, determined and paid pursuant to Fox's Television Definition of MAGR (with, on a CONFIDENTIAL, NON-PRECEDENTIAL AND NON-CITEABLE BASIS a [REDACTED] Television Distribution Fee and a [REDACTED] Fox Administrative Charge, applicable to the entirety of Lender's share of

MAGR). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Fox enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Player's stature as of the date of this agreement, but said definition shall include, among other things, the following:

Production Charges shall include all direct and directly allocable costs of production. Distribution Expenses shall include actual, direct or directly allocable costs.

Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.

The Fox Financing Charge shall be [REDACTED]. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge; provided, however, Fox Financing Charge shall be treated as a recoupable item.

Production Charges will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.

"Back-end" agency commissions (i.e., percentages of contingent compensation or deferrals payable out of contingent compensation) will be deducted in the same manner as Distribution Expenses and will not otherwise reduce Lender's contingent compensation hereunder; and "front-end" agency commissions (i.e., percentages of license fee) will be deducted as items of Production Charges.

In the event a Fox affiliate distributes the Series, Fox will not charge a distribution fee in excess of the Fox Distribution Fees.

#### **DISTRIBUTION CONTROLS:**

**General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode or aspects thereof, separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Lender and Player. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Player with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Player. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode, nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode.

**Dealings with Affiliates:** Each of Lender and Player acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Lender and Player further acknowledges that Fox has informed Lender and Player that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes, as, when and where Fox deems it appropriate to do so. Each of Lender and Player expressly waives any right to object to such distribution and exploitation of any Series episode (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (in lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Lender and Player agrees that Lender's and/or

Player's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and each of Lender and Player hereby waives any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

**Reference:**

- a. Any claims, disputes, disagreements or other matters in question arising out of or relating to Fox's distribution of the Series ("Claim") shall be submitted to a general, non-jury reference ("Referee") to hear and decide all matters relating to the Claim pursuant to California Code of Civil Procedure Sec. 638 ("638 Reference"). Without limiting the foregoing, if for any reason any cause of action asserted as part of a Claim, or the entire Claim, is not capable of being decided by means of a 638 Reference, then the parties agree to have that cause of action resolved by means of binding arbitration in Los Angeles County, California before a single, neutral arbitrator with experience handling entertainment industry matters who is a former or retired judge of any California State or Federal Court under the JAMS Comprehensive Arbitration Rules and Procedures, including Rules 16.1 and 16.2, and the parties further elect the JAMS Optional Arbitration Appeal Procedures with respect to any resulting arbitration judgment or award (collectively, the "JAMS Rules"). The parties agree that any issue or dispute involving the interpretation of this Agreement, or any issue or dispute as to whether a particular Claim is subject to this Reference provision, shall be determined by the Referee (or Arbitrator) selected as provided for below. For avoidance of doubt, the parties note their intent that any cause of action or dispute requiring interpretation of this Agreement, regardless of whether based on State or Federal law, and any proceedings on remand or following a reversal or grant of a new trial, shall be considered a Claim subject to these Reference provisions. The parties further agree that the Referee (or Arbitrator) shall follow the California Rules of Evidence except as otherwise provided herein, and the Reference Trial (or Arbitration) and any depositions shall be transcribed, with the transcription costs borne equally by each side. The Referee (or Arbitrator) shall provide a written decision, which shall include a written statement of reasoning for the decision. In connection with any proceeding under this provision, the parties agree to take reasonable efforts, consistent with all applicable laws, rules and regulations, to preserve the confidentiality of information, documents, testimony and proceedings that relate to a Claim.
- b. In the event a party refuses to participate in a 638 Reference (or Arbitration) as provided for herein, the party seeking to enforce the 638 Reference (or Arbitration) may do so by filing an action to enforce this dispute resolution provision. If any lawsuit is filed asserting a Claim, the parties intend and agree that the State or Federal Court where that action is filed shall be authorized to enforce this dispute resolution provision, and a party seeking to enforce this provision may file a motion for enforcement in lieu of a responsive pleading. Where the matters falling within this provision involve federal law issues that otherwise could only be heard in federal court, the motion to enforce the reference shall be brought in federal court.
- c. The Referee's (or Arbitrator's) fees and expenses shall be paid by the losing party, but each party shall bear its own attorneys' fees and related costs except as otherwise provided for by law. The Referee shall be selected by mutual agreement between the parties, but if the parties cannot agree upon a Referee within 5 business days of a written request therefore, then within 10 business days of the written request, each side shall exchange its own list of four retired Judges of the California state or federal courts whom it wishes to nominate as potential Referees and shall rank the potential Referees by number in order of preference (in descending order, assigning "1" to the lowest choice). If any name appears on both lists, that Judge shall act as Referee. If there is more than one match, the Judge with the highest combined ranking shall serve as Referee. If there are no matches, then each side has the option to veto one name from the other side's list, and shall rank the remaining potential Referees by number in order of that side's preference (in descending order, assigning "1" to the lowest choice). The lists shall be exchanged and the single Judge with the highest combined rating shall serve as Referee. In the event of a tie, the names of the tied Judges shall be placed in a hat and one name will be drawn to serve as Referee. If the highest-rated or agreed-upon Judge declines to serve or becomes unable to serve after selection, then the procedures set forth above shall be repeated to select a new Referee. Prior to the appointment of the Referee (or Arbitrator), any party may seek provisional remedies or preliminary injunctive relief not otherwise prohibited by this Agreement in a court of competent jurisdiction without thereby waiving its rights under this Paragraph. Arbitrators shall be selected as provided in the JAMS Rules subject to the qualifications set forth in a.

**Domestic Photo/Likeness/Biography Approval:** With respect to Fox's use of Player's likeness and biography (and Fox's provision of Fox-generated materials to the network licensee) in connection with the publicity and promotion of the Pilot/Series and/or elements thereof, Player shall have the following rights of approval, such approval not to be unreasonably or untimely withheld:

- a. **Still Photographs:** Still photography taken and distributed by Fox in which Player's likeness appears, provided that Player must approve: (i) 50% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears alone; or (ii) 75% of all still photographs from each Pilot and Series episode submitted to Player in reasonable quantities in which Player appears with others. Still photographs taken directly from copies of the Pilot or episode of the Series delivered to the Licensee of the Series are hereby pre-approved.
- b. **Non-Photographic Likeness:** All non-photographic likenesses provided that Player provides Fox specific written objections in writing. If disapproved non-photographic likenesses are redrawn to meet Player's specific written objections, Player shall have a right of reasonable approval with respect to such redrawn non-photographic likenesses. If, after 1 redrawn non-photographic likeness, Player has not approved such likeness, Player may elect to have the non-photographic likeness redrawn, at Player's own expense, by an artist approved by Fox; provided that such redrawing can be completed within the time guidelines reasonably specified by Fox. If Player elects not to have the non-photographic likeness redrawn, Fox will select one of the existing likenesses, excluding the first such likeness.
- c. **Biographical Data:** Player's biographical data released by Fox, provided that Player gives Fox specific written objections to any disapproved biographical data.
- d. **Domestic Application Only:** All of the foregoing shall apply only to still photographs, non-photographic likenesses, and biographical data of Player that are intended for use in connection with the U.S. telecast or distribution of the Pilot and/or Series.
- e. **Time Limitations:** Player must approve the applicable percentage of each group of still photographs, each non-photographic likeness, and all biographical data within 3 business days of Fox's submission to Player or 2 business days with respect to material in which Player's still photograph, non-photographic likeness, or biographical data appears with others. Failure to disapprove any of the foregoing within such time period (or shorter period in the case of publication and/or media deadlines) will be deemed approval of the submitted material.

**Paid Ads:** Subject to Fox's customary "Excluded Ads" (e.g., awards, nomination, congratulatory ads and the like in which only the honoree is mentioned, group ads, teasers, etc.), Fox shall accord Player credit in all paid ads issued by Fox or under its control in connection with the Series in which any other Series regular actor is accorded credit; if any Series regular actor, other than the nominee, award recipient, or subject of the congratulatory ad, is included in the Excluded Ad, Player also shall be accorded credit in such Excluded Ad. If Fox fails to comply with any paid ad provision of the Agreement, Fox agrees, upon written notice from Player which specifies such failure to comply, to take such steps as are reasonably practicable to cure such failure with respect to future paid ads.

**Hair/Make-up/Wardrobe:** Subject to applicable union guidelines and budgetary limitations, while Player is rendering Series services hereunder, Fox shall consult with Player regarding Player's hair, make-up, and wardrobe.

**Series Payment:** If Fox exercises its option for Player's Series services for a Contract Year, Fox shall commence Lender's episodic payments no later than October 1st of the applicable year, regardless of whether actual production of the Series has begun, subject to Fox's rights under the Agreement in the event of Lender's or Player's incapacity or default, or production interruption due to labor disputes and/or causes beyond Fox's control.

**Worker's Compensation:** Player's services hereunder shall be subject to all applicable workers' compensation statutes of the United States.

**Assignment and Lending:** The Agreement is non-assignable by Lender or Player except to an entity owned and controlled by Player and which has the exclusive right to furnish Player's services provided for in the Agreement, provided, however, that such assignment must be made prior to commencement of services for the First or subsequent applicable Contract Years, and shall be effective with respect to the then upcoming and subsequent Contract Years. The Agreement shall inure to the benefit of Fox's successors, assignees, licensees and grantees and associated, affiliated and subsidiary companies, and Fox and any subsequent assignee may freely assign the Agreement, in whole or in part, to any party; provided, however, that Fox shall remain secondarily liable thereunder unless said assignment is to an entity affiliated with, owned or controlled by or owning or controlling Fox, or which succeeds to substantially all of the assets of Fox, or to a major or so-called "mini-major" production or distribution company, or to a network, or to a similarly financially responsible entity, which assumes all of Fox's obligations hereunder in writing. Fox shall have the right to lend Player's services hereunder to any subsidiary or affiliated entities, or any motion picture production entity, provided such production entity shall have granted to Fox the right to distribute the Series. No such lending of Player's services shall relieve Fox of its obligations hereunder.

**Insurance:** Lender and Player shall be insured by Fox's errors and omissions and general liability insurance policies for the Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.

**Consents Exclusions:** Fox agrees not to use Player's name, voice or likeness in connection with the merchandising of, or commercial tie-ins to, gambling, religious or political advertising, alcohol, tobacco, firearms (including toy versions), drugs (prescription or otherwise), nutritional supplements, vitamins, products related to sexual activity, undergarments or feminine or personal hygiene products.

**Indemnification:**

- a. **By Lender and Player:** Each of Lender and Player agrees to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liabilities, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the breach by Lender and/or Player of any agreement or warranty made by Lender and/or Player hereunder and (ii) any gross negligence, intentionally tortious or reckless acts or omissions committed by Lender and/or Player while providing Series services (except for negligence, excluding gross negligence as set forth above, or as otherwise required by law or matters set forth in subparagraphs b. (i) and b.(ii) below).
- b. **By Fox:** Fox agrees to indemnify, defend and hold harmless Lender and Player from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (i) the addition, subtraction or alteration by Fox of any results and proceeds of Lender's and/or Player's services; (ii) materials specifically furnished by Fox for use by Lender and/or Player hereunder; and (iii) the development, production, distribution, and/or exploitation of the Series and/or elements thereof, except with respect to matters for which Lender and/or Player indemnifies Fox.

**Guild/Pension, Health & Welfare:** Fox shall make all required guild pension, health and welfare contributions directly to the applicable guild. There shall be no crediting of "overscale" compensation against residuals and vice-versa.

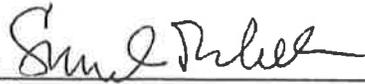
**SOUNDTRACK ALBUM AGREEMENT**  
As of December 26, 2012

Twentieth Century Fox Television ("Fox") shall own the phonorecord masters relating to the Pilot and Series referred to in that certain Agreement (the "Agreement") dated as of December 24, 2012 between Snooker Doodle Productions, Inc. ("Lender") f/s/o Emily Deschanel ("Player") and Fox. Fox shall have the right to rerecord and/or re-use Player's voice and performances for use in Soundtrack Records, provided that Fox's rights shall be limited to using Player's voice and performance from and/or in connection with the Pilot and/or Series. The royalty to be paid to Lender in connection with the issuance of a Soundtrack Record using Player's voice shall be [REDACTED] of the suggested retail list price of such Soundtrack Record, calculated, computed and paid in all respects in accordance with the Agreement between Fox and the record company distributing such Soundtrack Record. The royalty shall be reduced (pro rata) by the number of royalty bearing masters contained on the Soundtrack Record and if one or more additional artist/record producers are entitled to a royalty in connection with the exploitation of a master recording in which Player's voice is embodied, then the royalty shall be further reduced (pro rata) by the total number of such artists/record producers on such master. Neither Lender nor Player shall be entitled to any other compensation in connection with such use, excepting only minimum required applicable guild or union payments, if any.

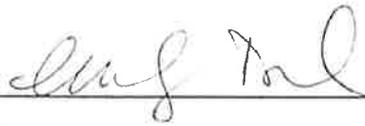
**AGREED:**

**TWENTIETH CENTURY FOX TELEVISION,**  
a unit of **TWENTIETH CENTURY FOX FILM CORP.**  
P.O. Box 900, Beverly Hills, CA 90213  
Attn: Legal Department; Fax 310.369.1872

  
\_\_\_\_\_  
Emily Deschanel ("Player")

By:   
\_\_\_\_\_  
Samuel Bramhall  
Its: Senior Vice President, Business Affairs

Snooker Doodle Productions, Inc. ("Lender")

By:   
\_\_\_\_\_  
Title: \_\_\_\_\_

Player's Agent and Address:

Rhonda Price

The Gersh Agency

41 Madison Avenue, 33rd Floor

New York, New York 10010

212.634.8139

(Phone)

e-mail: rprice@gershny.com

425.675.4444

(Fax)

cc:

Adam Kaller, Esq.

Hansen, Jacobson, Teller, Hoberman,

Newman, Warren, Richman, Rush & Kaller, LLP

450 N. Roxbury Drive, 8<sup>th</sup> Floor

Beverly Hills, California 90210-4222

Phone: 310.248.3154; Fax: 310.550.5525

e-mail: ak@hjth.com

# **Attachment 4(b)**

## **Exhibit G**

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5 MUNGER, TOLLES & OLSON LLP  
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6 Thirty-Fifth Floor  
Los Angeles, California 90071-1560  
7 Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
8

Attorneys for Claimants and Counter-  
9 Respondents TWENTIETH CENTURY FOX  
FILM CORPORATION; FOX  
10 ENTERTAINMENT GROUP, LLC; TWENTY-  
FIRST CENTURY FOX, INC.; FOX  
11 BROADCASTING COMPANY

12 JAMS

13 LOS ANGELES, CALIFORNIA

14 TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation;  
15 FOX ENTERTAINMENT GROUP, LLC, a  
Delaware limited liability corporation;  
16 TWENTY-FIRST CENTURY FOX, INC., a  
Delaware corporation; and FOX  
17 BROADCASTING COMPANY, a Delaware  
corporation,

18 Claimants,

19 vs.

20 WARK ENTERTAINMENT, INC. f/s/o  
21 BARRY JOSEPHSON; TEMPERANCE  
BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
22 SNOOKER DOODLE PRODUCTIONS, INC.  
f/s/o EMILY DESCHANEL; and BERTHA  
23 BLUE, INC. f/s/o DAVID BOREANAZ,

24 Respondents.

JAMS Ref. No. 1220052735

**STIPULATION REGARDING CLAIMS  
IN ARBITRATION**

Judge: Hon. Peter D. Lichtman (Ret.)

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STIPULATION

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WARK ENTERTAINMNET, INC. f/s/o  
BARRY JOSEPHSON; TEMPERANCE  
BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
SNOOKER DOODLE PRODUCTIONS, INC.  
f/s/o EMILY DESCHANEL; and BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ,  
  
Counter-Claimants,  
  
vs.  
  
TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation;  
FOX ENTERTAINMENT GROUP, LLC, a  
Delaware limited liability corporation;  
TWENTY-FIRST CENTURY FOX, INC., a  
Delaware corporation; and FOX  
BROADCASTING COMPANY, a Delaware  
corporation,  
  
Counter-Respondents.

1 Pursuant to Scheduling Order No. 1, Twentieth Century Fox Film Corporation  
2 (“TCFTV”), Fox Entertainment Group, LLC, Twenty-First Century Fox, Inc., and Fox  
3 Broadcasting Company (“Fox”), on the one hand, and Temperance Brennan, L.P. f/s/o Kathleen  
4 Reichs, Snooker Doodle Productions, Inc. f/s/o Emily Deschanel, and Bertha Blue, Inc. f/s/o  
5 David Boreanaz (“KBTF Respondents”), on the other hand, have met and conferred regarding  
6 Judge Rico’s Order of April 8, 2016 (“April 8 Order”) to determine the claims that are the subject  
7 of this arbitration. Accordingly, Fox and the KBTF Respondents have agreed as follows:

8 1. This stipulation only concerns the claims that are the subject of this arbitration as  
9 alleged in Fox’s January 11, 2016 JAMS Statement of Claim (the “Arbitration Demand”) and the  
10 KBTF Respondents’ November 30, 2015 Superior Court Complaint (the “KBTF Respondents’  
11 Complaint”). It does not limit the right of any party to amend its claims or to oppose the  
12 amendment of any claims in accordance with applicable law and procedure. This stipulation is  
13 without prejudice to any party’s position, whether in this arbitration or in the related proceedings  
14 before the Superior Court, concerning the relevance of any particular factual allegation to such  
15 claims, or to the discoverability or admissibility of any evidence for such claims.

16 2. For the sake of clarity, the parties understand the April 8 Order to pertain to four  
17 categories of claims alleged in the KBTF Respondents’ Complaint: (1) “Self-Dealing Claims,”  
18 which are claims related to the allegations that TCFTV entered into transactions with affiliates on  
19 terms that were not comparable to the terms on which the affiliated entity entered into similar  
20 transactions with unrelated third parties; (2) “2009 Release Claims,” which are claims related to  
21 2009 release agreements concerning Seasons 5 and 6 of *Bones*; (3) “Contingent Compensation  
22 Claims,” which are claims that TCFTV miscalculated, misclassified, or improperly allocated the  
23 contingent compensation to which the KBTF Respondents are due or failed to negotiate their  
24 contingent compensation definitions in good faith; and (4) “Failure to Permit Audit Claims,”  
25 which are allegations by the KBTF Respondents that TCFTV failed to provide the auditor with  
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1 documents it was contractually obligated to provide.<sup>1</sup> The Self-Dealing and 2009 Release Claims  
2 are arbitrable; the Contingent Compensation Claims and Failure to Permit Audit Claims are not.  
3 The division of arbitrability of claims is irrespective of (a) whether the claims are contractual, tort,  
4 statutory, equitable or otherwise in nature; and (b) which Fox entity or entities who are parties to  
5 this arbitration the claims are alleged against.

6 3. Fox and the KBTF Respondents understand and agree to treat the claims alleged in  
7 the Arbitration Demand and the KBTF Respondents' Complaint as follows:

8 **Fox JAMS Statement of Claim**

9 4. All of the third, fourth, sixth, and seventh causes of action (paragraphs 48-53, 57-  
10 62) of Fox's Statement of Claim are arbitrable. The first, second, eighth, and ninth causes of  
11 action of Fox's Statement of Claim (paragraphs 40-47, 63-68) involve both arbitrable claims and  
12 claims not subject to arbitration.

13 5. Attached hereto as Exhibit A is the Fox Statement of Claims. Claims that are fully  
14 arbitrable are highlighted in yellow, and claims that are partially arbitrable are highlighted in blue.

15 **KBTF Respondents' Complaint**

16 6. The allegations forming the basis for claims in the KBTF Respondents' Complaint  
17 are found in paragraphs 38-77 of that document. The parties agree that allegations contained in  
18 paragraphs 43-54 and 72-77 of the KBTF Respondents' Complaint are arbitrable, while the  
19 allegations in paragraphs 55-71 are not subject to arbitration. The allegations in paragraphs 38-42  
20 are inarbitrable to the extent that they include only Failure To Permit Audit Claims, but arbitrable  
21 to the extent that they also include Self-Dealing Claims. Accordingly, all of the third, fourth, fifth,  
22 and sixth causes of action (paragraphs 89-117) are arbitrable. The first, second, seventh and eighth  
23 causes of action of the KBTF Respondents' Complaint (paragraphs 78-88, 118-127) involve both  
24 arbitrable claims and claims that are not subject to arbitration.

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27 <sup>1</sup> Although Judge Rico did not explicitly use the label "Failure to Permit Audit Claims" in his  
28 April 8 Order, the parties believe that those claims are fairly encompassed in Judge Rico's  
discussion of the non-arbitrable claims alleged in the KBTF Respondents' Complaint.

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7. Attached hereto as Exhibit B is the KBTF Respondents' Complaint. Claims that are fully arbitrable are highlighted in yellow, and claims that are partially arbitrable are highlighted in blue.

DATED: May 13, 2016

MUNGER, TOLLES & OLSON LLP

By: Anjan Choudhury /arb  
GLENN D. POMERANTZ  
ANJAN CHOUDHURY  
JOHN L. SCHWAB  
ALLYSON R. BENNETT  
Attorneys for Claimants and Counter-Respondents  
TWENTIETH CENTURY FOX FILM  
CORPORATION; FOX ENTERTAINMENT GROUP,  
LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX  
BROADCASTING COMPANY

DATED: May 13, 2016

KASOWITZ BENSON TORRES & FRIEDMAN LLP

By: Candace Frazier  
JOHN V. BERLINSKI  
CANDACE FRAZIER  
Attorneys for Respondents and Counter-Claimants  
TEMPERANCE BRENNAN L.P. f/s/o KATHLEEN  
REICHS; SNOOKER DOODLE PRODUCTIONS,  
INC. f/s/o EMILY DESCHANEL; BERTHA BLUE,  
INC. f/s/o DAVID BOREANAZ

**Exhibit A**

1 GLENN D. POMERANTZ (State Bar No. 112503)  
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Los Angeles, California 90071-1560  
7 Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

8 Attorneys for Claimants  
9 TWENTIETH CENTURY FOX FILM CORPORATION;  
FOX ENTERTAINMENT GROUP, LLC;  
10 TWENTY-FIRST CENTURY FOX, INC.; FOX  
BROADCASTING COMPANY

11 JAMS

12 LOS ANGELES, CALIFORNIA

13  
14 TWENTIETH CENTURY FOX FILM  
15 CORPORATION, a Delaware corporation;  
FOX ENTERTAINMENT GROUP, LLC, a  
16 Delaware limited liability corporation;  
TWENTY-FIRST CENTURY FOX, INC., a  
17 Delaware corporation; and FOX  
BROADCASTING COMPANY, a Delaware  
18 corporation,

19 Claimants,

20 vs.

21 WARK ENTERTAINMENT, INC. f/s/o  
BARRY JOSEPHSON; TEMPERANCE  
22 BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
SNOOKER DOODLE PRODUCTIONS, INC.  
23 f/s/o EMILY DESCHANEL; and BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ,

24 Respondents.  
25

JAMS File No.

**STATEMENT OF CLAIM**

26 Claimants Twentieth Century Fox Television ("TCFTV"), a division of Twentieth Century  
27 Fox Film Corporation; Fox Entertainment Group, LLC ("FEG"); Twenty-First Century Fox, Inc.  
28

1 (“21CF”); and Fox Broadcasting Company (“FBC” and, together with other Claimants, “Fox”)  
2 allege against Respondents Wark Entertainment, Inc., f/s/o Barry Josephson; Temperance  
3 Brennan, L.P. f/s/o Kathleen Reichs; Snooker Doodle Productions, Inc. f/s/o Emily Deschanel;  
4 and Bertha Blue, Inc. f/s/o David Boreanaz (collectively, “Respondents”) as follows:

5 **INTRODUCTION**

6 1. This dispute concerns Respondents’ demand that Fox pay them millions of dollars  
7 in undue compensation for their work on the television series *Bones* (the “Series”). In accordance  
8 with its agreements, TCFTV has already paid Respondents millions of dollars for their services on  
9 the Series. Fox denies that it has any additional liability to Respondents.

10 2. Under their relevant agreements with TCFTV (“the Agreements,” true and correct  
11 copies of which are attached hereto as Exhibits 1-4), Respondents — who have always been  
12 represented by sophisticated legal counsel — are claiming entitlement to a contingent percentage  
13 of the modified adjusted gross receipts (“MAGR”) derived from the Series, determined pursuant  
14 to Fox’s standard television definition of MAGR. Fox has complied with all of its obligations  
15 under the Agreements, and does not owe any further payment to Respondents. Nevertheless,  
16 Respondents have claimed in two separate lawsuits (true and correct copies of the Complaints in  
17 those lawsuits are attached hereto as Exhibits 5 (“Wark Compl.”) and 6 (“TB Compl.”)) that Fox  
18 has improperly reduced Respondents’ contingent compensation by miscalculating MAGR, by  
19 failing to negotiate comparable deals with Affiliated Companies, and by failing to consult with  
20 them under the Agreements. They also allege that Fox failed to allow a full and complete audit of  
21 the Series’s books and records.

22 3. The Agreements, however, all contain broad arbitration clauses that provide that all  
23 of Respondents’ claims (the “Claims”) must be submitted to binding arbitration before JAMS.<sup>1</sup>

24 \_\_\_\_\_  
25 <sup>1</sup> Deschanel’s and Boreanaz’s agreements covering Seasons 8-11 of the Series (unlike their  
26 agreements for Seasons 1-7) provide for disputes to be submitted to a general non-jury reference  
27 pursuant to California Code of Civil Procedure § 638, or, if the dispute is “not capable of being  
28 decided” by means of a general reference, to arbitration. Exs. 7 (“Boreanaz 2012 Agreement”) Rider at 3, and 8 (“Deschanel 2012 Agreement”) Rider at 3. Fox does not believe that Boreanaz and Deschanel are bringing claims related to Seasons 8-11 in their Complaints. Even if they were,

1 Specifically, they provide that “[a]ny dispute arising under the provisions of this [Distribution  
2 Controls] Paragraph” must be arbitrated. *See* Ex. 1 (“Josephson Agreement”) ¶ 10(c).<sup>2</sup> The  
3 Distribution Controls Paragraph, in turn, provides that TCFTV makes “no express or implied  
4 warranty” as to the “manner or extent” of the distribution or exploitation of the Series, or the  
5 “amount of money” to be derived therefrom. *See, e.g., id.* ¶ 10(a). It further acknowledges that  
6 “[TCFTV] intends to make use of Affiliated Companies [as defined in the Agreement] in  
7 connection with its distribution and exploitation of the Series episodes” and that Respondents  
8 “expressly waive any right to object to such distribution and exploitation.” *See, e.g., id.* ¶ 10(b).  
9 TCFTV, in turn, agrees that any transactions with Affiliated Companies “will be on monetary  
10 terms comparable to the terms on which the Affiliated Company enters into similar transactions  
11 with unrelated third party distributors for comparable programs.” *Id.*

12 4. All of the Claims arise under the Distribution Controls Paragraph. First,  
13 Respondents make self-dealing and syndication accusations that allege direct violations of the  
14 terms of that paragraph. Second, Respondents’ claims that TCFTV miscalculated MAGR, failed  
15 to consult with them, and failed to permit a full and complete audit clearly challenge TCFTV’s  
16 decisions concerning the manner and extent of distribution and exploitation of the Series. Lastly,  
17 Josephson and Reichs make allegations challenging a 2009 release of claims they executed  
18 concerning network fees for Seasons 5 and 6 of the Series (the “2009 Release”). Because the  
19 allegations with respect to the 2009 Release plainly challenge TCFTV’s dealings with alleged  
20 Affiliated Companies, they are also subject to arbitration under the Distribution Controls  
21 Paragraph.

22 5. The claims with respect to the 2009 Release also fall within a second arbitration  
23 provision. The 2009 Release requires that “any dispute [that] arises out of, or with respect to, this  
24 Agreement, including a claimed breach thereof (whether sounding in contract or tort)” that cannot  
25 however, Fox would move to compel the submission of those claims to a general reference and, if  
26 that motion were denied, to include them in the instant arbitration.

27 <sup>2</sup> For ease of reference, this Statement of Claim relies largely on the Josephson Agreement.  
28 Except where indicated, the terms of the other relevant Agreements are materially similar to those  
of the Josephson Agreement.

1 be resolved through non-binding mediation must be resolved through "binding arbitration before a  
2 mutually selected arbitrator affiliated with J.A.M.S." Ex. 9 ("Release") ¶ 4.

3 6. Accordingly, Claimants respectfully demand arbitration of the Claims, to take place  
4 in Los Angeles, California, pursuant to the agreements of the parties.

5 **PARTIES**

6 7. At all relevant times, Twentieth Century Fox Film Corporation was and is a  
7 corporation organized and existing under the laws of the State of Delaware, with its principal place  
8 of business in Los Angeles, California. TCFTV is a division of Twentieth Century Fox Film  
9 Corporation. Both TCFTV and Twentieth Century Fox Film Corporation are referred to herein as  
10 TCFTV. Twentieth Century Fox Film Corporation is an indirectly wholly owned subsidiary of  
11 21CF.

12 8. At all relevant times, FEG was and is a limited liability company organized and  
13 existing under the laws of the State of Delaware, with its principal place of business in Los  
14 Angeles, California. FEG is an indirectly wholly owned subsidiary of 21CF.

15 9. At all relevant times, 21CF was and is a corporation organized and existing under  
16 the laws of the State of Delaware, with its principal place of business in New York, New York.

17 10. At all relevant times, FBC was and is a corporation organized and existing under  
18 the laws of the State of Delaware, with its principal place of business in Los Angeles, California.  
19 FBC is an indirectly wholly owned subsidiary of 21CF.

20 11. On information and belief, at all relevant times, Wark Entertainment, Inc. was and  
21 is a corporation organized and existing under the laws of the State of California, with its principal  
22 place of business in Los Angeles County, California. Wark Entertainment, Inc. is the loan-out  
23 company through which Barry Josephson provides his services to the Series.

24 12. On information and belief, at all relevant times, Temperance Brennan, L.P. was and  
25 is a partnership organized under the laws of the State of Delaware, with its principal place of  
26 business in Los Angeles County, California. Temperance Brennan, L.P. is the loan-out company  
27 through which Kathleen Reichs provides her services to the Series.

28



1           17.     The Distribution Controls Paragraph makes clear that Respondents have only a  
2 contingent entitlement to monies derived from *Bones* — including a percentage of MAGR — and  
3 that the Agreements do not entitle Respondents to any involvement in the decisions that determine  
4 the Series’s profitability or guarantee that the Series will earn any specific amount of money for  
5 TCFTV and, in turn, Respondents. Rather, aside from a few listed exceptions, TCFTV has  
6 complete discretion with respect to how to distribute and monetize the Series, and makes no  
7 promises about “the amount of money to be derived from the distribution, exhibition and  
8 exploitation of each Series episode,” or even that the Series will be broadcast at all. *See, e.g.,*  
9 Josephson Agreement ¶ 10(a).

10           18.     The Distribution Controls Paragraph further discloses that TCFTV “intends to  
11 make use of Affiliated Companies [as defined in the Agreements] in connection with its  
12 distribution and exploitation of the Series episodes . . . as, when and where [TCFTV] deems it  
13 appropriate to do so,” and waives any right that Respondents may otherwise have had “to object to  
14 such distribution and exploitation of any Series episode . . . or assert any claim that [TCFTV]  
15 should have offered the applicable distribution/exploitation rights to unaffiliated third parties.”  
16 *See, e.g.,* Josephson Agreement ¶ 10(b). In return, TCFTV promises in the Distribution Controls  
17 Paragraph that transactions with an Affiliated Company will be “on monetary terms comparable to  
18 the terms on which the Affiliated Company enters into similar transactions with unrelated third  
19 party distributors for comparable programs.” *See, e.g., id.*

20           19.     If an individual entitled to contingent compensation does not believe that TCFTV  
21 properly calculated his or her share of the Series’s MAGR, TCFTV’s MAGR definitions (which  
22 are incorporated into the Agreements), provide that he or she may, within a specified timeframe,  
23 notice an audit of TCFTV’s books and records. Ex. 10 (“MAGR Definitions”) ¶ VI(G). If the  
24 individual wishes to contest TCFTV’s calculation, he or she must submit a written “objection” to  
25 those calculations within a particular time period. *Id.* ¶ VI(H). If the objections are not resolved  
26 amicably, the individual may bring a claim within a certain time after the applicable objection  
27 period expires. *Id.*

28



1 BC602548). The Complaints bring claims against TCFTV for breach of contract, breach of the  
2 covenant of good faith and fair dealing, and declaratory judgment, *see* Wark Compl. ¶¶ 26-33, 64-  
3 66; TB Compl. ¶¶ 78-88, 123-27; against FBC, FEG, and 21CF for inducing breach of contract  
4 and intentional interference with contract, *see* Wark Compl. ¶¶ 34-52; TB Compl. ¶¶ 99-117;  
5 against TCFTV, FBC, and FEG for unfair competition, *see* Wark Compl. ¶¶ 53-59; and against all  
6 Claimants for fraudulent inducement, fraudulent concealment, and an accounting, *see* Wark  
7 Compl. ¶¶ 60-63, 67-68; TB Compl. ¶¶ 89-98, 118-22.

8         26. All of the claims raised in those Complaints, however, are subject to the parties'  
9 agreements to arbitrate. Indeed, binding and applicable arbitration provisions are found in the  
10 very Agreements that the Respondents claim they want enforced.

11         27. Respondents' allegations in those Complaints fall into four general categories.  
12 First, Respondents allege that TCFTV failed to abide by its obligation in the Distribution Controls  
13 Paragraph to "make transactions with [Affiliated Companies] on monetary terms comparable to  
14 the terms on which the [Affiliated Company] enter[s] into similar transactions with unrelated third  
15 party distributors for comparable programs" (the "Self-Dealing Claims"). *See* Wark Compl. ¶  
16 25(D); TB Compl. ¶¶ 43-54.

17         28. Second, Respondents contend that, in various ways, TCFTV miscalculated the  
18 income they are due or failed to consult with them about that income (the "Contingent  
19 Compensation Claims"). *See* Wark Compl. ¶¶ 25(A)-(C), (F)-(G); TB Compl. ¶¶ 55-71. Broadly  
20 speaking, MAGR is calculated by subtracting TCFTV's expenses and other defined deductions  
21 from TCFTV's "Defined Gross Receipts." The Contingent Compensation Claims involve both  
22 sides of the MAGR equation: They allege that TCFTV minimized the amount of money that it  
23 earned from its distribution, exploitation, and marketing of the Series; and maximized the  
24 expenses that it incurred in connection with said distribution, exploitation, and marketing. *See*  
25 Wark Compl. ¶¶ 25(A)-(C); TB Compl. ¶¶ 55-68. Additionally, Respondents have raised  
26 Contingent Compensation Claims concerning how alleged failures to consult them purportedly  
27 affected the income they derived from MAGR itself, *see* Wark Compl. ¶ 25(F); TB Compl. ¶ 70,  
28

1 and from TCFTV's classification of episodes of the Series, *see* Wark Compl. ¶ 25(G); TB Compl.  
2 ¶ 69.

3 29. Third, Reichs, Boreanaz, and Deschanel allege that TCFTV breached the  
4 Agreements by failing to provide the auditor with a variety of documents that they believe he  
5 needed to complete his review (the "Audit Claims"). TB Compl. ¶¶ 38-41.

6 30. Fourth, Josephson and Reichs challenge the validity of the 2009 Release, arguing  
7 that TCFTV and FBC falsely claimed that FBC would cancel the Series if they did not sign it.  
8 *See* Wark Compl. ¶¶ 53-63; TB Compl. ¶¶ 73-77.

9 31. Fox denies that it has any liability on any of Respondents' claims. First, all of  
10 TCFTV's transactions with Affiliated Companies were on monetary terms that were at least  
11 equivalent to those that the affiliated entity offers to unrelated third parties. Second, TCFTV has  
12 fully complied with the audit provisions of the Agreements. Third, TCFTV correctly calculated  
13 MAGR, and, consequently, the contingent compensation to which Respondents were entitled.  
14 Fourth, the 2009 Release is valid and binding on Josephson and Reichs.

15 32. Through this Demand, Fox seeks to enforce the parties' agreement to arbitrate these  
16 disputes. Specifically, Fox seeks a declaration that: TCFTV has not breached the parties'  
17 contracts or the covenant of good faith and fair dealing; FBC, FEG, and 21CF did not induce  
18 TCFTV to breach its contracts with Respondents or intentionally interfere with those contracts;  
19 TCFTV, FBC, and FEG did not engage in unfair competition; no Claimant fraudulently induced  
20 Reichs or Josephson to sign the Release or fraudulently concealed material facts with respect to  
21 the Release; and Respondents are not entitled to an accounting. To the extent that Respondents  
22 seek to raise any additional claims against Fox in their Superior Court Complaints on the basis of  
23 those Agreements, Fox also seeks to resolve those disputes in this binding arbitration before  
24 JAMS.

### 25 JURISDICTION

26 33. Josephson's, Reichs's, and Boreanaz's Initial Agreements, and Boreanaz's and  
27 Deschanel's 2008 Agreements, provide that any dispute that arises under the Distribution Controls  
28 Paragraph shall be resolved by binding arbitration before JAMS.

1           34.    In particular, Paragraph 10(c) of the Josephson Agreement (attached hereto as  
2 Exhibit 1) states:

3                   **Arbitration:** Any dispute arising under the provisions of this Paragraph 10.  
4 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,  
5 J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a  
6 mutually selected arbitrator experienced in the United States television industry.  
7 Although each side shall advance one-half of the fee of the arbitrator and for  
8 JAMS' services, the prevailing party in such arbitration shall be entitled to recover  
9 all costs of arbitration, including reasonable outside attorneys' fees and costs.

10           35.    Paragraph 13(c) of the Reichs Agreement (attached hereto as Exhibit 2) states:

11                   **Arbitration:** Any dispute arising under the provisions of this Paragraph  
12 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,  
13 J.A.M.S./Endispute ("JAMS") in binding arbitration in Los Angeles, California and  
14 before a mutually selected arbitrator experienced in the United States television  
15 industry. Although each side shall advance one-half of the fee of the arbitrator and  
16 for JAMS' services, the prevailing party in such arbitration shall be entitled to  
17 recover all costs of arbitration, including reasonable attorneys' fees and costs.

18           36.    The "Distribution Controls" sub-paragraph of the "Contingent Compensation"  
19 provision of the Rider to the 2005 Boreanaz Agreement (attached hereto as Ex. 3) states:

20                   **Arbitration:** Any dispute arising under the provisions of this Paragraph shall  
21 be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration  
22 in Los Angeles, California and before a mutually selected arbitrator experienced in  
23 the United States television industry. Although each side shall advance one-half of  
24 the fee of the arbitrator and for JAMS' services, the prevailing party in such  
25 arbitration shall be entitled to recover all costs of arbitration, including reasonable  
26 outside attorneys' fees and costs.<sup>5</sup>

27           37.    The "Distribution Controls" Provision of the Rider to the 2008 Deschanel  
28 Agreement (attached hereto as Exhibit 4) states:

**Arbitration:** Any dispute arising under the provisions of this "Distribution  
Controls" Paragraph shall be arbitrated by, and under the rules of, J.A.M.S.  
("JAMS") in binding arbitration in Los Angeles, California and before a mutually  
selected arbitrator experienced in the United States television industry. Although  
each side shall advance one-half of the fee of the arbitrator and for JAMS' services,  
the prevailing party in such arbitration shall be entitled to recover all costs of  
arbitration, including reasonable outside attorneys' fees and costs.

                  38.    The 2009 Release (attached hereto as Exhibit 9) similarly provides that the Parties'  
disputes with respect to the 2009 Release shall be subject to binding arbitration before JAMS.

<sup>5</sup> The 2008 Boreanaz Agreement incorporates the 2005 Boreanaz Agreement's arbitration provision. See Ex. 11 ("2008 Boreanaz Agreement") Rider at 1.

1 39. In particular, Paragraph 4 of the 2009 Release states:

2 Negotiation, Mediation and Arbitration: If any dispute ("Dispute") arises  
3 out of, or with respect to, this Agreement, including a claimed breach thereof  
4 (whether sounding in contract or tort), and cannot be settled through negotiation,  
5 the parties agree first to try in good faith to arbitrate the Dispute by mediation  
6 utilizing the mediation services of a mutually agreed upon mediator. Written notice  
7 of mediation must be given as to all Disputes. The mediation of all Disputes must  
8 be completed within 45 business days from the date of selection of the mediator.  
9 Negotiation shall be non-binding, directed towards resolution of all outstanding  
10 issues, and designed to produce a comprehensive settlement of the Dispute. If,  
11 after efforts to mediate and resolve outstanding issues, there remain unresolved  
12 issues, either Party may commence arbitration proceedings in Los Angeles through  
13 binding arbitration before a mutually selected arbitrator affiliated with J.A.M.S.  
14 and with experience in the United States television industry.

15 **FIRST CAUSE OF ACTION**

16 **Declaratory Relief (No Breach of Contract)**

17 **(By TCFTV Against All Respondents)**

18 40. Claimants incorporate paragraphs 1-39 above, inclusive, of this Demand as though  
19 fully set forth herein.

20 41. TCFTV has complied fully with all of its obligations under the Agreements.

21 42. At present, an actual, substantial controversy exists between TCFTV and  
22 Respondents. Respondents contend that TCFTV has violated the Agreements in several respects,  
23 including by entering into transactions with Affiliated Companies on terms that are not  
24 comparable to those that the Affiliated Company gives to unrelated third parties, by miscalculating  
25 MAGR, by failing to consult with them about the MAGR definitions or syndication, by failing to  
26 allow a full and complete audit, and by classifying episodes by the season in which they were  
27 produced rather than the season in which they aired.

28 43. TCFTV, in contrast, contends and seeks a declaration here that it has complied with  
the Agreements in good faith and has not breached any obligation to Respondents, and that  
Respondents are entitled to no remedy whatsoever for any alleged self-dealing, miscalculation of  
MAGR, failure to consult, failure to allow a full and complete audit, or misclassification of  
episodes.

1 **SECOND CAUSE OF ACTION**

2 **Declaratory Relief (No Breach of Implied Covenant of Good Faith and Fair Dealing)**

3 **(By TCFTV Against All Respondents)**

4 44. Claimants incorporate paragraphs 1-43 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 45. TCFTV has complied fully with all of its obligations under the Agreements.

7 46. At present, an actual, substantial controversy exists between TCFTV and  
8 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
9 Complaints that TCFTV has breached the covenant of good faith and fair dealing by, among other  
10 conduct, licensing the Series at below-market rates, altering the license agreement without  
11 informing Respondents, and miscalculating MAGR.

12 47. TCFTV, in contrast, contends and seeks a declaration that it has complied fully  
13 with all of its obligations under the Agreements and has not committed any breach of the covenant  
14 of good faith and fair dealing, and that Respondents are entitled to no remedy whatsoever for any  
15 alleged self-dealing, alteration of licenses, or miscalculation of MAGR.

16 **THIRD CAUSE OF ACTION**

17 **Declaratory Relief (No Fraudulent Inducement)**

18 **(By All Claimants Against Reichs and Josephson)**

19 48. Claimants incorporate paragraphs 1-47 above, inclusive, of this Demand as though  
20 fully set forth herein.

21 49. At present, an actual, substantial controversy exists between Claimants and Reichs  
22 and Josephson regarding the parties' rights, duties, and obligations. Reichs and Josephson allege  
23 in their Complaints that the 2009 Release is a result of fraudulent inducement.

24 50. Claimants, in contrast, contend and seek a declaration that the 2009 Release was  
25 not the result of fraudulent inducement, that the 2009 Release is valid and binding on Reichs and  
26 Josephson, and that Reichs and Josephson are entitled to no remedy whatsoever with respect to the  
27 2009 Release.

28

1 **FOURTH CAUSE OF ACTION**

2 **Declaratory Relief (No Fraudulent Concealment)**

3 **(By All Claimants Against Reichs)**

4 51. Claimants incorporate paragraphs 1-50 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 52. At present, an actual, substantial controversy exists between Claimants and Reichs  
7 regarding the parties' rights, duties, and obligations. Reichs alleges in her Complaint that  
8 Claimants fraudulently concealed material facts relating to their intentions to modify the licensing  
9 agreement between FBC and TCFTV in order to induce her into signing the 2009 Release.

10 53. Claimants, in contrast, contend and seek a declaration that they did not conceal any  
11 material facts with respect to the 2009 Release, that the 2009 Release is valid and binding on  
12 Reichs, and that Reichs is entitled to no remedy whatsoever with respect to the 2009 Release.

13 **FIFTH CAUSE OF ACTION**

14 **Declaratory Relief (No Unfair Competition)**

15 **(By TCFTV, FEG, and FBC Against Josephson)**

16 54. Claimants incorporate paragraphs 1-53 above, inclusive, of this Demand as though  
17 fully set forth herein.

18 55. At present, an actual, substantial controversy exists between Claimants and  
19 Josephson regarding the parties' rights, duties, and obligations. Josephson alleges in his  
20 Complaint that TCFTV, FEG, and FBC engaged in unfair competition by, among other actions,  
21 engaging in improper self-dealing, miscalculating MAGR, and fraudulently threatening to cancel  
22 *Bones* in order to secure the 2009 Release.

23 56. Claimants, in contrast, contend and seek a declaration that they have not engaged in  
24 unfair competition, that they have not engaged in any improper self-dealing, that they did not  
25 miscalculate MAGR, that the 2009 Release is valid and binding on Josephson, and that Josephson  
26 is entitled to no remedy whatsoever on his unfair competition claim.

1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief (No Inducement of Breach of Contract)**

3 **(By 21CF, FEG, and FBC Against All Respondents)**

4 57. Claimants incorporate paragraphs 1-56 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 58. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and  
7 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
8 Complaints that 21CF, FEG, and FBC induced TCFTV to breach the Agreements.

9 59. Claimants, in contrast, contend and seek a declaration that they did not induce  
10 TCFTV to breach the Agreements, and that Respondents are entitled to no remedy whatsoever on  
11 their inducement of breach of contract claims.

12 **SEVENTH CAUSE OF ACTION**

13 **Declaratory Relief (No Intentional Interference With Contract)**

14 **(By 21CF, FEG, and FBC Against All Respondents)**

15 60. Claimants incorporate paragraphs 1-59 above, inclusive, of this Demand as though  
16 fully set forth herein.

17 61. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and  
18 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
19 Complaints that 21CF, FEG, and FBC intentionally interfered with the Agreements between  
20 TCFTV and Respondents.

21 62. Claimants, in contrast, contend and seek a declaration that they did not interfere  
22 with TCFTV's performance of its obligations under the Agreements, and that Respondents are  
23 entitled to no remedy whatsoever on their interference claims.

24 **EIGHTH CAUSE OF ACTION**

25 **Declaratory Relief (No Entitlement To an Accounting)**

26 **(By All Claimants Against All Respondents)**

27 63. Claimants incorporate paragraphs 1-62 above, inclusive, of this Demand as though  
28 fully set forth herein.

1 64. At present, an actual, substantial controversy exists between all Claimants and  
2 Respondents. Respondents contend that they are entitled to an accounting of all proceeds  
3 generated from, by, or in connection with the distribution, licensing and exploitation of the Series,  
4 as well as the fees and expenses incurred by Claimants therewith.

5 65. Claimants, in contrast, contend and seek a declaration that Claimants' accounting  
6 practices with respect to the Series are entirely proper, that any "accounting" can only be  
7 conducted pursuant to the Audit Provisions in the Agreements, that Claimants have complied with  
8 their obligations pursuant to those provisions, and that Respondents are entitled to no remedy  
9 whatsoever with respect to their accounting claims.

10 **NINTH CAUSE OF ACTION**

11 **Declaratory Relief (No Entitlement To Declaratory Relief)**

12 **(By TCFTV Against All Respondents)**

13 66. Claimants incorporate paragraphs 1-65 above, inclusive, of this Demand as though  
14 fully set forth herein.

15 67. At present, an actual, substantial controversy exists between TCFTV and  
16 Respondents. Respondents contend that TCFTV has breached the terms of the Agreements and  
17 that they are entitled to a declaration of TCFTV's obligations under the Agreements. Further,  
18 Reichs contends that the 2009 Release is null, void, and unenforceable.

19 68. TCFTV, in contrast, contends and seeks a declaration that it has complied with its  
20 obligations under the Agreements, that the 2009 Release is valid and enforceable, and that  
21 Respondents are entitled to no remedy whatsoever with respect to their claims for declaratory  
22 relief.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Claimants respectfully pray for the following relief:

- 25 1. For a declaration that:
- 26 a. TCFTV has not breached its Agreements with Respondents;
- 27 b. TCFTV has not breached the covenant of good faith and fair dealing;
- 28

- 1 c. Reichs's and Josephson's signing of the 2009 Release is not the result of
- 2 fraudulent inducement;
- 3 d. Reichs's signing of the 2009 Release is not the result of fraudulent
- 4 concealment;
- 5 e. The 2009 Release is valid and binding on Reichs and Josephson;
- 6 f. TCFTV, FBC, and FEG did not engage in unfair competition;
- 7 g. 21CF, FEG, and FBC did not induce TCFTV to breach any of the
- 8 Agreements;
- 9 h. 21CF, FEG, and FBC did not intentionally interfere with TCFTV's
- 10 performance of the Agreements;
- 11 i. Respondents are not entitled to an accounting;
- 12 j. Respondents are not entitled to declaratory relief; and
- 13 2. For such other and further relief that the Arbitrator may deem just and proper.

17 DATED: January 11, 2016

MUNGER, TOLLES & OLSON LLP

18  
19 By:   
20 \_\_\_\_\_  
GLENN D. POMERANTZ  
21 Attorneys for Claimants  
22 TWENTIETH CENTURY FOX FILM  
23 CORPORATION; FOX ENTERTAINMENT GROUP,  
24 LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX  
25 BROADCASTING COMPANY  
26  
27  
28

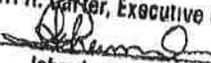
## **Exhibit B**

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NOV 30 2015

Sherri R. Carter, Executive Office/Clerk  
By:  Deputy  
Ishayla Chambers

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11  
12 TEMPERANCE BRENNAN, L.P. f/s/o  
13 KATHLEEN REICHS; SNOOKER  
14 DOODLE PRODUCTIONS, INC. f/s/o  
15 EMILY DESCHANEL; and BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ,

16 Plaintiffs,

17 v.

18 TWENTY-FIRST CENTURY FOX, INC.,  
a Delaware corporation; FOX  
19 ENTERTAINMENT GROUP, INC., a  
Delaware corporation; TWENTIETH  
20 CENTURY FOX FILM CORPORATION,  
a Delaware corporation; FOX  
21 BROADCASTING COMPANY, a  
Delaware corporation, and DOES 1-20,  
22 inclusive,

23 Defendants.

Case No.

BC 6 0 2 5 4 8

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) FRAUDULENT INDUCEMENT;
- (4) FRAUDULENT CONCEALMENT;
- (5) INDUCING BREACH OF CONTRACT;
- (6) INTENTIONAL INTERFERENCE WITH CONTRACT;
- (7) ACCOUNTING; AND
- (8) DECLARATORY RELIEF

DEMAND FOR TRIAL BY JURY

Trial Date: None

1 Plaintiffs Temperance Brennan, L.P. f/s/o Kathleen Reichs (“Reichs”), Snooker Doodle  
2 Productions, Inc. f/s/o Emily Deschanel (“Deschanel”), and Bertha Blue, Inc. f/s/o David  
3 Boreanaz (“Boreanaz”) (collectively, “Plaintiffs”), for their demand against Defendants Twenty-  
4 First Century Fox, Inc. (“21<sup>st</sup> Fox”), Fox Entertainment Group, Inc. (“FEG”), Twentieth Century  
5 Fox Television, a unit of Twentieth Century Fox Film Corporation (“20<sup>th</sup> TV”), and Fox  
6 Broadcasting Company (“FBC”) (21<sup>st</sup> Fox, FEG, 20<sup>th</sup> TV, and FBC collectively “Fox” or  
7 “Defendants”), allege as follows:

8 **I. INTRODUCTION**

9 1. Fox and its predecessors have played a leading role in the well-documented history  
10 of Hollywood accounting scandals. In 1979, for example, Fox produced the movie *Alien* that, on  
11 information and belief, cost it between \$9 and \$11 million to make and by spring of 1980 had  
12 generated more than \$100 million at the box office alone. Yet, when it came time to pay the  
13 film’s profit participant—the small, independent producer who had contracted for a share of  
14 Fox’s profits—Fox claimed that the film had somehow *lost* money and that no profits were due.  
15 That independent producer sued, and, on information and belief, obtained a favorable settlement.  
16 In the years since, Fox has engaged in similar conduct with respect to many of its television  
17 series, including mega-hits such as *M\*A\*S\*H*, *The X-Files*, *N.Y.P.D. Blue*, and *Cops*, all of which  
18 on information and belief have spawned meritorious lawsuits.

19 2. The Fox conglomerate’s latest episode in this grim series concerns *Bones*, the  
20 longest running primetime drama in the history of FBC. *Bones* (the “Series”) is a one-hour  
21 scripted television series based on the best-selling “Temperance Brennan” fiction novels by  
22 plaintiff Kathy Reichs. The Series centers around a forensic anthropologist named Dr.  
23 Temperance Brennan, who is played by plaintiff Emily Deschanel, and a Special Agent with the  
24 FBI named Seeley Booth, who is played by plaintiff David Boreanaz. Together, these characters  
25 solve the most baffling murders by combining Dr. Brennan’s expertise in cutting edge forensic  
26 science with Agent Booth’s classically intuitive detective work. *Bones* premiered on FBC in 2005  
27 and was heralded by media outlets as “the best drama of the new network season.” Since then the  
28 Series has been a constant fixture on FBC’s primetime schedule. During Season 10 in 2014,

1 *Bones* celebrated its 200<sup>th</sup> broadcast episode. Very few dramas on any television network, and  
2 only two others in the history of FBC, have ever achieved this honor. Showing no signs of  
3 stopping its epic run, *Bones* is currently in its 11th season and is heading toward Season 12.

4 3. *Bones*' longevity has made it a cash cow for Fox. For example, on information and  
5 belief, FBC has earned many hundreds of millions of dollars selling commercial airtime in  
6 connection with the Series. The price that advertisers pay for such airtime depends in part on  
7 Nielsen audience ratings. In the United States alone, *Bones* averaged 9 million weekly viewers in  
8 its most recent season, which made it FBC's second most watched primetime television series.  
9 Separate and apart from these advertising revenues, 20<sup>th</sup> TV—Fox's production and distribution  
10 arm—has received hundreds of millions of dollars from the exploitation of the Series in over 150  
11 territories throughout the world. According to Gary Newman, Fox Television Group chairman  
12 and Chief Executive Officer, the Series has been "incredibly successful internationally, in  
13 syndication, on SVOD [subscription video-on-demand] and Netflix." Media outlets have echoed  
14 this sentiment, referring to *Bones* as Fox's "golden child."

15 4. The success of *Bones* has been all the more impressive considering its frequent  
16 migration on FBC's primetime schedule. On information and belief, television series achieve  
17 better Nielsen audience ratings when they are broadcast on the same day and time each week so  
18 that viewers can establish a habit of tuning in for "appointment viewing." Yet in an effort to  
19 provide ratings "Band-Aids" for FBC, which in recent history has had fewer than a handful of  
20 dramas continue beyond three seasons, FBC has broadcast original *Bones* episodes in seven  
21 different time periods spanning five different nights. According to Mr. Newman: "To have a  
22 show that resilient is an incredible luxury." Indeed, the value of *Bones* to Fox goes well beyond  
23 the revenues that FBC and 20<sup>th</sup> TV have generated through advertising and licensing the Series.

24 5. Plaintiff Reichs, a forensic anthropologist, is the inspiration for Temperance  
25 Brennan's television persona. In return for her life story rights, the television rights to her novels,  
26 and her agreement to render producing services for the Series, 20<sup>th</sup> TV promised her a 5% share  
27 of the Series profits. Plaintiffs Deschanel and Boreanaz, for their leading roles in the Series, are  
28

1 each contractually entitled to a 3% share of Series profits. All three Plaintiffs are entitled to  
2 periodic accounting statements showing how 20<sup>th</sup> TV calculates their profits.

3 6. As the Series became more profitable for Fox over the years, these accounting  
4 statements issued by 20<sup>th</sup> TV counter-intuitively showed Plaintiffs falling farther and farther away  
5 from achieving profits. In 2010, for example, not long after FBC aired the finale of the Series'  
6 successful fifth broadcast season, plaintiff Reichs received a statement showing that she was  
7 nearly \$90 million away from receiving profits payments, and plaintiffs' Boreanaz and Deschanel  
8 received statements showing they were nearly \$100 million away from profits. Knowing of Fox's  
9 checkered history in profit participation matters, Plaintiffs noticed an audit of 20<sup>th</sup> TV's books  
10 and records thereafter. During the following years, Plaintiffs' independent auditor set out to  
11 uncover the truth but was stymied by 20<sup>th</sup> TV's refusal to disclose many of the basic documents  
12 related to Plaintiffs' profit statements.

13 7. The documents that 20<sup>th</sup> TV did provide confirmed Plaintiffs' suspicions and  
14 showed that they were being cheated out of more than \$100 million in gross revenues and being  
15 overcharged many additional millions of dollars in alleged expenses. One of the primary culprits  
16 was 20<sup>th</sup> TV's practice of licensing the Series to Fox affiliates. When "self-dealing" such as this  
17 occurs, a temptation exists for the distributor to charge below market rates so that fewer dollars  
18 are directed into the "pool" of funds from which profit participants like Plaintiffs share. Many  
19 television studios are transparent about this temptation and offer profit participants a "seat at the  
20 table" to arrive at what is commonly referred to as an "imputed license fee." 20<sup>th</sup> TV, however,  
21 set its initial network license fees for *Bones* without ever consulting Plaintiffs. And when 20<sup>th</sup> TV  
22 finally did engage with Plaintiffs in the fifth and sixth seasons of the Series, it did so under the  
23 threat of cancelling the Series unless Plaintiffs accepted its non-negotiable license fee figure, and  
24 then concealed material information about the true value of that figure.

25 8. Plaintiffs' auditor also uncovered a practice whereby 20<sup>th</sup> TV "packages" films  
26 and television series together in a single license agreement, leveraging the most successful series  
27 to force licensing of the entire package. But contrary to logic and well-established California law,  
28 when 20<sup>th</sup> TV accounts to profit participants such as Plaintiffs, it allocates a disproportionately

1 greater share of the total fees it receives to the less valuable shows. The result is that Fox  
2 understates the revenues on its most successful television series—which are necessarily the ones  
3 most likely to result in profit participation payments.

4 9. In addition to uncovering improper self-dealing and misallocation claims, the  
5 auditor's review, albeit truncated by 20<sup>th</sup> TV's withholding of many key documents, unearthed  
6 more than a dozen accounting errors, tricks, and deceitful acts that 20<sup>th</sup> TV has used to deprive  
7 Plaintiffs of their entitlement to profits. In short, the audit revealed that, consistent with past Fox  
8 practices, 20<sup>th</sup> TV has engaged in a systematic and pervasive effort to cheat Plaintiffs out of their  
9 entitlement to profits from the longest running drama series ever broadcast on FBC. Plaintiffs  
10 bring this action to enforce their rights to these payments that they are rightfully owed, which  
11 they estimate to collectively exceed tens of millions of dollars.

## 12 II. JURISDICTION AND VENUE

13 10. The Court has personal jurisdiction over Defendants pursuant to California Code  
14 of Civil Procedure 410.10 because the Defendants are domiciled in and/or are doing business in  
15 the State of California and some or all of the agreements that are the subject of this dispute were  
16 made, entered into, performed, and breached within the State of California. The amount in  
17 controversy exceeds the jurisdictional minimum of this Court.

18 11. Venue is proper in this County pursuant to California Code of Civil Procedure  
19 § 395(a) and § 395.5 because the Defendants, or some of them, have their principal place of  
20 business in the County of Los Angeles and because some or all of the agreements that are the  
21 subject of this dispute were made, entered into, performed, and/or breached in this County.

22 12. Venue is also proper under the parties' agreements. Plaintiff Reichs' agreement,  
23 attached hereto as Exhibit A, provides that her entitlement to profits "shall be defined, computed,  
24 accounted for and paid according to the [profits definition] customarily used by Fox, and shall be  
25 incorporated herein, subject to good faith negotiations within the customary parameters for  
26 persons of [her] stature in the television industry . . ." Ex. A, 2004 Reichs Agreement, Purchase  
27 Agreement, ¶ 10(c). The profits definition being used by Fox is attached hereto as Exhibit B. It  
28 provides that the parties' rights to "maintain or institute *any* action or proceeding shall be *only* as

1 provided in [the profits definition],” and then defines such an action as “an action at law for  
2 recovery of any such monies claimed.” Ex B, 2007 Profits Definition, ¶ VII.F. On information  
3 and belief, 20<sup>th</sup> TV is using a similar profits definition with an identical dispute resolution  
4 provision for Deschanel and Boreanaz.

### 5 **III. PARTIES**

6 13. Plaintiff Temperance Brennan, L.P. is a partnership organized under the laws of  
7 the State of Delaware whose principal place of business is located in the County of Los Angeles.  
8 At all relevant times, Temperance Brennan, L.P. was and is the loan-out company through which  
9 Kathleen Reichs provides her producing services for the Series.

10 14. Plaintiff Snooker Doodle Productions, Inc. is a corporation organized under the  
11 laws of the State of California, with its principal place of business located in the County of Los  
12 Angeles. At all relevant times, Snooker Doodle Productions, Inc. was and is the loan-out  
13 company through which Emily Deschanel provides her acting and producing services for the  
14 Series.

15 15. Plaintiff Bertha Blue, Inc. is a corporation organized under the laws of the State of  
16 California, with its principal place of business located in the County of Los Angeles. At all  
17 relevant times, Bertha Blue, Inc. was and is the loan-out company through which David Boreanaz  
18 provides his acting, directing, and producing services for the Series.

19 16. Defendant Twenty-First Century Fox, Inc., on information and belief, is, and at all  
20 relevant times was, a corporation organized and existing under the laws of the State of Delaware  
21 doing business throughout the United States, including at its offices in the State of California,  
22 County of Los Angeles.

23 17. Defendant Fox Entertainment Group, Inc., on information and belief, is, and at all  
24 relevant times was, a corporation organized and existing under the laws of the State of Delaware  
25 doing business throughout the United States, including at its principal place of business in the  
26 State of California, County of Los Angeles. Fox Entertainment Group, Inc. is, on information and  
27 belief, a wholly-owned subsidiary of Twenty-First Century Fox, Inc.

1           18. Defendant Twentieth Century Fox Television, on information and belief, is a unit  
2 of Twentieth Century Fox Film Corporation, which, on information and belief, is, and at all  
3 relevant times was, a corporation organized and existing under the laws of the State of Delaware  
4 doing business throughout the United States, including at its principal place of business in the  
5 State of California, County of Los Angeles. Twentieth Century Fox Television, on information  
6 and belief, is not a legal entity distinct from Twentieth Century Fox Film Corporation, so  
7 Twentieth Century Fox Film Corporation is therefore liable for all acts and omissions made by or  
8 on behalf of Twentieth Century Fox Television. Twentieth Century Fox Film Corporation is, on  
9 information and belief, a wholly-owned subsidiary of Fox Entertainment Group, Inc. and/or  
10 Twenty-First Century Fox, Inc.

11           19. Defendant Fox Broadcasting Company, on information and belief, is, and at all  
12 relevant times was, a corporation organized and existing under the laws of the State of Delaware  
13 doing business throughout the United States, including at its principal place of business in the  
14 State of California, County of Los Angeles. Fox Broadcasting Company is, on information and  
15 belief, a wholly-owned subsidiary of Fox Entertainment Group, Inc. and/or Twenty-First Century  
16 Fox, Inc.

17           20. Defendants, Does 1 through 20, are sued herein by fictitious names for the reason  
18 that their true names are unknown to Plaintiff. Plaintiff will seek leave to amend this Complaint to  
19 allege the true names and capacities of these Defendants when their identities have been  
20 ascertained. Plaintiff is informed and believes and based thereon alleges that these fictitiously  
21 named Defendants are responsible in some manner for the actions and damages alleged herein.

22           21. Plaintiff is further informed and believes and based thereon alleges that  
23 Defendants at all times herein alleged were the agents, employees, servants, joint venturers,  
24 and/or co-conspirators of each of the other remaining Defendants, and that in doing the things  
25 herein alleged were acting in the course and scope of such agency, employment, joint venture,  
26 and/or conspiracy.

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**IV. FACTUAL BACKGROUND**

**A. Plaintiffs are the Inspiration for and the Faces of *Bones***

22. *Bones* was inspired by a series of crime novels authored by Reichs, and commonly referred to as the “Temperance Brennan Novels.” The first of these novels was released in 1997 and there have been 18 in this series to date. All of the novels feature a protagonist named Dr. Temperance Brennan, a forensic anthropologist whose fictional persona is based on Reichs’ real-life experiences, which continue to generate creative material for her novels and the Series.

23. In *Bones*, Dr. Brennan is played by plaintiff Deschanel, and Special Agent Booth is played by plaintiff Boreanaz. The duo are the backbone of the Series, ensuring that millions of viewers tune in each week not only to see the next murder mystery that their characters are able to solve, but also to see the evolution of their relationship. While Dr. Brennan is ruled by her head, Agent Booth is ruled by his heart. These differing perspectives initially give rise to tension between the characters, but ultimately, as is often the case in classic love stories, opposites attract. Through their skillful acting and long-standing dedication to their characters, plaintiffs Deschanel and Boreanaz continue to make palpable for dedicated viewers the powerful chemistry between Dr. Brennan and Agent Booth.

**B. The Outsized Success of *Bones***

24. Premiering September 13, 2005 on FBC, *Bones* immediately garnered positive reviews for its infusion of dark humor and character development into an otherwise saturated primetime schedule of crime procedurals. The Series’ premiere obtained nearly 11 million viewers and was FBC’s highest-rated primetime Tuesday-night drama since the premiere of the hit series *24* four years earlier. Media outlets soon began describing the show as “the best drama of the new network season.” FBC, knowing it had a hit on its hands, on information and belief, ordered a full season of *Bones* after a mere three episodes had aired.

25. FBC’s instincts proved keen, and the Series continued to generate favorable Nielsen ratings for a freshman drama, finishing the year averaging around 9 million weekly viewers. Remarkably, *Bones* continues to maintain these ratings ten years later in an era when overall audiences have declined in part because, according to FX Networks’ CEO John Landgraf:

1 "There is simply too much television." It is due to *Bones*' loyal viewership and its ability to  
2 perform regardless of when it airs that FBC has had the luxury of scheduling the Series such that  
3 at some point in its run, *Bones* has held a timeslot on every weeknight. It is rare for a series to be  
4 moved around the primetime schedule as often as FBC has done with *Bones*, and even rarer still  
5 for this type of movement to not negatively affect the overall viewership numbers. It is clear that  
6 *Bones* is in a class of its own.

7 26. This durability of the Series often has been touted by Fox. When FBC announced  
8 that *Bones* would be renewed for Season 7 in May 2011, its President of Entertainment Kevin  
9 Reilly said, "*Bones* is creatively fresh, it's a rock-solid player every time it airs and this season it  
10 has helped us win on Thursday nights for the first time in our history." Fox has even used the  
11 Series as a lead-in to help improve the viewership of other series aspiring to cultivate the faithful  
12 fan base of *Bones*. For example, last month FBC broadcast a cross-over event with *Bones* and  
13 *Sleepy Hollow*, beginning a storyline with *Bones* at 8 p.m. and concluding that storyline with  
14 *Sleepy Hollow* at 9 p.m. While *Bones* out-performed *Sleepy Hollow*, Fox was able to use the  
15 *Bones* viewership to boost *Sleepy Hollow*'s audience by an additional 38% compared to the prior  
16 week. It is this type of consistent performance that has allowed *Bones* to earn its accolades as a  
17 "golden child" and the longest running drama ever produced and broadcast by Fox.

18 27. Of course, *Bones* would not have achieved this distinction without the ability to  
19 generate consistent profits for Fox. According to 20<sup>th</sup> TV, the Series has earned over 1.1 *billion*  
20 dollars in revenues on the 20<sup>th</sup> TV side alone. This revenue is mostly comprised of fees from  
21 domestic broadcast licenses and revenues from syndication, from subscription video-on-demand  
22 platforms such as Netflix, and from multiple networks and platforms abroad. Separate and apart  
23 from these revenues, on information and belief Fox has generated hundreds of millions of  
24 additional dollars in advertising revenues in connection with the 220 *Bones* episodes and counting  
25 that have aired to date in original runs and in syndication on Fox's owned and operated network  
26 of television channels throughout the United States and abroad.

27 28. *Bones* has also received significant critical acclaim, and the Series and its cast  
28 have been recognized by various entertainment industry award nominations. In fact, its cast and

1 crew have been nominated for over 10 different industry awards including the Primetime Emmys  
2 and People's Choice Awards.

3 **C. The Agreements Entitling Reichs to Series Profits**

4 29. In or about April 2005, Reichs and 20<sup>th</sup> TV entered into their initial agreements  
5 regarding the Series dated as of September 1, 2004. Attached hereto as Exhibit A are true and  
6 correct copies of a redacted Purchase Agreement for Purchase of Literary Material and Life Story  
7 Rights and a redacted Option Agreement for Purchase of Literary Material and Life Story Rights,  
8 along with supporting exhibits, executed by Reichs and 20<sup>th</sup> TV (the "2004 Reichs Agreement").

9 30. The 2004 Reichs Agreement entitled Reichs to fixed and contingent compensation  
10 in connection with her work on the Series. With respect to the latter, Reichs is entitled to a 5%  
11 share of the Series "Modified Adjusted Gross Receipts" ("MAGR"), pursuant to a profits  
12 definition that 20<sup>th</sup> TV promised to supply at a later time. The 2004 Reichs Agreement further  
13 provided that after Reichs received the profits definition it would be "subject to good faith  
14 negotiations within the customary parameters for persons of [Reichs'] stature in the television  
15 industry." Ex. A, 2004 Reichs Agreement, Purchase Agreement, ¶ 10(c).

16 31. It was not until approximately three years later, in November 2007, that 20<sup>th</sup> TV  
17 provided Reichs with its "standard" MAGR definition (the "2007 Profits Definition"). Attached  
18 hereto as Exhibit B is a true and correct copy of the correspondence from 20<sup>th</sup> TV providing  
19 Reichs with this 2007 Profits Definition. Notwithstanding 20<sup>th</sup> TV's promise to subsequently  
20 negotiate this 2007 Profits Definition in "good faith," 20<sup>th</sup> TV never even commenced such  
21 negotiations.

22 **D. The Agreements Entitling Deschanel and Boreanaz to Series Profits**

23 32. Plaintiffs Deschanel and Boreanaz became entitled to Series profits when they  
24 signed their initial agreements with 20<sup>th</sup> TV in 2005. Their most recent agreements entitling them  
25 to profits, true and correct copies of which are attached hereto with redactions as Exhibits C and  
26 D, are dated as of December 24, 2012, and provide for each of them to receive a 3% share of  
27 MAGR (the "2012 Actor Agreements"). Similar to the 2004 Reichs Agreement, the 2012 Actor  
28 Agreements provide that after Deschanel and Boreanaz receive their MAGR profits definitions,

1 those definitions would be subject to “good faith negotiation within Fox’s customary parameters  
2 for persons of [Actor’s] stature.” Exs. C-D, 2012 Actor Agreements, Rider. Unlike with Reichs,  
3 however, 20<sup>th</sup> TV never even sent plaintiffs Deschanel or Boreanaz the profits definition. On  
4 information and belief, the profits definition that 20<sup>th</sup> TV is using to calculate Deschanel and  
5 Boreanaz’s profit share is substantially similar to the 2007 Profits Definition and identical with  
6 respect to the dispute resolution provisions.

7 **E. Plaintiffs Receive No Profits Payments For 10 Years**

8 33. In March 2008, during Season 3 of the Series, 20<sup>th</sup> TV issued Plaintiffs their first  
9 profits accounting statements, which reflected deficits of around \$70 million that each of them  
10 would need to recoup before they would receive any payments. In January 2009, during the  
11 Series’ fourth season, 20<sup>th</sup> TV issued its second set of statements to Plaintiffs, showing that their  
12 deficit had been *increased* to over \$80 million. By the next accounting period the deficit had  
13 grown even further, and at one point the deficit approached or exceeded \$100 million depending  
14 on the Plaintiff.

15 **F. The Audit**

16 34. Unable to reconcile the growing deficit reported on 20<sup>th</sup> TV’s statements with the  
17 fact that *Bones* was in the middle of its sixth successful broadcast season, Plaintiffs exercised  
18 their contractual audit rights. Toward that end, their representatives engaged Sills & Gentile  
19 (now known as Green Hasson & Janks LLP), an independent third party auditing firm  
20 specializing in entertainment industry accounting and transactions, to conduct a review of 20<sup>th</sup>  
21 TV’s books and records (the “Audit”).

22 35. As explained below, 20<sup>th</sup> TV withheld from the auditors much of the  
23 documentation necessary to conduct this audit and determine the full extent of the underpayments  
24 to Plaintiffs. Based on the limited information that 20<sup>th</sup> TV did provide, however, the auditors  
25 uncovered more than twenty accounting violations that they estimated to total well over \$100  
26 million in underreported receipts and millions of additional dollars in overcharged expenses.  
27 Plaintiffs submitted these findings to 20<sup>th</sup> TV on or around May 14, 2014 (the “Audit Reports”).

28 36. The audit also uncovered the falsity of representations made by 20<sup>th</sup> TV to

1 Plaintiffs and the concealment of material facts by 20<sup>th</sup> TV, in connection with discussions  
2 between the parties about a potential “release” of claims regarding the license fees that FBC had  
3 agreed to pay 20<sup>th</sup> TV for broadcasting seasons 5 and 6 of the Series (the “2009 Release”).

4 **G. The Tolling Agreements**

5 37. On or about April 25, 2014, 20<sup>th</sup> TV and Plaintiffs entered into an agreement  
6 extending until May 30, 2015 the deadlines under which Plaintiffs could bring the claims set forth  
7 in this lawsuit. Attached hereto as Exhibit E is a true and correct copy of this agreement dated  
8 April 25, 2014. On May 6, 2015, 20<sup>th</sup> TV and Plaintiffs agreed to further extend this deadline  
9 until November 30, 2015. Attached hereto as Exhibit F is a true and correct copy of this  
10 agreement dated May 6, 2015. On November 20, 2015, 20<sup>th</sup> TV and Plaintiffs agreed to further  
11 extend this deadline until May 31, 2016.

12 **V. DEFENDANTS’ BREACHES OF THE AGREEMENTS**

13 **A. Failure to Permit a Full and Complete Audit**

14 38. The 2007 Profits Definition provides Plaintiffs with the right to audit 20<sup>th</sup> TV’s  
15 “books of account which relate to the [Series], in order to verify the accuracy of the transactions  
16 or items of information as first reflected in any Negative Cost Summary or any Participation  
17 Statement . . .” Ex. B, 2007 Profits Definition, ¶ VI.G. However, when it came time to provide  
18 the auditors with the documents necessary to verify the accuracy of these transactions and items,  
19 20<sup>th</sup> TV’s responses ranged from no substantive response, to outright denial, to false  
20 representations that it had disclosed all relevant documents.

21 39. One of the most significant revenue streams that television studios like 20<sup>th</sup> TV  
22 typically receive are the fees associated with licensing the rights to broadcast initial runs of a  
23 television series on a U.S. network. To arrive at these fees here, on information and belief, 20<sup>th</sup>  
24 TV and FBC negotiated a network license agreement. Notwithstanding repeated requests,  
25 however, the auditor was never provided with a complete copy of this network license agreement.

26 40. Nor did 20<sup>th</sup> TV provide the auditor with any of the scores of license agreements  
27 that it entered into with other affiliated companies concerning *Bones*. These included, but were  
28 not limited to, agreements with Fox’s home video distribution arm, agreements with the Fox

1 owned and operated stations that broadcast *Bones* in syndication, and agreements with the many  
2 Fox International Channels that broadcast the Series in Europe, Latin America, Africa, and Asia.

3 41. In addition to the above, 20<sup>th</sup> TV failed to provide the auditor with a host of other  
4 critical documents including but not limited to:

- 5 • Documents enabling the auditor to calculate the Nielsen rankings of the Series to  
6 test 20<sup>th</sup> TV's calculation of cumulative series deficit reimbursement payments;
- 7 • Documents reflecting the amount of production costs charged in excess of the  
8 budgeted amounts for the Series, and documents reflecting how much, if any, of  
9 those excess production costs were reimbursed by FBC and credited to Plaintiffs;
- 10 • Documents reflecting the agreements reached, and the revenues received, from  
11 licensing the Series on new media platforms such as fox.com and Netflix;
- 12 • The agreement with Shaw Television Limited Partnership in connection with the  
13 network broadcast of *Bones* in Canada;
- 14 • Documents related to determining whether Plaintiffs were credited all revenues  
15 20<sup>th</sup> TV received from Turner Entertainment Network ("TEN") in connection with  
16 TEN's basic cable television license agreement; and
- 17 • The detail ledger for foreign home video sales.

18 42. Without these and other documents, the auditors could not complete their review  
19 or determine the full value of Plaintiffs' claims, though as set forth below, the auditors' findings  
20 based on what limited information 20<sup>th</sup> TV did provide were still significant.

21 **B. Improper Self-Dealing**

22 43. 20<sup>th</sup> TV has engaged in numerous improper self-dealing license agreements with  
23 its affiliated networks and other licensees. Some of the more egregious examples of this  
24 misconduct are highlighted below.

25 1. 20<sup>th</sup> TV's "Sweetheart" Network License Agreement with FBC

26 44. The fees received by a distributor for licensing the right to broadcast original runs  
27 of a television series to a network are among the most significant revenues included in calculating  
28 profits. Recognizing this, and the potential conflict of interest when two arms of the same entity

1 negotiate with one another, many studios who produce for their sister networks have adopted an  
2 “imputed license fee” model. In essence, this model prevents conflicts by directly inserting the  
3 profit participant into licensing negotiations. The studio discloses the amounts that it intends to  
4 credit to the profit participant in connection with the network license up front, and the profit  
5 participant negotiates the figure and ultimately signs off on it. This imputed license fee model has  
6 the benefit of transparency and strives to minimize self-dealing claims such as those in this case.

7 45. Here, however, Plaintiffs were never given a seat at the table when 20<sup>th</sup> TV  
8 “negotiated” the Series initial network license agreement with its sister network FBC. Not  
9 surprisingly, the product of that “negotiation” was a schedule of artificially low license fees that  
10 benefitted FBC and its parent, 21<sup>st</sup> Fox, at the expense of Plaintiffs. Then, beginning in Season 5,  
11 FBC and 20<sup>th</sup> TV added insult to injury by conspiring to amend their network license agreement  
12 such that FBC would pay even less to 20<sup>th</sup> TV—and in turn the Plaintiffs—than what it had  
13 initially agreed to pay. Through Season 6 these fees were so low that they resulted in a production  
14 deficit—the delta between production costs and network license fees—of around \$50 million.

15 46. The “sweetheart” deals that created this deficit do not even come close to  
16 satisfying 20<sup>th</sup> TV’s contractual obligations to enter into license agreements with its affiliates on  
17 terms comparable to the terms on which those affiliates enter into similar agreements with  
18 unrelated third parties.<sup>1</sup> For example, media outlets have reported that FBC was willing to pay  
19 significantly more to license the television series *House* from unrelated distributor Universal  
20 Media Studios than FBC paid to license *Bones* from affiliate 20<sup>th</sup> TV.

21 47. As stated above, 20<sup>th</sup> TV and FBC also routinely amended the terms of their  
22 network license agreement to reduce payment obligations to 20<sup>th</sup> TV at the expense of Plaintiffs.  
23 In addition to the Season 5 example set forth above, the initial 20<sup>th</sup> TV/FBC network license  
24 agreement contained a provision that promised to pay 20<sup>th</sup> TV “rankings bonuses” depending on  
25 how *Bones* compared to certain other primetime television series in terms of Nielsen viewership.  
26 Shortly before these bonuses were due, however, FBC and 20<sup>th</sup> TV conspired to amend this

27  
28 <sup>1</sup> In this lawsuit, plaintiffs’ Boreanaz and Deschanel do not contest the license fees that were  
credited to them in connection with Season 11 of the Series.

1 provision and create a pure “ratings” bonus structure. The result, as these Fox affiliates knew but  
2 concealed from Plaintiffs, was a reduction of at least \$2.62 million in bonus payments through the  
3 Audit Period. Similarly, 20<sup>th</sup> TV agreed to forego at least \$10,375,000 in “deficit recoupment”  
4 payments from FBC without any consideration in return. Had FBC licensed the Series from a  
5 third party television studio instead of affiliate 20<sup>th</sup> TV, on information and belief that third party  
6 studio would never have agreed to such financially disadvantageous amendments.

7 **2. 20<sup>th</sup> TV’s “Sweetheart” Deals with Affiliated Foreign Networks**

8 48. *Bones* has performed well not only in the United States but in many of the more  
9 than 70 foreign territories in which 20<sup>th</sup> TV has licensed it. In certain of these territories, 20<sup>th</sup> TV  
10 licensed runs of the Series in non-exclusive arrangements to both its affiliated networks and to  
11 unrelated third party networks. The stark differences between the monetary terms of these deals  
12 demonstrate how 20<sup>th</sup> TV has dramatically underpaid Plaintiffs when licensing to its foreign  
13 affiliates. By way of example only, 20<sup>th</sup> TV licensed Season 1 of the Series in Italy to third party  
14 network, RTI SPA, for \$3,077 per run while simultaneously licensing Season 1 to its Italian sister  
15 network for \$200 per run. The value of the Series was therefore more than 15 times what 20<sup>th</sup> TV,  
16 and consequently Plaintiffs, received from this self-dealing transaction. Likewise, 20<sup>th</sup> TV  
17 licensed Season 1 of the Series in Spain to third party Gestora de Inversiones Audiovisuales La  
18 Sexta S.A. for \$24,667 per run, but when dealing with its Spanish sister network, licensed that  
19 season for \$300 per run for the same term. In the same territory, 20<sup>th</sup> TV therefore obtained 82  
20 times more fees when licensing the Series to a third party than to its affiliate. Fox has engaged in  
21 similar improper self-dealing transactions with numerous other foreign affiliates.

22 **3. Fox’s Self-Dealing In New Media Licenses**

23 49. In recent years, the exhibition of television series has evolved beyond traditional  
24 linear broadcasts on television screens in the home. These “new media” exhibitions permit  
25 viewing of full or partial episodes of television series on platforms including computers, smart  
26 phones, and tablets, and allow for downloading and streaming at the convenience of the user.  
27 With the emergence of digital subscription video-on-demand options like Hulu and Netflix,

28

1 television studios and distributors are now collectively receiving billions of dollars in exchange  
2 for licensing their series and related content to these new media outlets.

3 50. 20<sup>th</sup> TV's licensing of *Bones* to new media outlets owned in whole or in part by  
4 Fox was handled consistent with Fox's overall approach of licensing to related parties at below  
5 market rates. One example concerns Hulu, LLC ("Hulu") an entity in which Fox possesses an  
6 approximate 33% equity interest according to its SEC 10-K filings. On information and belief,  
7 Hulu is available free of charge to viewers and additional premium programming is available at  
8 Hulu.com on a monthly subscription basis for \$7.99 per month or a commercial free option for  
9 \$11.99 per month. Press releases in or around March 2008, the date of Hulu's public launch,  
10 touted *Bones* as among the available Hulu programming.

11 51. On information and belief, the license agreements that 20<sup>th</sup> TV entered into with  
12 related party Hulu for *Bones* differ markedly from the agreements that Hulu enters into with third  
13 party distributors for similar television programming. For one, on information and belief, many  
14 third party distributors require fixed cash guarantees to license their series to Hulu, but on  
15 information and belief 20<sup>th</sup> TV is licensing *Bones* for a speculative percentage of the ad sales and  
16 monthly subscriber fees that Hulu pays to 20<sup>th</sup> TV. This arrangement shifts the risk onto the Profit  
17 Participant and can also result in delayed receipt of license fees. Moreover, it means that 20<sup>th</sup> TV  
18 should be allocating an appropriate percentage of the monthly subscriber fees it receives from  
19 Hulu to each individual title it has licensed, including *Bones*. On information and belief, 20<sup>th</sup> TV  
20 has failed to do so, resulting in significant underpayments to Plaintiffs.

21 52. 20<sup>th</sup> TV has also breached the parties' agreements by licensing the subscription  
22 video on demand ("SVOD") rights to current season episodes of *Bones* to Hulu for below market  
23 rates. "Current season" refers to the episodes of a television series that make up the season  
24 presently being broadcast in original runs on network television, as opposed to episodes that were  
25 broadcast in prior seasons. On information and belief, Fox's financial interest in Hulu has resulted  
26 in 20<sup>th</sup> TV licensing current season episodes of *Bones* for less than what Hulu would have paid a  
27 third party distributor—sometimes even giving away access to clips and series premieres for free.  
28 Moreover, this practice of "stacking" current season episodes on multiple platforms such as FBC

1 and Hulu has, on information and belief, resulted in third party SVOD licensees such as Netflix  
2 paying less for those episodes—which have been viewed more often and therefore have lost  
3 value—than they would otherwise have paid if the current season episodes were kept off of Hulu.

4 **4. Fox's "Sweetheart" Domestic Syndication Deal**

5 53. On information and belief, 20<sup>th</sup> TV licensed certain "re-runs" of the Series in  
6 syndication to Fox's owned and operated group of domestic television stations. Where television  
7 series are as successful as *Bones*, such syndication agreements typically contain both a fixed cash  
8 license fee and a barter component. The barter component gives distributors such as 20<sup>th</sup> TV the  
9 right to sell commercial airtime during the broadcasts of these "re-run" episodes. Here, when  
10 dealing with its affiliated stations group, 20<sup>th</sup> TV obtained no cash license fees, but rather traded  
11 *Bones*' valuable syndication rights for only commercial airtime plus 30 additional seconds of  
12 billboard announcements. As an initial matter, 20<sup>th</sup> TV's licensing of these valuable rights  
13 without including a cash component breached its contractual obligation to deal with affiliates on  
14 monetary terms comparable to the terms on which those affiliates enter into similar agreements  
15 with third party distributors. Moreover, 20<sup>th</sup> TV's failure to credit Plaintiffs with any revenues  
16 from the sale of the 30-second billboard announcements it received as consideration constitutes a  
17 further breach of its obligations under the parties' agreements.

18 54. Moreover, 20<sup>th</sup> TV has rejected lucrative third-party syndication deals opting to  
19 instead license basic cable rights to the Series to its affiliates for less than fair market value. In  
20 one such example of this self-dealing, on information and belief, 20<sup>th</sup> TV licensed the Spanish-  
21 language rights to the Series to its then sister network MundoFox (now known as MundoMax) for  
22 a mere \$13,000 per episode. Knowing that this license fee was well below market value of these  
23 rights, 20<sup>th</sup> TV tried to get Plaintiffs to consent to this transaction by representing that it had  
24 contacted all potential Spanish-language buyers and they had passed. But when Plaintiffs'  
25 representatives sought to verify that claim, they learned that the other major buyers had never  
26 been contacted and knew nothing about this potential opportunity. Moreover, Plaintiffs'  
27 representatives were told that these buyers would have paid substantially more than the \$13,000

28

1 per run that MundoFox offered. Notwithstanding Plaintiffs' objection to this transaction, 20<sup>th</sup> TV  
2 went ahead and licensed the Series to MundoFox.

3 **C. Additional Accounting Claims**

4 55. As detailed in the Audit Report, 20<sup>th</sup> TV has committed well over a dozen  
5 breaches of the parties' agreements in addition to the claims mentioned above. A sampling of  
6 these additional accounting claims is set forth below.

7 **1. Improper Allocations**

8 56. When distributing the Series domestically and internationally, 20<sup>th</sup> TV frequently  
9 "packaged" *Bones* with other Fox-owned television series and films and licensed these collective  
10 titles as a group. Large distributors such as 20<sup>th</sup> TV often engage in this practice of "packaging"  
11 in an effort to sell as much of their owned content as possible, using the more popular television  
12 series and films as "drivers" in these deals, and refusing to sell those "drivers" a la carte. While  
13 this strategy is effective in bringing in more revenue for the corporate entity as a whole—because  
14 20<sup>th</sup> TV can force its less popular content on licensees—it often harms profit participants on  
15 successful series like *Bones* whose statement are credited at less than market value.

16 57. Where a distributor like 20<sup>th</sup> TV "packages" content together, it has a duty to  
17 allocate the total license fees it receives in good faith relative to the actual value of each title in  
18 the package. Here, 20<sup>th</sup> TV blatantly failed to do so. On information and belief, it often employed  
19 what is referred to as a "straight-line" allocation methodology and credited all titles in a particular  
20 "package" agreement with the same episodic license fees, notwithstanding their different values  
21 to the licensee. In other instances, Fox drastically undervalued *Bones* compared to other less  
22 successful Fox titles. For example, in one such agreement, Fox allocated only \$6,000 per episode  
23 to *Bones* but then allocated *seven times as much*, \$44,000 per episode, to *Boston Public*—a  
24 television series that was cancelled after four seasons. 20<sup>th</sup> TV's misallocation in favor of *Boston*  
25 *Public*—a series that, on information and belief, likely will never generate profit participation  
26 payments—ensures that its corporate parent 21<sup>st</sup> Fox will retain more money by having to pay out  
27 fewer dollars to Plaintiffs on *Bones*. On information and belief, 20<sup>th</sup> TV has failed to properly  
28 allocate license fees on many other "package agreements," including those with Netflix and Hulu.

1           2.     Improperly Charging Production Costs Associated with a Spinoff Pilot

2           58.     The 2007 Profits Definition obligated 20<sup>th</sup> TV to calculate Plaintiffs profits by  
3     deducting only those production costs incurred “in connection with the preparation, production,  
4     completion and delivery of the completed *Program*,” which the 2007 Profits Definition defined  
5     as *Bones*. Notwithstanding this clear language, 20<sup>th</sup> TV breached the parties’ agreements by  
6     deducting \$3.5 million in production costs incurred in connection with a proposed spinoff series  
7     called *The Finder* when calculating Plaintiffs’ profits.

8           3.     Improperly Charging Distribution Fees on EST and VOD Receipts

9           59.     With respect to electronic sell-through (“EST”) license agreements, 20<sup>th</sup> TV  
10     accounts to Plaintiffs on a 20% royalty basis, meaning that of the nearly \$8 million in cash that  
11     20<sup>th</sup> TV admits it received in connection with digital downloads of the Series (e.g., iTunes  
12     downloads), 20<sup>th</sup> TV credited to Plaintiffs’ profits definition just \$1.6 million. 20<sup>th</sup> TV applies the  
13     same accounting treatment to video-on-demand (“VOD”), which is when a distributor makes  
14     episodes available to consumers on its website or via a set-top box. But 20<sup>th</sup> TV does not stop  
15     there. On top of the 80% of revenues it keeps, 20<sup>th</sup> TV deducts an additional 30% or 45%  
16     distribution fee, thereby effectively reducing the amounts that are used to calculate Plaintiffs’  
17     profits to 14% for domestic EST and VOD and 11% for foreign EST and VOD. 20<sup>th</sup> TV’s  
18     purported justification for doing so is that EST and VOD are similar to the hard goods  
19     manufactured for DVD sales and this type of accounting treatment is fair with respect to such  
20     hard goods. But the expenses associated with DVD sales far outweigh the negligible costs  
21     associated with EST and VOD. Using this improper accounting treatment has given 20<sup>th</sup> TV a  
22     windfall and caused Plaintiffs to suffer a detriment of at least \$4.2 million in Gross Receipts.

23           4.     Improper Distribution Charges

24           60.     In addition to crediting Plaintiffs with less than 20% of certain revenue streams  
25     using a royalty-based accounting methodology, 20<sup>th</sup> TV has also improperly charged certain  
26     expenses against its royalty-based accounting. As stated above, when 20<sup>th</sup> TV accounts to profit  
27     participants using a royalty formula it is already excluding 80% of the revenues received. It is not  
28     therefore permitted to also deduct actual expenses associated with that distribution because the

1 80% it is holding back is designed to account for those expenses. 20<sup>th</sup> TV, however, has done  
2 exactly that with respect to certain home video distribution expenses and music clearance fees  
3 that should be part of the home video expenses. This improper accounting has resulted in a  
4 detriment to Plaintiffs of over \$1.5 million in Gross Receipts.

5 **5. Improper Overhead and Corporate Charges**

6 61. In addition to distribution expenses, 20<sup>th</sup> TV deducts distribution fees from all  
7 revenues that it receives in connection with the distribution of the Series. These distribution fees  
8 can be as high as 50% of the total revenues received and are designed to compensate 20<sup>th</sup> TV for  
9 internal costs such as corporate overhead. Yet in addition to deducting these significant  
10 distribution fees, 20<sup>th</sup> TV has also deducted general corporate costs including but not limited to  
11 those associated with sales conventions, Fox's TV library and digital services, consumer and  
12 market research, and Fox's information technology support services. By taking these additional  
13 expenses on top of the direct distribution expenses and distribution fees that are already deducted,  
14 Plaintiffs' have suffered a detriment of over \$1.1 million in Gross Receipts.

15 62. Moreover, with respect to production costs, 20<sup>th</sup> TV charges a 15% overhead fee  
16 on all of the more than \$400 million in production costs that it has incurred to date. These  
17 overhead fees are designed to provide 20<sup>th</sup> TV with compensation for its internal resources that  
18 are used in connection with the production of the Series. Notwithstanding that 20<sup>th</sup> TV has  
19 already collected over \$60 million in overhead related to the production of the Series, however,  
20 20<sup>th</sup> TV has added to the Series Production Charges certain indirect and overhead costs not  
21 directly attributable to the Series including but not limited to computer support, transportals,  
22 restocking fees, and refreshments. It has then charged a 15% overhead fee on the indirect  
23 expenses that should have been subsumed in the overhead fee 20<sup>th</sup> TV was already taking on the  
24 direct production charges for the Series. This practice of double-dipping has resulted in a  
25 detriment to Plaintiffs of more than \$3.1 million in Gross Receipts.

26 **6. Insufficiently Supported Expenses**

27 63. 20<sup>th</sup> TV has a legal duty to justify all of the expenses that it deducts when  
28 calculating Plaintiffs' profit participation. With respect to over \$100,000 in dubbing expenses,

1 however, it indicated during the Audit that it is unable to provide any support or justification. In  
2 the absence of any support justifying that these expenses were in fact incurred in connection with  
3 the distribution of the Series, Plaintiffs should not have these expenses deducted from Gross  
4 Receipts when calculating their profit participation.

5 **7. Improperly Deducting Foreign Taxes**

6 64. Through the Audit Period, 20<sup>th</sup> TV had deducted approximately \$1.4 million from  
7 Defined Gross Receipts as distribution expenses attributable to foreign taxes. Because Fox is able  
8 to take a credit for these taxes on its United State income tax return, these are not moneys that  
9 20<sup>th</sup> TV is ultimately out-of-pocket in connection with the Series, and therefore it should not  
10 deduct them when calculating Plaintiffs' profit participation.

11 **8. Failure to Report Rebates from Media Buys**

12 65. 20<sup>th</sup> TV charged the Series with nearly \$900,000 in advertising, expenses and  
13 accruals related to media buys in markets such as cable, interactive and radio but did not report  
14 any credits in connection with these media buys. On information and belief, it is customary to  
15 receive discounts, rebates and other credits based on volume purchases related to media buys. In  
16 fact, 20<sup>th</sup> TV has reported rebates from vendors related to production costs, so it is even more  
17 questionable that none were reported in connection with these large media buys.

18 **9. Improperly Charging Overhead on Distribution Expenses**

19 66. 20<sup>th</sup> TV has improperly classified certain distribution expenses as production  
20 charges, thereby subjecting them to a 15% overhead fee that would not have been deducted from  
21 Plaintiffs' Gross Receipts if these expenses had been properly accounted. For example, 20<sup>th</sup> TV  
22 charged a 15% overhead fee on the \$172,205 of AMPTP dues that it paid. The 2007 Profits  
23 Definition is clear that AMPTP dues are a distribution expense rather than a production cost, and  
24 therefore should not be subject to an overhead fee. Through the Audit Period, Plaintiffs were  
25 damaged by at least \$25,830 in overcharged expenses as a result of this accounting treatment.

26 **10. Improperly Accounting for Breakage**

27 67. 20<sup>th</sup> TV incurred tens of millions of dollars in additional production charges over  
28 and above what had been budgeted for each season. During the Audit Period, FBC reimbursed

1 20<sup>th</sup> TV for some of those production overages, known as “breakage.” However, instead of  
2 offsetting Production Charges with these reimbursements, 20<sup>th</sup> TV accounted for these amounts in  
3 the manner most favorable to itself and detrimental to Plaintiffs. Specifically, 20<sup>th</sup> TV included  
4 these breakage reimbursements in Production Charges and then charged a 15% overhead fee on  
5 them even though 20<sup>th</sup> TV was not truly out-of-pocket on these expenses. This overhead resulted  
6 in a detriment to Plaintiffs to be proven at trial but that Plaintiffs expect to exceed \$8 million.

7 **11. Improperly Accounting for Product Placement & Integration Revenues**

8 68. 20<sup>th</sup> TV accounts for product placement and integration revenues as if they are  
9 merchandising receipts so that it can apply a 40% distribution fee to those revenues when  
10 calculating Plaintiffs’ profits. There is nothing in the 2007 Profits Definition permitting this  
11 accounting treatment. Moreover, 20<sup>th</sup> TV failed to follow through on its promise that it would  
12 account for certain product integration revenues it received as an offset to Production Charges,  
13 thereby reducing the amount of Production Charges for which the 15% overhead was applied.  
14 Fox’s improper deduction of a 40% distribution fee coupled with its failure to offset Production  
15 Charges as promised resulted in a detriment to Plaintiffs of over \$1.8 million in Gross Receipts.

16 **12. Underreported License Fees Due to Misclassification of Episodes**

17 69. 20<sup>th</sup> TV produced certain episodes during one season but then broadcast those  
18 episodes as part of a subsequent season. Although the FBC/20<sup>th</sup> TV network license agreement  
19 provided that episodic license fees must increase for successive seasons of the Series, when 20<sup>th</sup>  
20 TV engaged in this practice of holding episodes until later seasons, it only credited Plaintiffs with  
21 the license fees for the season in which the episode was produced. This is despite the fact that  
22 when Fox licensed those episodes to third parties, 20<sup>th</sup> TV demanded from a third party the higher  
23 license fee associated with the season in which a particular episode aired. This practice resulted in  
24 a detriment to Plaintiffs in an amount to be proven at trial.

25 **13. 20<sup>th</sup> TV’s Failure to Negotiate the Profits Definitions in Good Faith**

26 70. Plaintiffs’ agreements entitle each of them to a good faith negotiation of their  
27 profits definitions within 20<sup>th</sup> TV’s customary parameters for persons of Plaintiffs’ stature. With  
28 respect to Reichs, 20<sup>th</sup> TV did not send its standard Profits Definition until 2007, three years after

1 her initial deal had been executed. Upon sending the 2007 Profits Definition, 20<sup>th</sup> TV did not  
2 engage in any negotiation with Reichs whatsoever, let alone a good faith negotiation. With  
3 respect to Deschanel and Boreanaz, 20<sup>th</sup> TV has never even sent them a copy of its standard  
4 Profits Definition, and has therefore not negotiated any of its terms at all. Plaintiffs are informed  
5 and believe that if 20<sup>th</sup> TV had engaged in the contractually required good faith negotiation with  
6 each Plaintiff, he or she would have received significant improvements to that definition such that  
7 his or her eventual profit participation payments would have been dramatically increased.

8 **14. Improperly Charged Overhead on Unrecouped Guarantees**

9 71. When calculating Reichs' profit participation payments, 20<sup>th</sup> TV charged a 15%  
10 overhead fee on more than \$3 million of unrecouped guarantees and overhead because these  
11 expenses were included as Production Charges. As stated above, Reichs' 2004 Agreement entitles  
12 her to a Profits Definition that is negotiated in good faith. The fact that Plaintiffs Deschanel and  
13 Boreanaz, both of whom are also producers on the Series as is Reichs, were not accounted to in  
14 this manner is evidence that Reichs was not treated consistent with the terms of her agreements  
15 and should not be subject to the 15% overhead fee applied to these \$3 million in expenses.

16 **15. Failure to Consult Regarding Distribution**

17 72. The 2012 Agreements provide that "[20<sup>th</sup> TV] shall accord good faith (meaningful)  
18 consultation to [Deschanel and Boreanaz] with respect to the initial domestic off-network sales  
19 plan, subject to the reasonable availability and reasonable response time of [Deschanel and  
20 Boreanaz]." 20<sup>th</sup> TV nevertheless failed to consult with Deschanel and Boreanaz about the initial  
21 domestic off-network sales plan, and if it had done so, Deschanel and Boreanaz are informed and  
22 believe that the consultation would have resulted in higher license fees to 20<sup>th</sup> TV, which would  
23 have resulted in higher profit participation payments to Deschanel and Boreanaz.

24 **VI. DEFENDANTS' FRAUDULENT CONDUCT**

25 73. In or around May 2009, 20<sup>th</sup> TV and FBC approached Plaintiffs and the other  
26 profit participants on *Bones* and informed them that unless each and every one of them agreed  
27 that FBC could pay 20<sup>th</sup> TV reduced episodic license fees for Seasons 5 and 6 of *Bones* relative to  
28 the amounts that FBC had previously agreed to pay, FBC would not pick up its option on the

1 Series, thereby preventing them from receiving the additional fixed and contingent compensation  
2 that they would earn only if the Series continued. 20<sup>th</sup> TV then prepared an “Agreement and  
3 Release” memorializing this, which contained signature lines for each and every profit participant  
4 on the Series. Believing 20<sup>th</sup> TV’s representations to be true at the time they were made, and  
5 fearful that Season 5 would not be picked up unless she and all the other profit participants signed  
6 this 2009 Release, Reichs executed it. It was not until years later during the Plaintiffs’ joint  
7 attempts to resolve the Audit Claims with 20<sup>th</sup> TV that Reichs learned that Deschanel and  
8 Boreanaz had in fact not signed the 2009 Release and that 20<sup>th</sup> TV had falsely represented to  
9 Reichs that producing Seasons 5 and 6 of *Bones* had been contingent upon *all* *Bones* profit  
10 participants agreeing to the reduced license fees in the 2009 Release. Moreover, Deschanel and  
11 Boreanaz learned during the Audit that even though they had refused to sign the 2009 Release  
12 because the license fees Fox had proposed for Season 5 and 6 were well below fair market value,  
13 20<sup>th</sup> TV still credited them with those same below-market license fees.

14 74. In addition to these affirmative misrepresentations in connection with the 2009  
15 Release, 20<sup>th</sup> TV took its bad acts one step further and simultaneously concealed additional  
16 material information that, if known by Reichs, would have ensured she did not sign the 2009  
17 Release. In particular, Fox suppressed the fact that immediately after obtaining Reichs’ signature  
18 on the 2009 Release, 20<sup>th</sup> TV intended to *further* harm her by amending other terms of the  
19 existing FBC/20<sup>th</sup> TV network license agreement to her detriment.

20 75. Indeed, as Plaintiffs learned during the Audit, the very same day that 20<sup>th</sup> TV  
21 obtained Reichs’ signature on the 2009 Release, it entered into a “sweetheart” deal with FBC to  
22 amend the Nielsen ratings bonus provision in their network license agreement for *Bones*. The  
23 original formula was based on how Nielsen *ranked* the Series relative to other primetime shows  
24 and provided for a minimum of \$100,000 per episode for each eligible episode, but the  
25 amendment replaced this with a less favorable bonus structure tied purely to the Series’ Nielsen  
26 *ratings*. The new ratings bonus structure considered only the total number of viewers and did not  
27 make any adjustments based on how well *Bones* performed relative to its competition. Under this  
28 new structure, instead of owing 20<sup>th</sup> TV a minimum of \$100,000 per eligible episode, FBC did

1 not have to pay any money in connection with the majority of the episodes, and in fact paid only a  
2 fraction of what would have been due under the original agreement. Yet even though FBC and  
3 20<sup>th</sup> TV were aware that they were devaluing the network license agreement to the detriment of  
4 plaintiff Reichs and the other profit participants on the very same day that they were asking them  
5 to accept reduced network license fees, Fox concealed this material fact from Plaintiffs.

6 76. Moreover, FBC ensured it would be exceedingly difficult for 20<sup>th</sup> TV and  
7 therefore the Plaintiffs to obtain these bonuses under the new structure by subjecting *Bones* to the  
8 fate of perpetual migration throughout its primetime schedule. Notably, *Bones* is the only drama  
9 in the history of FBC that has migrated to so many different timeslots that it has aired on each  
10 weeknight during its 11-year run. Just as the day of the week kept migrating, so did its broadcast  
11 time, with FBC sometimes airing it at 8 p.m. and at other times airing it at 9 p.m. In some  
12 instances, such as Season 7, the weekly day and time for *Bones* were changed three times during  
13 the course of a single broadcast season. This decision by FBC to constantly migrate the Series  
14 likely led to it having lower viewership, which ultimately impacted the Nielsen bonuses the show  
15 would earn under the new *ratings* bonus structure that FBC and 20<sup>th</sup> TV conspired to employ and  
16 in fact did employ.

17 77. Then in October 2009, at the start of Season 5 when certain "deficit  
18 reimbursement" payments that were part of the original network license agreement between 20<sup>th</sup>  
19 TV and FBC were due to be paid to 20<sup>th</sup> TV, the sister companies once again amended their  
20 agreement, this time by eliminating entirely 20<sup>th</sup> TV's entitlement to these payments that ranged  
21 from \$250,000-500,000 per episode for the 84 episodes in Seasons 1 through 4 of the Series.  
22 Inexplicably, as the show continued and grew more and more successful, 20<sup>th</sup> TV negotiated with  
23 FBC to *forego* payments to which it was already entitled. And it did so without receiving any  
24 consideration in return, resulting in a detriment to Plaintiffs of at least \$10.375 million in Gross  
25 Receipts, and possibly much more.

1 **FIRST CAUSE OF ACTION**

2 **Breach of Contract**

3 **(By All Plaintiffs Against Defendant 20<sup>th</sup> TV)**

4 78. Plaintiffs incorporate by reference and reallege each and every allegation in  
5 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

6 79. Plaintiffs have performed all conditions, covenants, and promises required to be  
7 performed by them in accordance with the terms of their respective agreements and the 2007  
8 Profits Definition provided by 20<sup>th</sup> TV to Reichs.

9 80. All conditions required for Defendants' performance of the conditions, covenants,  
10 and promises required to be performed by them in accordance with the terms of the agreements  
11 and the 2007 Profits Definition have occurred.

12 81. As detailed above, Defendants have breached the agreements and the 2007 Profits  
13 Definition by, among other things, failing to pay monies due to Plaintiffs pursuant to Fox's  
14 Television Definition of Defined Modified Adjusted Gross Receipts.

15 82. Defendants have further breached the agreements and the 2007 Profits Definition  
16 by failing to provide Plaintiffs' auditor with documents necessary to allow the auditor to perform  
17 its audit of 20<sup>th</sup> TV accounts as required by the agreements.

18 83. As a direct and proximate result of Defendants' breaches of the agreements and the  
19 2007 Profits Definition, Plaintiffs have suffered, and will continue to suffer, monetary damages in  
20 an amount to be proven at trial.

21 **SECOND CAUSE OF ACTION**

22 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 **(By All Plaintiffs Against 20<sup>th</sup> TV)**

24 84. Plaintiffs incorporate by reference and reallege each and every allegation in  
25 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

26 85. Plaintiffs have performed all conditions, covenants, and promises required to be  
27 performed by them in accordance with the terms of their respective agreements and the 2007  
28 Profits Definition.

1 86. All conditions required for Defendants' performance of the conditions, covenants,  
2 and promises required to be performed by them in accordance with the terms of the agreements  
3 and the 2007 Profits Definition have occurred.

4 87. Defendants breached the implied covenant of good faith and fair dealing by  
5 unfairly interfering with Plaintiffs' right to receive the benefits of the their respective agreements  
6 and the 2007 Profits Definition by, among other things:

- 7 • Failing to properly allocate revenues earned from agreements in which *Bones* was  
8 licensed in packages with other Fox television series and films;
- 9 • Failing to properly allocate to *Bones* revenues earned from new media, including  
10 but not limited to those earned from Netflix and Hulu;
- 11 • Misclassifying certain revenues and expenses to the detriment of Plaintiffs; and
- 12 • Improperly accounting for home video and electronic sell-through receipts to the  
13 detriment of Plaintiffs.

14 88. As a direct and proximate result of Defendants' breaches of the implied covenant  
15 of good faith and fair dealing, Plaintiffs have suffered monetary damages in an amount to be  
16 proven at trial.

### 17 **THIRD CAUSE OF ACTION**

#### 18 **Fraudulent Inducement per Cal. Civ. Code § 1572**

#### 19 **(By Plaintiff Reichs Against All Defendants)**

20 89. Plaintiffs incorporate by reference and reallege each and every allegation in  
21 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

22 90. As set forth above, in May 2009, 20<sup>th</sup> TV and FBC approached Plaintiffs and the  
23 other profit participants on *Bones* and informed them that unless each and every one of them  
24 agreed that FBC could pay 20<sup>th</sup> TV significantly reduced episodic license fees for Seasons 5 and 6  
25 of *Bones* relative to the amounts stated in the FBC/20<sup>th</sup> TV network license agreement, FBC  
26 would not pick up its option on the Series, thereby preventing them from receiving the additional  
27 fixed and contingent compensation that they would earn only if the Series continued. 20<sup>th</sup> TV then  
28 prepared an "Agreement and Release" memorializing this, which contained signature lines for

1 each and every profit participant on the Series. Believing 20<sup>th</sup> TV's representations to be true at  
2 the time they were made, and fearful that Season 5 would not be picked up unless she and all the  
3 other profit participants signed this 2009 Release, Reichs executed it. It was not until years later  
4 during the Plaintiffs' joint attempts to resolve the Audit Claims with 20<sup>th</sup> TV that Reichs learned  
5 that Deschanel and Boreanaz had in fact not entered into the 2009 Release and 20<sup>th</sup> TV had  
6 falsely represented to Reichs that producing Seasons 5 and 6 of *Bones* had been contingent upon  
7 all *Bones* profit participants agreeing to the reduced license fees in the 2009 Release.

8 91. Defendants knew their representations to Reichs were false at the time they were  
9 made, *i.e.* that Defendants would produce and broadcast Season 5 of *Bones* regardless of whether  
10 all profit participants signed the 2009 Release, which is in fact what occurred. Defendants  
11 intentionally made these false representations to Reichs to induce her to enter into the 2009  
12 Release.

13 92. Plaintiff Reichs actually and justifiably relied on Defendants' false material  
14 misrepresentations and, consequently, agreed to enter into the 2009 Release because Fox  
15 threatened to cancel *Bones* if she did not acquiesce, thereby stripping her of other fixed and  
16 contingent compensation that she would have otherwise been due under the 2004 Reichs  
17 Agreement and the 2007 Profits Definition.

#### 18 **FOURTH CAUSE OF ACTION**

#### 19 **Fraudulent Concealment per Cal. Civ. Code § 1572**

#### 20 **(By Plaintiff Reichs Against All Defendants)**

21 93. Plaintiffs incorporate by reference and reallege each and every allegation in  
22 paragraph 1 through 77 and paragraph 90 of this Complaint, inclusive, as though fully set forth  
23 herein.

24 94. At the time Fox entered into the 2009 Release, FBC and 20<sup>th</sup> TV concealed their  
25 intent to further amend the network license agreement between 20<sup>th</sup> TV and sister-company FBC  
26 to the detriment of Plaintiffs. The very same day that 20<sup>th</sup> TV induced Reichs to enter into the  
27 2009 Release, FBC and 20<sup>th</sup> TV amended their network license agreement to change the Nielsen  
28 bonus structure from a rankings structure that was more favorable to profit participants such as

1 Reichs to a ratings structure that was less favorable to Reichs. In addition, Fox concealed the  
2 material fact that it would be exceedingly difficult to obtain these Nielsen ratings bonuses under  
3 the new structure because it intended to broadcast *Bones* at different time periods on all five  
4 weekdays thus making it more difficult for viewers to locate the show and thus to achieve  
5 sufficient Nielsen ratings to achieve bonuses.

6 95. The facts concealed by Defendants were material and Fox concealed such facts  
7 with the intent to induce Reichs to enter into the 2009 Release.

8 96. At the time Fox concealed these material facts, and at the time Reichs took the  
9 actions herein alleged, Reichs was ignorant of the facts concealed, and in reasonable reliance on  
10 these representations, Reichs was induced to and did enter into the 2009 Release. Had Reichs  
11 know the actual facts, and had Defendants not concealed material facts, she would not have taken  
12 such actions. Reichs' reliance on Fox's concealment was justified because Reichs could not, in  
13 the exercise of reasonable diligence, have discovered the actual facts.

14 97. As a direct and proximate result of the fraudulent concealment by Fox, Reichs has  
15 been damaged in an amount to be proven at trial. When Reichs has ascertained the full value of  
16 her damages, she will seek leave of the Court to amend this Complaint accordingly.

17 98. Reichs is informed and believes and thereon alleges that Defendants, in doing the  
18 things alleged herein, acted willfully, maliciously, oppressively and with full knowledge of the  
19 adverse effects of their actions on Reichs, and with willful and deliberate disregard to the  
20 consequences to Reichs, such as to constitute oppression, fraud, and/or malice. As a direct result  
21 of their fraudulent, willful and malicious conduct, Reichs is entitled to exemplary and punitive  
22 damages pursuant to Civil Code § 3294 in an amount to be determined by the Court at trial.

23 **FIFTH CAUSE OF ACTION**

24 **Inducing Breach of Contract**

25 **(By All Plaintiffs Against 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20)**

26 99. Plaintiffs incorporate by reference and reallege each and every allegation in  
27 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

28

1 100. 20<sup>th</sup> TV and one or more Plaintiffs were parties to the 2004 Reichs Agreement and  
2 2012 Actor Agreements, which are valid and binding contracts.

3 101. 20<sup>th</sup> TV and one or more Plaintiffs were parties to the 2007 Profits Definition,  
4 portions of which are valid and binding contracts.

5 102. At all relevant times, defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 were aware  
6 of the 2004 Reichs Agreement, the 2007 Profits definition, and the 2012 Actor Agreements and  
7 their terms.

8 103. As set forth above, 20<sup>th</sup> TV breached the 2004 Reichs Agreement, the 2012 Actor  
9 Agreements, and the binding portions of the 2007 Profits Definition, including their implied  
10 covenants of good faith and fair dealing, in various ways.

11 104. Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 intended to influence, direct, or  
12 cause 20<sup>th</sup> TV to commit the above-described breaches because these defendants knew they  
13 would benefit from such breaches. Among other benefits, Defendants 21<sup>st</sup> Fox, FEG, FBC, and  
14 Does 1-20 benefited by paying lower license fees for the rights to broadcast the Series, thus  
15 decreasing costs and increasing profits for FBC and ultimately for 21<sup>st</sup> Fox as a result of denying  
16 Plaintiffs their proper share of revenues from the Series.

17 105. Through the conduct described above, Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does  
18 1-20 caused 20<sup>th</sup> TV to breach the 2004 Reichs Agreement, the 2012 Actor Agreements, and the  
19 binding portions of the 2007 Profits Definition as set forth above. But for the influence or  
20 direction of these defendants, 20<sup>th</sup> TV would have had no incentive, basis, and/or ability to  
21 collude with these defendants; rather, absent such collusion, the primary goal of 20<sup>th</sup> TV would  
22 have been to maximize its revenues and profits from the Series and obtain the highest-possible  
23 license fees for the Series.

24 106. Through their conduct, Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 caused  
25 damage to Plaintiffs by inducing acts that reduced 20<sup>th</sup> TV's Gross Receipts and ultimately  
26 Plaintiffs' profit participation in connection with the Series, in an amount to be proven at trial.

27 107. The conduct of Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 was a substantial  
28 factor in causing Plaintiffs' harm.

1 108. In engaging in the misconduct alleged herein, Defendants 21<sup>st</sup> Fox, FEG, FBC, and  
2 Does 1-20 have acted with malice, oppression, or fraud, and in willful disregard of Plaintiffs'  
3 rights and interests, thus entitling Plaintiffs to an award of punitive damages in an amount  
4 appropriate to punish or make an example of Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20,  
5 pursuant to Civil Code § 3294.

6 **SIXTH CAUSE OF ACTION**

7 **Intentional Interference with Contract**

8 **(By All Plaintiffs Against 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20)**

9 109. Plaintiffs incorporate by reference and reallege each and every allegation in  
10 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

11 110. 20<sup>th</sup> TV and one or more Plaintiffs were parties to the 2004 Reichs Agreement and  
12 2012 Actor Agreements, which are valid and binding contracts.

13 111. 20<sup>th</sup> TV and one or more Plaintiffs were parties to the 2007 Profits Definition,  
14 portions of which are valid and binding contracts.

15 112. At all relevant times, defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 were aware  
16 of the 2004 Reichs Agreement, the 2007 Profits Definition, and the 2012 Actor Agreements and  
17 their terms.

18 113. Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 collaborated and/or participated  
19 with 20<sup>th</sup> TV in the misconduct described above because these defendants knew they would  
20 benefit from such misconduct. Among other benefits, Defendants 21<sup>st</sup> Fox and FBC benefited by  
21 paying lower license fees for the rights to broadcast the Series, thus decreasing costs and  
22 increasing profits for FBC and ultimately for 21<sup>st</sup> Fox as a result of denying Plaintiffs their proper  
23 share of revenues from the Series.

24 114. Through the conduct described above, Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does  
25 1-20 intended to disrupt or prevent the performance by 20<sup>th</sup> TV of the 2004 Reichs Agreement,  
26 the 2012 Actor Agreements, and the binding portions of the 2007 Profits Definition as set forth  
27 above, and did disrupt or prevent that performance.

1 115. Through their conduct, Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 caused  
2 damaged to Plaintiffs by collaborating and/or participating in acts that reduced 20<sup>th</sup> TV's Gross  
3 Receipts and ultimately Plaintiffs' profit participation in connection with the Series, in an amount  
4 to be proven at trial.

5 116. The conduct of Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20 was a substantial  
6 factor in causing Plaintiffs' harm.

7 117. In engaging in the misconduct alleged herein, Defendants 21<sup>st</sup> Fox, FEG, FBC, and  
8 Does 1-20 have acted with malice, oppression, or fraud, and in willful disregard of Plaintiffs'  
9 rights and interests, thus entitling Plaintiffs to an award of punitive damages in an amount  
10 appropriate to punish or make an example of Defendants 21<sup>st</sup> Fox, FEG, FBC, and Does 1-20,  
11 pursuant to Civil Code § 3294.

12 **SEVENTH CAUSE OF ACTION**

13 **Accounting**

14 **(By All Plaintiffs Against All Defendants)**

15 118. Plaintiffs incorporate by reference and reallege each and every allegation in  
16 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

17 119. A relationship exists between Plaintiffs on the one hand and Defendants on the  
18 other hand for which an accounting of Defendants' books and records is appropriate.

19 120. Plaintiffs are informed and believe and thereon allege that Fox has derived and  
20 received significant income, profit and other benefits from the aforementioned improper and  
21 fraudulent accounting practices. Plaintiffs are entitled to a full and accurate accounting of all  
22 proceeds generated from, by or in connection with the distribution, licensing and/or other  
23 exploitation of the Series and its components as well as the fees and expenses incurred by 20<sup>th</sup> TV  
24 in connection with the production, distribution and exploitation of the Series and its components.

25 121. The amount of money due to Plaintiffs is unknown and cannot be reasonably  
26 ascertained without a full and complete accounting of Defendants' books and records. Defendants  
27 have failed and refused to supply the information and documents necessary to complete that audit.  
28 Due to Plaintiffs' exclusion from exercising any control or management over the distribution,

1 licensing and other exploitation of the Series and the collection, reporting and accounting of  
2 revenues generated from such exploitation and the complex nature of the accounts of such  
3 exploitation, it is impractical to ascertain a fixed sum that is currently owed to Plaintiffs.  
4 Accordingly, the full amount due and owing to Plaintiffs can only be determined pursuant to a  
5 full and accurate accounting of all proceeds and expenses generated in connection with the  
6 production, distribution, licensing and other exploitation of the Series that Plaintiffs seek herein.

7 122. Plaintiffs also pray for the Court to impose a constructive trust on all moneys  
8 wrongfully withheld by Defendants, in accordance with common law and California Civil Code  
9 §§ 2223-2224, for the benefit of Plaintiffs and Plaintiffs' interests.

10 **EIGHTH CAUSE OF ACTION**

11 **Declaratory Relief**

12 **(By All Plaintiffs Against 20<sup>th</sup> TV)**

13 123. Plaintiffs incorporate by reference and reallege each and every allegation in  
14 paragraph 1 through 77 of this Complaint, inclusive, as though fully set forth herein.

15 124. An actual controversy has arisen and now exists between Reichs and 20<sup>th</sup> TV  
16 regarding the enforceability of the 2009 Release. Reichs is informed and believes that 20<sup>th</sup> TV  
17 contends that Reichs is bound by the terms of the 2009 Release, and that Reichs is not entitled to  
18 raise claims associated with the improperly reduced network license fees reported to her in  
19 connection with Season 5 and 6 of the Series. Reichs, on the other hand, contends that she was  
20 fraudulently induced to enter into the 2009 Release, therefore rendering it null, void, and  
21 unenforceable. These issues have been raised with 20<sup>th</sup> TV who disagrees and thus the parties  
22 have a dispute concerning their respective rights and obligations, if any, under the 2009 Release.

23 125. Plaintiffs are further informed and believe that an actual controversy has arisen  
24 and now exists between Plaintiffs and 20<sup>th</sup> TV regarding the allocation of certain license fees that  
25 are used to determine Plaintiffs' profit participation under the agreements. Plaintiffs are informed  
26 and believe that 20<sup>th</sup> TV is misallocating and/or underreporting the revenues for the Series in  
27 many of self-dealing domestic and international agreements governing the distribution, licensing,  
28 or other exploitation of *Bones*. Plaintiffs, on the other hand, contend that pursuant to their

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agreements, 20<sup>th</sup> TV must allocate and report revenues consistent with the monetary terms of the licenses 20<sup>th</sup> TV enters into with third parties for comparable programs.

126. Plaintiffs are further informed and believe that an actual controversy has arisen and exists between Plaintiffs and 20<sup>th</sup> TV regarding their respective rights and obligations under the parties' agreements with respect to the interpretation of provisions of the parties' agreement related to the calculation, reporting, and payment of Plaintiffs profit interests in the Series. Plaintiffs are informed and believe that 20<sup>th</sup> TV contends otherwise.

127. Therefore, Plaintiffs request that this Court make and enter its binding judicial declarations in accordance with Plaintiffs' contentions set forth above. These declarations are both necessary and proper at this time under the circumstances in that, among other things, the interests of judicial economy and substantial justice will be served thereby.

[Remainder of page intentionally left blank]

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against the Defendants and each of them as follows:

- 1. For monetary damages in an amount to be proven at trial;
- 2. For a judicial declaration of the parties' contractual rights and duties in connection with *Bones*, their agreements concerning *Bones*, the 2007 Profits Definition, and the 2009 Release alleged herein;
- 3. For an accounting under Court supervision of the profits of the Series and the amounts due and payable to Plaintiffs in accordance with the agreements alleged herein;
- 4. For the Court to impose a constructive trust on the moneys wrongfully withheld;
- 5. For rescission of the 2009 Release;
- 6. For an award of punitive damages in an amount to be proven at trial;
- 7. That Plaintiffs be awarded all pre-judgment interest allowable by law;
- 8. That Plaintiffs be awarded their outside attorneys' fees and costs; and
- 9. For such further relief as the Court may deem just and proper.

Los Angeles, California  
Dated: November 30, 2015

**KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP**

By: 

John V. Berlinski, Esq.  
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**DEMAND FOR JURY TRIAL**

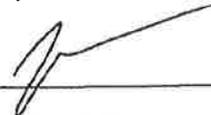
Plaintiffs Temperance Brennan, L.P. f/s/o Kathleen Reichs, Snooker Doodle Productions, Inc. f/s/o Emily Deschanel, and Bertha Blue, Inc. f/s/o David Boreanaz hereby demand a trial by jury in this matter.

Los Angeles, California

Dated: November 30, 2015

**KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP**

By: \_\_\_\_\_



John V. Berlinski, Esq.  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, CA 90071-1560.

On May 13, 2016, I served true copies of the following document(s) described as **STIPULATION REGARDING CLAIMS IN ARBITRATION** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document to be sent from e-mail address - rhonda.clarke@mto.com - to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 13, 2016, at Los Angeles, California.

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Rhonda Clarke

**SERVICE LIST**

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Via Email & Federal Express

# **Attachment 4(b)**

## **Exhibit H**

EXHIBIT 33

Peter Rice  
3/14/18

Reported by:  
Jean Haidav, CSR 4535

ORIGINAL

As of October 4, 2004  
Revised as of July 7, 2005  
Further revised as of October 3, 2005  
Further revised as of November 7, 2005  
Further revised as of August 1, 2006

VIA FAX & U.S. MAIL

Michael Schenkman  
Bloom Hergott Diemer Rosenthal & LaViolette, LLP  
150 South Rodeo Drive  
Third Floor  
Beverly Hills, California 90212

RE: "UNTITLED HART HANSON/KATHY REICHS/BARRY JOSEPHSON  
PROJECT" ("Project")  
WARK ENTERTAINMENT, INC. *f/s/o* BARRY JOSEPHSON ("Company")

Dear Michael:

This letter sets forth the agreement ("Agreement") between Twentieth Century Fox Television, a unit of Twentieth Century Fox Film Corporation ("Fox"), and WARK ENTERTAINMENT, INC. ("Company") *f/s/o* BARRY JOSEPHSON ("Artist") in connection with the project currently untitled and referred to herein as the "UNTITLED HART HANSON/KATHY REICHS/BARRY JOSEPHSON PROJECT" ("Project").

1. **Pilot Development:** Fox hereby engages Company *f/s/o* Artist to supervise Hart Hanson and render such other non-writing executive producing services as Fox may request in connection with a 1-hour pilot script based on the Project. In consideration for such services, Fox agrees to the following.
2. **Pilot Producing Fees & Services:** If Fox produces a pilot based on the Pilot Script ("Pilot") which is Company-Developed (as set forth herein), Fox shall engage Company *f/s/o* Artist as an Executive Producer of the Pilot, on a pay-or-play basis, at a fee of \$50,000 ("Pilot Producing Fee"). If the Pilot is based on a Pilot Script which is not Company-Developed, then Fox shall have an option to engage Company *f/s/o* Artist as an Executive Producer at the same fee. Such option shall be exercised, if at all, by written notice to Company not later than 10 business days after Fox's written acceptance of a written network order for the Pilot. The Pilot Producing Fee shall be payable one-quarter promptly following commencement of Pilot pre-production, one-quarter promptly following commencement of Pilot principal photography, one-quarter promptly following

TV-#5740-v6-Barry\_Josephson\_EP\_agreement\_(non-writing)\_(Kathy\_Reichs\_project).DOC

Ex. 54-0001

As of October 4, 2004  
Revised as of July 7, 2005  
Further revised as of October 3, 2005  
Further revised as of November 7, 2005  
Further revised as of August 1, 2006  
Pilot Producing Deal  
Barry Josephson  
Page 2

completion of Pilot principal photography, and one-quarter promptly following the later of Fox's receipt of an original of this Agreement fully signed by Company and Artist or the delivery of the Pilot to the licensee. Notwithstanding the foregoing, if Fox elects to produce a Presentation in lieu of a Pilot, then: (i) Company's fee for said Presentation shall be negotiated in good faith with a floor of 50%, and a cap of 75%, of the Pilot Producing Fee set forth hereinabove; (ii) if Fox elects to complete the Presentation for telecast as an episode of the Series and Artist renders executive producer services in connection therewith, or the Presentation is telecast without additional or reshot scenes and Company and Artist have not been previously pay-or-played, Fox shall pay Company the difference between the Presentation fee and the Pilot fee promptly following Company's and Artist's completion of such services or said telecast, as applicable, but in no event shall Company receive more (in the aggregate) than the Pilot fee; and (iii) other than as provided in this sentence, all references to the Pilot in this Agreement shall be deemed references to the Presentation.

**3. Series Options & Fees:**

- a. **Fees:** If Fox produces a series based on the Pilot ("Series") which is Company-Developed and Artist completes all material Executive Producer services on the Pilot, Fox shall engage Company f/so Artist as an Executive Producer, on a pay-or-play basis, for all original episodes of the Series produced (for the life of the Series, so long as Artist is not in material uncured breach -- if such breach is susceptible to cure -- or default hereunder) at a fee of \$27,500 per original episode produced in the first Series production year and \$30,000 per original episode produced in the second Series production year, with 5% cumulative annual increases for each Series production year thereafter.
- b. **Compensation:** The fees set forth hereinabove cover the entire work period, including holidays, Saturdays and Sundays. No additional compensation shall be paid for incidental services unless specifically required by an applicable mandatory guild basic agreement. If so required, the additional compensation shall be paid at minimum guild rates. If Fox makes multi-segment episodes, each such full segment will constitute 1 episode for purposes of guarantee, and episodic compensation for 1 episode will be payable for each such segment. All episodic compensation payable hereunder may be advanced to Company on a weekly basis, the specific terms of which payment schedule shall be determined by Fox in its sole, good faith discretion. Company and Artist acknowledge and accept that weekly payments of episodic compensation are made as an accommodation to Company and do not establish a guarantee and/or time limit on Artist's services. Subject to the WGA Basic Agreement, until Fox receives an

As of October 4, 2004  
Revised as of July 7, 2005  
Further revised as of October 3, 2005  
Further revised as of November 7, 2005  
Further revised as of August 1, 2006  
Pilot Producing Deal  
Barry Josephson  
Page 3

original of this Agreement fully signed by Company, Fox shall withhold 10% of the payments set forth in Paragraph 3. hereof which may become due and payable. Such withheld sums, if any, shall be paid on a retroactive basis promptly following Fox's receipt of such original Agreement.

4. **Services:** Artist's Executive Producer services shall be meaningful, non-exclusive services (as set forth in paragraph 16.a. but without material interference from Company's other professional obligations) rendered on an in-person basis as needed by Fox and as normally and customarily rendered by network prime-time television series executive producers (non-writing, non-exclusive) in the U.S. television industry, consistent with the highest standards and shall include attending important network, studio and story meetings and table readings, supervising casting, the engagement of production staff, reviewing stories and scripts and submitting written comments thereon, and assisting with the editing and post-production of the Pilot and each episode of the Series. All services hereunder shall be performed consistent with Fox's reasonable directions, practices and policies (except as to creative matters, as to which the "reasonable" restriction shall not apply).
5. **Series Broadcast Bonus:** If Fox produces the Company Developed Series hereunder, Fox shall pay Company a Series Broadcast Bonus of \$25,000. The Series Broadcast Bonus is based on production and broadcast of 12 episodes (excluding the Pilot) during the first Series production year and shall be reduced proportionately if fewer episodes are produced and broadcast during said first year (and increased proportionately if additional episodes (up to 12) are produced and broadcast during said first year), except that no Series Broadcast Bonus shall be payable if fewer than 6 episodes (excluding the Pilot) are produced and broadcast during said first year. The applicable Series Bonus shall be payable 50% promptly following broadcast of the first 6 episodes (excluding the Pilot), with the remaining 50% payable in equal installments of 1/6 promptly following broadcast of each additional episode.
6. **Contingent Compensation:** With respect to the Series produced hereunder and subject to Company's complete performance of all of the terms and conditions of this Agreement, the following shall apply:
  - a. **MAGR:** For a Series that is Company-Developed, Company shall be entitled to receive an amount equal to 12.5% of 100% of the Defined Modified Adjusted Gross Receipts ("MAGR") derived from the Series, reducible, on a dollar-for-dollar basis, by amounts of contingent compensation (however denominated) payable to all third parties to a floor of an amount equal to 7.5% of 100% of MAGR

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- b. **Vesting:** The percentage of Contingent Compensation participation payable, if at all, to Company pursuant to Paragraph 7.a. shall vest as follows:
- i. 33-1/3 % upon Artist's completion of all material Executive Producer services on the Pilot;
  - ii. 33-1/3% upon Artist's completion of all material Executive Producer services with respect to the first production year of the Series; and,
  - iii. 33-1/3% upon Artist's completion of all material Executive Producer services with respect to the second production year of the Series.
- c. **Definition:** Company's MAGR shall be computed, determined and paid pursuant to Fox's standard Television Definition of MAGR (with a 12.5% Television Distribution Fee and a 12.5% Fox Administrative Charge). The Television Distribution Fee will not be charged with respect to Gross Receipts derived from the initial network license or any extensions or renewals thereof. In the event that Fox enters into an agreement with a network for the renewal of a Series following the expiration of the initial network license ("Network Renewal") and such Network Renewal provides for the network to pay to Fox, prospectively, payments in excess of the pattern budget for such additional seasons of the Series ("Premium License Fee"), then Fox shall charge the Television Distribution Fee on the amount by which the Premium License Fee exceeds the pattern budget. The remainder of the MAGR definition shall be Fox's standard MAGR definition, subject only to those changes as may be mutually agreed upon in writing following good faith negotiation within Fox's customary parameters for persons of Artist's stature as of the date of this agreement, but such definition shall include, among other things, the following:
- i. Series will not be cross-collateralized except that a Series may be cross-collateralized with a Pilot(s) and/or Presentation(s) on which it is based.
  - ii. The Fox Financing Charge shall be at prime plus 1%. There shall be no Fox Administrative Charge charged on Fox Financing Charge or Fox Financing Charge on Fox Administrative Charge or Fox Financing Charge on Fox Financing Charge.
  - iii. Production costs will not include any third-party contingent compensation (excluding only fixed amount bonuses and royalties), advances or deferrals payable out of or measured by MAGR, net proceeds or other contingent compensation definition or calculation.



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Fox, or under its control, in which any other Executive Producer or other producer of lesser credit is accorded credit. If and while Artist renders Executive Producer services hereunder, if any Executive Producer (excluding only the showrunner, if not Artist) or other producer of lesser credit (other than the nominee, award recipient, or subject of the congratulatory ad in which only honorees are mentioned) is included in the Excluded Ad, Artist also shall be accorded Executive Producer credit in such Excluded Ad.

- d. **Limitations:** Except as otherwise set forth in this Paragraph 8., all aspects of each credit shall be at Fox's sole discretion. All credits shall be subject to network (or other licensee) and applicable guild approval. Casual or inadvertent failure to accord credit as specified in this Paragraph 8. shall not be deemed to be a breach of the Agreement and shall not entitle Company and/or Artist to terminate this Agreement or seek injunctive relief. Fox agrees, upon receipt of written notice from Company which specifies Fox's failure to comply with this Paragraph 8., to make reasonable efforts to correct, or cause to be corrected, such failure on a prospective basis.
9. **Ownership:** Company and Artist agree that all of the results and proceeds of Company's and Artist's services hereunder (collectively, "Material") are and shall be created by Company and/or Artist as a "work-made-for-hire" for Fox for use as part of an audio-visual work and that Fox shall own solely and exclusively all results and proceeds of Company's and Artist's services, in perpetuity, in all media, throughout the universe, subject only to any applicable requirements of a collective bargaining agreement. If, and to the extent that the Material contains pre-existing works (in whole or in part) in which Company and/or Artist retains any interest, Company and Artist hereby irrevocably grant and assign all such rights to Fox. The rights granted to Fox under this Agreement are for use exclusively and in perpetuity, throughout the universe, in any media and by all technologies, now or later known or devised and include the rights generally known as "moral rights of authors." To the extent that any provision of this Paragraph does not vest fully and effectively in Fox all of the rights set forth herein, Company and/or Artist, as beneficial owner, hereby irrevocably and unconditionally grants to Fox all rights not so vested (including an immediate assignment of future copyright) throughout the universe, in perpetuity and in all media and by all technologies now known or hereafter devised, including all rights to receive royalties as the "author" thereof (but for further certainty, not including WGA required or contractual royalties, if any). Company and Artist agree not to institute any action on the grounds that any changes or use of the results or proceeds of Artist's services violates any moral rights of authors. Subject to Article 28. of the WGA Basic Agreement, each of Company and Artist warrants that: the Material will be Company's and/or Artist's original work (except to the extent the

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Material is based on ideas, concepts and materials supplied to Artist by Fox or incorporated at Fox's direction, or are based upon material in the public domain, which shall not be a material or substantial part of the results and product of Artist's services); Company and/or Artist has the sole right to grant all rights in and to the Material to Fox; and, to the best of Company's and Artist's knowledge in the exercise of reasonable prudence, Fox's use of the Material will not violate or infringe upon the rights of any third party and there will be no encumbrances of any kind affecting the Material or Fox's exercise of its rights therein.

**10. Distribution Controls:**

- a. **General:** Fox shall have complete, exclusive and unqualified discretion and control as to the time, manner, and terms of its distribution, exhibition and exploitation of each Series episode (including the Pilot), separately or in connection with other programs, in accordance with such policies, terms and conditions and through such parties as Fox in its business judgment may in good faith determine are consistent with business policy and proper or expedient and the decision of Fox in all such matters shall be binding and conclusive upon Company and Artist. Notwithstanding the foregoing, Fox shall accord good faith (meaningful) consultation to Artist with respect to the initial domestic off-network sales plan, subject to the reasonable availability and reasonable response time of Artist. Fox makes no express or implied warranty or representation as to the manner or extent of any distribution or exploitation of each Series episode (including the Pilot) nor the amount of money to be derived from the distribution, exhibition and exploitation of each Series episode (including the Pilot), nor as to any maximum or minimum amount of such monies to be expended in connection therewith. Fox does not guarantee the performance by any Subdistributor, licensee or exhibitor, of any contract regarding the distribution and exploitation of each Series episode (including the Pilot).
- b. **Dealings with Affiliates:** Each of Company and Artist acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television "platforms", networks, stations and programming services, video device distributors, record companies, internet companies, so called "E.Commerce companies", publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, "Affiliated Company or Companies"). Each of Company and Artist further acknowledges that Fox has informed Company and Artist that Fox intends to make use of Affiliated Companies in connection with its distribution and exploitation of the Series episodes (including the Pilot), as, when

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and where Fox deems it appropriate to do so. Each of Company and Artist expressly waive any right to object to such distribution and exploitation of any Series episode (including the Pilot) (or aspects thereof) or assert any claim that Fox should have offered the applicable distribution/exploitation rights to unaffiliated third parties (In lieu of, or in addition to, offering the same to Affiliated Companies). In consideration thereof, Fox agrees that Fox's transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the Affiliated Company enters into similar transactions with unrelated third party distributors for comparable programs. Each of Company and Artist agrees that Company's and Artist's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and Company and Artist hereby waive any right to seek or obtain preliminary or permanent equitable relief or punitive relief in connection with any such alleged failure.

- c. **Arbitration:** Any dispute arising under the provisions of this Paragraph 10. shall be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a mutually selected arbitrator experienced in the United States television industry. Although each side shall advance one-half of the fee of the arbitrator and for JAMS' services, the prevailing party in such arbitration shall be entitled to recover all costs of arbitration, including reasonable outside attorneys' fees and costs.
11. **Pay-or-Play:** All of Artist's services are to be rendered on a pay-or-play basis. Fox is not obligated to use Artist's services to produce or exploit the Series. Company and Artist may be discharged at any time without cause subject only to Fox's obligation to pay the balance of any fixed compensation (including fees, royalties and bonus(es) if and to the extent earned pursuant to this Agreement) and contingent compensation (if and to the extent vested pursuant to Paragraph 7 above) which may be due Company under this Agreement; provided, however, that the parties' respective obligations under Paragraphs 9 (Credit), 12 (Spinoffs/Sequels/Remakes), 13.b. (Indemnification) and 13.g. (Insurance) shall survive. If Fox exercises its pay-or-play rights, then any compensation earned by Company and/or Artist in the television industry during the period that Fox could have required Company and/or Artist to render services under this Agreement shall reduce Fox's obligation to pay Company compensation hereunder. If Fox exercises its pay-or-play rights, Company and/or Artist shall immediately notify Fox in writing of any such compensation earned by Company or Artist in the television industry. Fox shall not exercise its pay-or-play rights for the purpose of frustrating Company's vesting of rights and benefits hereunder.

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12. **Spin-Offs/Sequels/Remakes of Series:** For purposes of this Agreement, "spin-off" shall mean a spin-off, sequel, or remake of the Series:
- a. **First Opportunity:** Provided that the Pilot and Series are Company-Developed, Artist shall have the first opportunity to executive produce each Series spin-off, prequel/sequel and remake intended for initial U.S. television exhibition (respectively, "Spin-Off", "Prequel/Sequel" and "Remake"), on terms to be negotiated in good faith (but no less than terms set forth in this Agreement) within a 15-business day period from commencement of negotiations; provided that, in the case of a planted Spin-Off, Artist must be rendering Executive Producer services on the original Series at the time the Spin-Off is planted for the right of first opportunity to apply.
  - b. **Passive Participation:** Provided that the Pilot and Series are Company-Developed, if Artist elects not to executive produce pursuant to Paragraph 12.a. above, or in the case of a planted spin-off if such election is not available to Artist or no agreement is reached under Paragraph 12.a., the following shall apply: (i) for a generic spin-off or television prequel/sequel, Company shall receive 50% of the applicable rate of Royalty and MAGR to which Company is entitled from the original Series; and (ii) for a planted spin-off or television remake, Company shall receive 25% of the applicable rate of Royalty and MAGR to which Company is entitled from the original Series.
  - c. **Direct to Home Video Movies, Movies for Television, Television Miniseries and Theatrical Motion Pictures ("Derivative Production"):** In the event Fox elects to develop a Derivative Production based on a Series which is Company-Developed within seven years after completion of production of the last episode of such Series on which Artist performed Executive Producer services, Artist shall have the first opportunity to produce the first Derivative Production, if any, on terms to be negotiated in good faith within Fox's customary parameters for writers of Artist's stature in the theatrical motion picture or television industry, as applicable. The first negotiation right shall continue for each immediately following Derivative Production of the same applicable format produced by Fox within the applicable seven year period provided Artist renders all executive producer services on the immediately preceding applicable Derivative Production. If no agreement is reached within fifteen business days after Fox commences negotiations or if Artist is unavailable or declines to render services hereunder, Fox will have no further obligation to Company and/or Artist with respect to such Derivative Production(s) provided that Fox and Company/Artist will negotiate in

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good faith regarding the terms of Company's Passive Participation in such Derivative Production within Fox's customary parameters.

**13. Miscellaneous:**

- a. **Exclusivity:** Company's and Artist's services shall be non-exclusive but rendered on a meaningful basis, in-person as needed by Fox but without material interference from Company's other professional obligations. Each of Company and Artist warrants and represents that neither Company nor Artist has any commitments or obligations that will materially interfere with Company's and/or Artist's full compliance with the terms and conditions of this Agreement. Furthermore, each of Company and Artist warrants and represents that neither Company nor Artist shall accept any commitment or enter into any agreement that will materially interfere with Company's or Artist's full compliance with the terms and conditions hereunder. Fox shall not credit overscale payments or Company's or Artist's MAGR payments against Company's or Artist's residuals, program fees or other contractually required payments, or vice-versa (although such payments may be taken into consideration if calculating MAGR as provided in the MAGR definition).
- b. **Indemnification:**
  - i. **By Company and Artist:** Company and Artist agree to indemnify and hold harmless Fox, its subsidiaries, affiliates, parents and its and their successors, assigns, licensees, officers, directors and employees, from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of (i) the material breach by Company and/or Artist of any agreement or warranty made by Company and/or Artist hereunder and (ii) any tortious acts committed by Company and/or Artist while providing Series services.
  - ii. **By Fox:** Fox agrees to defend, indemnify and hold harmless Company and Artist from and against any and all third party claims, liability, losses, damages, costs, expenses (including reasonable outside attorneys' fees), judgments and penalties arising out of, resulting from, based upon or incurred because of: (A) the addition, subtraction or alteration by Fox of any results and proceeds of Artist's services; (B) materials specifically furnished by Fox for use by Artist hereunder; and (C) the development, production, distribution, and/or exploitation of the Pilot and/or Series and/or elements thereof except to the extent covered by Company's and Artist's indemnifications of Fox (as set forth in subparagraph a.i above).

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- c. **"Company Developed" Definition:** For purposes of this Agreement, Company Developed shall mean the following:
  - i. With respect to the Pilot, Artist actively participates in the development of the Pilot Script (including all important studio and network meetings relating thereto) and Hart Hanson receives sole "written by" credit on the Pilot; and
  - ii. With respect to the Series, in addition to the conditions set forth in subparagraph i., Hart Hanson is accorded sole "created by" credit and Artist renders all Pilot Executive Producer services.
- d. **"Fox Disability":** If Fox's normal production operations are materially hampered or otherwise materially interfered with by reason of any event of Force Majeure and/or by virtue of any disruptive events (including, but not limited to, a labor dispute or strike) which are beyond Fox's control for a period of 2 consecutive weeks or more ("Fox Disability"), then Fox shall have the right at any time upon written notice to Company and Artist to terminate this Agreement and/or postpone the commencement of or suspend all or some of the rendition of services by Artist and the running of time hereunder for such time as the Fox Disability shall continue (provided that those provisions identified in paragraph 11 above as surviving termination shall similarly survive a suspension or termination hereunder). During a period of suspension resulting from a Fox Disability, Artist may render services for themselves or any party other than Fox, subject to Artist's ability to resume the rendition of service to Fox upon 48 hours notice, which shall be promptly confirmed in writing. If production of the Series is terminated due to a Fox Disability and resumes within a period of 1 year following such termination, Artist shall have the right to be reinstated on the Series pursuant to the terms of this Agreement as, when and where Fox reasonably requires. Fox shall notify Artist as soon as reasonably practicable of Fox's intention to resume production.
- e. **Fox:** In the event that Fox's assignee, designee or successor-in-interest produces the Pilot and/or Series in lieu of Fox, all references in this Agreement to Fox shall be deemed references to said assignee, designee or successor-in-interest.
- f. **Employment Eligibility and Payment Requirements:** As an express condition to Fox's performance under this Agreement, Company and Artist must submit a form I-9 (Employment Eligibility Verification Form) and original documents satisfactory to prove Company's and Artist's employment eligibility. All payments hereunder are subject to Fox's receipt of such documentation (e.g., W-9

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and Articles of Incorporation) as may be required by federal, state and local laws and Fox policies (including, but not limited to, auditing practices) as may be in effect at the time payments, if any, are processed.

- g. **Insurance:** Company and Artist shall be insured by Fox's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto shall be insured by Fox's errors and omissions and general liability insurance policies for the Pilot and Series to the extent that Fox obtains and maintains such policies, subject to the terms, conditions and restrictions of such policies and endorsements thereto.
- h. **Travel:** If Fox requires Artist to travel in connection with the development of the Project or the Pilot, or temporarily in connection with the Series, Fox shall provide Artist with first-class round-trip air travel, first-class hotel accommodations, first class ground transportation or, at Fox's election, reimbursement of rental-car expenses up to \$40 per day (all on an "if available" and "if used" basis) and a reasonable per diem equal to the highest per diem paid to any non-actor on the Pilot or Series, but in no event greater than \$100, all in accordance with Fox's then-customary policies for persons of Artist's stature.
- i. **Office:** While Artist is rendering Executive Producer services hereunder, Fox shall provide Artist with an office with customary furnishings, access to an assistant, and parking (which may be reserved, subject to availability), all pursuant to Fox's then customary policies, provided that Artist shall not be provided with more than one office by Fox or any of its affiliated companies (in the aggregate).
- j. **Videocassette:** Upon Artist's request following telecast of the Pilot, Artist shall be provided with one ½ inch videocassette or DVD (at Fox's sole election) copy of any Pilot produced hereunder for Artist's personal, non-commercial use.
- k. **FCC Compliance:** Each of Company and Artist warrants and represents that neither Company and/or Artist will pay nor agree to pay any money, service or other valuable consideration as defined in Section 507 of the Communications Act of 1934 as amended, for the inclusion of any matter in any motion picture, and that neither Company nor Artist has accepted nor will knowingly accept nor agree to accept any money, service or other valuable consideration (other than payment to Company hereunder) for the inclusion of any matter in any motion picture. Company and Artist will, during or after the term of Artist's services hereunder, promptly on request, complete Fox's standard Section 507 report forms.

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The remaining terms of the Agreement are Fox's standard terms and conditions, subject to such changes thereto, if any, as Fox customarily makes in contracts with persons of Company's stature in the television industry at the time of this Agreement. This is the complete Agreement between the parties unless and until a more detailed formal contract is executed.

AGREED & ACCEPTED:

WARK ENTERTAINMENT, INC.  
("Company")

TWENTIETH CENTURY FOX TELEVISION  
a unit of Twentieth Century Fox Film Corporation ("Fox")

By:   
Its: president

By:   
Its: SEP

Federal I.D. 

I have read the terms of the foregoing Agreement and fully understand its terms and agree as an express inducement to the parties entering into the Agreement to render all services, grant all rights necessary, and observe all requirements of Lender under the Agreement. If I fail to do so, Fox shall have the same rights against me personally as if I had entered into the Agreement directly with Fox.

Barry Josephson ("Artist")

  
SS# 

# **Attachment 4(b)**

## **Exhibit I**

1 GLENN D. POMERANTZ (State Bar No. 112503)  
glenn.pomerantz@mto.com  
2 ANJAN CHOUDHURY (State Bar No. 236039)  
anjan.choudhury@mto.com  
3 JOHN L. SCHWAB (State Bar No. 301386)  
john.schwab@mto.com  
4 ALLYSON R. BENNETT (State Bar No. 302090)  
allyson.bennett@mto.com  
5 MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue  
6 Thirty-Fifth Floor  
Los Angeles, California 90071-1560  
7 Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
8

Attorneys for Claimants and Counter-  
9 Respondents TWENTIETH CENTURY FOX  
FILM CORPORATION; FOX  
10 ENTERTAINMENT GROUP, LLC; TWENTY-  
FIRST CENTURY FOX, INC.; FOX  
11 BROADCASTING COMPANY

JAMS

LOS ANGELES, CALIFORNIA

14 TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation;  
15 FOX ENTERTAINMENT GROUP, LLC, a  
Delaware limited liability corporation;  
16 TWENTY-FIRST CENTURY FOX, INC., a  
Delaware corporation; and FOX  
17 BROADCASTING COMPANY, a Delaware  
corporation,

18 Claimants,

19 vs.

20 WARK ENTERTAINMENT, INC. f/s/o  
21 BARRY JOSEPHSON; TEMPERANCE  
BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
22 SNOOKER DOODLE PRODUCTIONS, INC.  
f/s/o EMILY DESCHANEL; and BERTHA  
23 BLUE, INC. f/s/o DAVID BOREANAZ,

24 Respondents.

JAMS Ref. No. 1220052735

**STIPULATION REGARDING WARK  
CLAIMS IN ARBITRATION**

Judge: Hon. Peter D. Lichtman (Ret.)

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WARK ENTERTAINMNET, INC. f/s/o  
BARRY JOSEPHSON; TEMPERANCE  
BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
SNOOKER DOODLE PRODUCTIONS, INC.  
f/s/o EMILY DESCHANEL; and BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ,  
  
Counter-Claimants,  
  
vs.  
  
TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation;  
FOX ENTERTAINMENT GROUP, LLC, a  
Delaware limited liability corporation;  
TWENTY-FIRST CENTURY FOX, INC., a  
Delaware corporation; and FOX  
BROADCASTING COMPANY, a Delaware  
corporation,  
  
Counter-Respondents.

1 Pursuant to Scheduling Order No. 1, Claimants and Counter-Respondents Twentieth  
2 Century Fox Film Corporation, et al. ("Fox") and Respondent and Counter-Claimant Wark  
3 Entertainment, Inc. ("Wark") have met and conferred regarding Judge Rico's Order of April 8,  
4 2016 ("April 8 Order") to determine the claims that are the subject of this arbitration.  
5 Accordingly, Fox and Wark have agreed as follows:

6 1. This stipulation only concerns the claims that are the subject of this arbitration.  
7 The parties agree that this stipulation is without prejudice to any party's position, whether in this  
8 arbitration or the related proceedings before the Superior Court, concerning the relevance of any  
9 particular factual allegation to such claims, or to the discoverability or admissibility of any  
10 evidence for such claims. Rather, in accordance with Scheduling Order No. 1, the parties have  
11 made their best efforts to reach agreement on the claims in this arbitration consistent with the  
12 April 8 Order.

13 2. The April 8 Order divided the claims in this dispute into three categories: First,  
14 "Self-Dealing Claims," which are claims related to actions by Fox concerning the "alleged failure  
15 to 'make transactions with affiliated entities on monetary terms comparable to the terms on which  
16 the affiliated entities enter into similar transactions with unrelated third party distributors for  
17 comparable programs.'" April 8 Order at 2-3. Second, there are "2009 Release" claims, which  
18 are claims related to 2009 release agreements concerning Seasons 5 and 6 of the television series.  
19 *See id.* at 6. Third, there are "Contingent Compensation Claims," which challenge "Fox's  
20 calculation or reporting" of Respondent/Counter-Claimants' contingent compensation. *See id.* at  
21 4. The Self-Dealing and 2009 Release claims are arbitrable; the Contingent Compensation claims  
22 are not. This division of arbitrability of claims is irrespective of (a) whether the claims are  
23 contractual, tort, statutory, equitable or otherwise in nature; and (b) which Fox entity or entities  
24 the claims are alleged against. *See id.* at 6-7.

25 3. Fox and Wark understand and agree that this division of claims relates to the  
26 arbitration demands and cross-demands as follows:  
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**Fox JAMS Statement of Claim**

4. All of the third, fourth, fifth, sixth, and seventh causes of action (paragraphs 48-62) of Fox’s Statement of Claim are arbitrable, as those causes of action concern only Self-Dealing or 2009 Release Claims. The parts of the first, second, eighth, and ninth causes of action of Fox’s Statement of Claim (paragraphs 40-47, 63-68) concerning Self-Dealing or 2009 Release Claims are arbitrable.

5. Attached hereto as Exhibit A is the Fox Statement of Claims. Claims that are fully arbitrable are highlighted in yellow, and claims that are partially arbitrable (because they concern Contingent Compensation Claims in addition to Self-Dealing or Release Claims) are highlighted in blue.

**Wark Superior Court Complaint**

6. The alleged failures that form the basis for claims in the Complaint brought by Wark (“Wark Complaint”) are contained in paragraph 25 of that document. Claims related to the alleged failures in paragraphs 25.D-E of the Wark Complaint are arbitrable, while claims related to the alleged failures in paragraphs 25.A-C, and 25.F-G are not arbitrable.

7. With respect to the alleged failures that are arbitrable (paragraphs 25.D-E), the Self-Dealing Claims “form the basis of parts of the first, second, third, fourth, fifth, seventh, and eight[h] causes of action,” and the 2009 Release Claims form “part of the basis for the fifth and sixth causes of action.” April 8 Order at 3, 6. The third, fourth, fifth, and sixth causes of action (paragraphs 34-63) are fully arbitrable. The first, second, seventh, and eighth causes of action (paragraphs 26-33, 64-68) are arbitrable only insofar as they concern Self-Dealing or 2009 Release Claims, and not arbitrable insofar as they relate to Contingent Compensation Claims.

8. Attached hereto as Exhibit B is the Wark Complaint. Claims that are fully arbitrable are highlighted in yellow, and claims that are partially arbitrable (because they concern Contingent Compensation Claims in addition to Self-Dealing or Release Claims) are highlighted in blue.

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DATED: May 10, 2016

MUNGER, TOLLES & OLSON LLP  
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TWENTIETH CENTURY FOX FILM  
CORPORATION; FOX ENTERTAINMENT GROUP,  
LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX  
BROADCASTING COMPANY

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DATED: May 10, 2016

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By: 

DALE F. KINSELLA  
CHAD FITZGERALD

Attorney for Respondent and Counter-Claimant WARK  
ENTERTAINMENT, INC., f/s/o BARRY  
JOSEPHSON.

# **Exhibit A**

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10 TWENTY-FIRST CENTURY FOX, INC.; FOX  
BROADCASTING COMPANY

11 JAMS

12 LOS ANGELES, CALIFORNIA  
13

14 TWENTIETH CENTURY FOX FILM  
15 CORPORATION, a Delaware corporation;  
FOX ENTERTAINMENT GROUP, LLC, a  
16 Delaware limited liability corporation;  
TWENTY-FIRST CENTURY FOX, INC., a  
17 Delaware corporation; and FOX  
18 BROADCASTING COMPANY, a Delaware  
corporation,

19 Claimants,

20 vs.

21 WARK ENTERTAINMENT, INC. f/s/o  
BARRY JOSEPHSON; TEMPERANCE  
22 BRENNAN, L.P. f/s/o KATHLEEN REICHS;  
SNOOKER DOODLE PRODUCTIONS, INC.  
23 f/s/o EMILY DESCHANEL; and BERTHA  
BLUE, INC. f/s/o DAVID BOREANAZ,  
24

25 Respondents.

JAMS File No.

**STATEMENT OF CLAIM**

26  
27 Claimants Twentieth Century Fox Television ("TCFTV"), a division of Twentieth Century  
28 Fox Film Corporation; Fox Entertainment Group, LLC ("FEG"); Twenty-First Century Fox, Inc.

1 (“21CF”); and Fox Broadcasting Company (“FBC” and, together with other Claimants, “Fox”)  
2 allege against Respondents Wark Entertainment, Inc., f/s/o Barry Josephson; Temperance  
3 Brennan, L.P. f/s/o Kathleen Reichs; Snooker Doodle Productions, Inc. f/s/o Emily Deschanel;  
4 and Bertha Blue, Inc. f/s/o David Boreanaz (collectively, “Respondents”) as follows:

### 5 INTRODUCTION

6 1. This dispute concerns Respondents’ demand that Fox pay them millions of dollars  
7 in undue compensation for their work on the television series *Bones* (the “Series”). In accordance  
8 with its agreements, TCFTV has already paid Respondents millions of dollars for their services on  
9 the Series. Fox denies that it has any additional liability to Respondents.

10 2. Under their relevant agreements with TCFTV (“the Agreements,” true and correct  
11 copies of which are attached hereto as Exhibits 1-4), Respondents — who have always been  
12 represented by sophisticated legal counsel — are claiming entitlement to a contingent percentage  
13 of the modified adjusted gross receipts (“MAGR”) derived from the Series, determined pursuant  
14 to Fox’s standard television definition of MAGR. Fox has complied with all of its obligations  
15 under the Agreements, and does not owe any further payment to Respondents. Nevertheless,  
16 Respondents have claimed in two separate lawsuits (true and correct copies of the Complaints in  
17 those lawsuits are attached hereto as Exhibits 5 (“Wark Compl.”) and 6 (“TB Compl.”)) that Fox  
18 has improperly reduced Respondents’ contingent compensation by miscalculating MAGR, by  
19 failing to negotiate comparable deals with Affiliated Companies, and by failing to consult with  
20 them under the Agreements. They also allege that Fox failed to allow a full and complete audit of  
21 the Series’s books and records.

22 3. The Agreements, however, all contain broad arbitration clauses that provide that all  
23 of Respondents’ claims (the “Claims”) must be submitted to binding arbitration before JAMS.<sup>1</sup>

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24  
25 <sup>1</sup> Deschanel’s and Boreanaz’s agreements covering Seasons 8-11 of the Series (unlike their  
26 agreements for Seasons 1-7) provide for disputes to be submitted to a general non-jury reference  
27 pursuant to California Code of Civil Procedure § 638, or, if the dispute is “not capable of being  
28 decided” by means of a general reference, to arbitration. Exs. 7 (“Boreanaz 2012 Agreement”) Rider at 3, and 8 (“Deschanel 2012 Agreement”) Rider at 3. Fox does not believe that Boreanaz and Deschanel are bringing claims related to Seasons 8-11 in their Complaints. Even if they were,

1 Specifically, they provide that “[a]ny dispute arising under the provisions of this [Distribution  
2 Controls] Paragraph” must be arbitrated. *See* Ex. 1 (“Josephson Agreement”) ¶ 10(c).<sup>2</sup> The  
3 Distribution Controls Paragraph, in turn, provides that TCFTV makes “no express or implied  
4 warranty” as to the “manner or extent” of the distribution or exploitation of the Series, or the  
5 “amount of money” to be derived therefrom. *See, e.g., id.* ¶ 10(a). It further acknowledges that  
6 “[TCFTV] intends to make use of Affiliated Companies [as defined in the Agreement] in  
7 connection with its distribution and exploitation of the Series episodes” and that Respondents  
8 “expressly waive any right to object to such distribution and exploitation.” *See, e.g., id.* ¶ 10(b).  
9 TCFTV, in turn, agrees that any transactions with Affiliated Companies “will be on monetary  
10 terms comparable to the terms on which the Affiliated Company enters into similar transactions  
11 with unrelated third party distributors for comparable programs.” *Id.*

12 4. All of the Claims arise under the Distribution Controls Paragraph. First,  
13 Respondents make self-dealing and syndication accusations that allege direct violations of the  
14 terms of that paragraph. Second, Respondents’ claims that TCFTV miscalculated MAGR, failed  
15 to consult with them, and failed to permit a full and complete audit clearly challenge TCFTV’s  
16 decisions concerning the manner and extent of distribution and exploitation of the Series. Lastly,  
17 Josephson and Reichs make allegations challenging a 2009 release of claims they executed  
18 concerning network fees for Seasons 5 and 6 of the Series (the “2009 Release”). Because the  
19 allegations with respect to the 2009 Release plainly challenge TCFTV’s dealings with alleged  
20 Affiliated Companies, they are also subject to arbitration under the Distribution Controls  
21 Paragraph.

22 5. The claims with respect to the 2009 Release also fall within a second arbitration  
23 provision. The 2009 Release requires that “any dispute [that] arises out of, or with respect to, this  
24 Agreement, including a claimed breach thereof (whether sounding in contract or tort)” that cannot  
25 \_\_\_\_\_  
26 however, Fox would move to compel the submission of those claims to a general reference and, if  
27 that motion were denied, to include them in the instant arbitration.

28 <sup>2</sup> For ease of reference, this Statement of Claim relies largely on the Josephson Agreement.  
Except where indicated, the terms of the other relevant Agreements are materially similar to those  
of the Josephson Agreement.

1 be resolved through non-binding mediation must be resolved through “binding arbitration before a  
2 mutually selected arbitrator affiliated with J.A.M.S.” Ex. 9 (“Release”) ¶ 4.

3 6. Accordingly, Claimants respectfully demand arbitration of the Claims, to take place  
4 in Los Angeles, California, pursuant to the agreements of the parties.

5 **PARTIES**

6 7. At all relevant times, Twentieth Century Fox Film Corporation was and is a  
7 corporation organized and existing under the laws of the State of Delaware, with its principal place  
8 of business in Los Angeles, California. TCFTV is a division of Twentieth Century Fox Film  
9 Corporation. Both TCFTV and Twentieth Century Fox Film Corporation are referred to herein as  
10 TCFTV. Twentieth Century Fox Film Corporation is an indirectly wholly owned subsidiary of  
11 21CF.

12 8. At all relevant times, FEG was and is a limited liability company organized and  
13 existing under the laws of the State of Delaware, with its principal place of business in Los  
14 Angeles, California. FEG is an indirectly wholly owned subsidiary of 21CF.

15 9. At all relevant times, 21CF was and is a corporation organized and existing under  
16 the laws of the State of Delaware, with its principal place of business in New York, New York.

17 10. At all relevant times, FBC was and is a corporation organized and existing under  
18 the laws of the State of Delaware, with its principal place of business in Los Angeles, California.  
19 FBC is an indirectly wholly owned subsidiary of 21CF.

20 11. On information and belief, at all relevant times, Wark Entertainment, Inc. was and  
21 is a corporation organized and existing under the laws of the State of California, with its principal  
22 place of business in Los Angeles County, California. Wark Entertainment, Inc. is the loan-out  
23 company through which Barry Josephson provides his services to the Series.

24 12. On information and belief, at all relevant times, Temperance Brennan, L.P. was and  
25 is a partnership organized under the laws of the State of Delaware, with its principal place of  
26 business in Los Angeles County, California. Temperance Brennan, L.P. is the loan-out company  
27 through which Kathleen Reichs provides her services to the Series.

28



1           17.     The Distribution Controls Paragraph makes clear that Respondents have only a  
2 contingent entitlement to monies derived from *Bones* — including a percentage of MAGR — and  
3 that the Agreements do not entitle Respondents to any involvement in the decisions that determine  
4 the Series’s profitability or guarantee that the Series will earn any specific amount of money for  
5 TCFTV and, in turn, Respondents. Rather, aside from a few listed exceptions, TCFTV has  
6 complete discretion with respect to how to distribute and monetize the Series, and makes no  
7 promises about “the amount of money to be derived from the distribution, exhibition and  
8 exploitation of each Series episode,” or even that the Series will be broadcast at all. *See, e.g.,*  
9 Josephson Agreement ¶ 10(a).

10           18.     The Distribution Controls Paragraph further discloses that TCFTV “intends to  
11 make use of Affiliated Companies [as defined in the Agreements] in connection with its  
12 distribution and exploitation of the Series episodes . . . as, when and where [TCFTV] deems it  
13 appropriate to do so,” and waives any right that Respondents may otherwise have had “to object to  
14 such distribution and exploitation of any Series episode . . . or assert any claim that [TCFTV]  
15 should have offered the applicable distribution/exploitation rights to unaffiliated third parties.”  
16 *See, e.g.,* Josephson Agreement ¶ 10(b). In return, TCFTV promises in the Distribution Controls  
17 Paragraph that transactions with an Affiliated Company will be “on monetary terms comparable to  
18 the terms on which the Affiliated Company enters into similar transactions with unrelated third  
19 party distributors for comparable programs.” *See, e.g., id.*

20           19.     If an individual entitled to contingent compensation does not believe that TCFTV  
21 properly calculated his or her share of the Series’s MAGR, TCFTV’s MAGR definitions (which  
22 are incorporated into the Agreements), provide that he or she may, within a specified timeframe,  
23 notice an audit of TCFTV’s books and records. Ex. 10 (“MAGR Definitions”) ¶ VI(G). If the  
24 individual wishes to contest TCFTV’s calculation, he or she must submit a written “objection” to  
25 those calculations within a particular time period. *Id.* ¶ VI(H). If the objections are not resolved  
26 amicably, the individual may bring a claim within a certain time after the applicable objection  
27 period expires. *Id.*

28



1 BC602548). The Complaints bring claims against TCFTV for breach of contract, breach of the  
2 covenant of good faith and fair dealing, and declaratory judgment, *see* Wark Compl. ¶¶ 26-33, 64-  
3 66; TB Compl. ¶¶ 78-88, 123-27; against FBC, FEG, and 21CF for inducing breach of contract  
4 and intentional interference with contract, *see* Wark Compl. ¶¶ 34-52; TB Compl. ¶¶ 99-117;  
5 against TCFTV, FBC, and FEG for unfair competition, *see* Wark Compl. ¶¶ 53-59; and against all  
6 Claimants for fraudulent inducement, fraudulent concealment, and an accounting, *see* Wark  
7 Compl. ¶¶ 60-63, 67-68; TB Compl. ¶¶ 89-98, 118-22.

8         26. All of the claims raised in those Complaints, however, are subject to the parties'  
9 agreements to arbitrate. Indeed, binding and applicable arbitration provisions are found in the  
10 very Agreements that the Respondents claim they want enforced.

11         27. Respondents' allegations in those Complaints fall into four general categories.  
12 First, Respondents allege that TCFTV failed to abide by its obligation in the Distribution Controls  
13 Paragraph to "make transactions with [Affiliated Companies] on monetary terms comparable to  
14 the terms on which the [Affiliated Company] enter[s] into similar transactions with unrelated third  
15 party distributors for comparable programs" (the "Self-Dealing Claims"). *See* Wark Compl. ¶  
16 25(D); TB Compl. ¶¶ 43-54.

17         28. Second, Respondents contend that, in various ways, TCFTV miscalculated the  
18 income they are due or failed to consult with them about that income (the "Contingent  
19 Compensation Claims"). *See* Wark Compl. ¶¶ 25(A)-(C), (F)-(G); TB Compl. ¶¶ 55-71. Broadly  
20 speaking, MAGR is calculated by subtracting TCFTV's expenses and other defined deductions  
21 from TCFTV's "Defined Gross Receipts." The Contingent Compensation Claims involve both  
22 sides of the MAGR equation: They allege that TCFTV minimized the amount of money that it  
23 earned from its distribution, exploitation, and marketing of the Series; and maximized the  
24 expenses that it incurred in connection with said distribution, exploitation, and marketing. *See*  
25 Wark Compl. ¶¶ 25(A)-(C); TB Compl. ¶¶ 55-68. Additionally, Respondents have raised  
26 Contingent Compensation Claims concerning how alleged failures to consult them purportedly  
27 affected the income they derived from MAGR itself, *see* Wark Compl. ¶ 25(F); TB Compl. ¶ 70,  
28

1 and from TCFTV's classification of episodes of the Series, *see* Wark Compl. ¶ 25(G); TB Compl.  
2 ¶ 69.

3 29. Third, Reichs, Boreanaz, and Deschanel allege that TCFTV breached the  
4 Agreements by failing to provide the auditor with a variety of documents that they believe he  
5 needed to complete his review (the "Audit Claims"). TB Compl. ¶¶ 38-41.

6 30. Fourth, Josephson and Reichs challenge the validity of the 2009 Release, arguing  
7 that TCFTV and FBC falsely claimed that FBC would cancel the Series if they did not sign it.  
8 *See* Wark Compl. ¶¶ 53-63; TB Compl. ¶¶ 73-77.

9 31. Fox denies that it has any liability on any of Respondents' claims. First, all of  
10 TCFTV's transactions with Affiliated Companies were on monetary terms that were at least  
11 equivalent to those that the affiliated entity offers to unrelated third parties. Second, TCFTV has  
12 fully complied with the audit provisions of the Agreements. Third, TCFTV correctly calculated  
13 MAGR, and, consequently, the contingent compensation to which Respondents were entitled.  
14 Fourth, the 2009 Release is valid and binding on Josephson and Reichs.

15 32. Through this Demand, Fox seeks to enforce the parties' agreement to arbitrate these  
16 disputes. Specifically, Fox seeks a declaration that: TCFTV has not breached the parties'  
17 contracts or the covenant of good faith and fair dealing; FBC, FEG, and 21CF did not induce  
18 TCFTV to breach its contracts with Respondents or intentionally interfere with those contracts;  
19 TCFTV, FBC, and FEG did not engage in unfair competition; no Claimant fraudulently induced  
20 Reichs or Josephson to sign the Release or fraudulently concealed material facts with respect to  
21 the Release; and Respondents are not entitled to an accounting. To the extent that Respondents  
22 seek to raise any additional claims against Fox in their Superior Court Complaints on the basis of  
23 those Agreements, Fox also seeks to resolve those disputes in this binding arbitration before  
24 JAMS.

### 25 JURISDICTION

26 33. Josephson's, Reichs's, and Boreanaz's Initial Agreements, and Boreanaz's and  
27 Deschanel's 2008 Agreements, provide that any dispute that arises under the Distribution Controls  
28 Paragraph shall be resolved by binding arbitration before JAMS.

1           34.     In particular, Paragraph 10(c) of the Josephson Agreement (attached hereto as  
2 Exhibit 1) states:

3                     **Arbitration:** Any dispute arising under the provisions of this Paragraph 10.  
4 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,  
5 J.A.M.S. ("JAMS") in binding arbitration in Los Angeles, California and before a  
6 mutually selected arbitrator experienced in the United States television industry.  
7 Although each side shall advance one-half of the fee of the arbitrator and for  
8 JAMS' services, the prevailing party in such arbitration shall be entitled to recover  
9 all costs of arbitration, including reasonable outside attorneys' fees and costs.

10           35.     Paragraph 13(c) of the Reichs Agreement (attached hereto as Exhibit 2) states:

11                     **Arbitration:** Any dispute arising under the provisions of this Paragraph  
12 [titled "Distribution Controls"] shall be arbitrated by, and under the rules of,  
13 J.A.M.S./Endispute ("JAMS") in binding arbitration in Los Angeles, California and  
14 before a mutually selected arbitrator experienced in the United States television  
15 industry. Although each side shall advance one-half of the fee of the arbitrator and  
16 for JAMS' services, the prevailing party in such arbitration shall be entitled to  
17 recover all costs of arbitration, including reasonable attorneys' fees and costs.

18           36.     The "Distribution Controls" sub-paragraph of the "Contingent Compensation"  
19 provision of the Rider to the 2005 Boreanaz Agreement (attached hereto as Ex. 3) states:

20                     **Arbitration:** Any dispute arising under the provisions of this Paragraph shall  
21 be arbitrated by, and under the rules of, J.A.M.S. ("JAMS") in binding arbitration  
22 in Los Angeles, California and before a mutually selected arbitrator experienced in  
23 the United States television industry. Although each side shall advance one-half of  
24 the fee of the arbitrator and for JAMS' services, the prevailing party in such  
25 arbitration shall be entitled to recover all costs of arbitration, including reasonable  
26 outside attorneys' fees and costs.<sup>5</sup>

27           37.     The "Distribution Controls" Provision of the Rider to the 2008 Deschanel  
28 Agreement (attached hereto as Exhibit 4) states:

**Arbitration:** Any dispute arising under the provisions of this "Distribution  
Controls" Paragraph shall be arbitrated by, and under the rules of, J.A.M.S.  
("JAMS") in binding arbitration in Los Angeles, California and before a mutually  
selected arbitrator experienced in the United States television industry. Although  
each side shall advance one-half of the fee of the arbitrator and for JAMS' services,  
the prevailing party in such arbitration shall be entitled to recover all costs of  
arbitration, including reasonable outside attorneys' fees and costs.

                   38.     The 2009 Release (attached hereto as Exhibit 9) similarly provides that the Parties'  
disputes with respect to the 2009 Release shall be subject to binding arbitration before JAMS.

---

<sup>5</sup> The 2008 Boreanaz Agreement incorporates the 2005 Boreanaz Agreement's arbitration provision. See Ex. 11 ("2008 Boreanaz Agreement") Rider at 1.

1 39. In particular, Paragraph 4 of the 2009 Release states:

2 Negotiation, Mediation and Arbitration: If any dispute (“Dispute”) arises  
3 out of, or with respect to, this Agreement, including a claimed breach thereof  
4 (whether sounding in contract or tort), and cannot be settled through negotiation,  
5 the parties agree first to try in good faith to arbitrate the Dispute by mediation  
6 utilizing the mediation services of a mutually agreed upon mediator. Written notice  
7 of mediation must be given as to all Disputes. The mediation of all Disputes must  
8 be completed within 45 business days from the date of selection of the mediator.  
9 Negotiation shall be non-binding, directed towards resolution of all outstanding  
10 issues, and designed to produce a comprehensive settlement of the Dispute. If,  
11 after efforts to mediate and resolve outstanding issues, there remain unresolved  
12 issues, either Party may commence arbitration proceedings in Los Angeles through  
13 binding arbitration before a mutually selected arbitrator affiliated with J.A.M.S.  
14 and with experience in the United States television industry.

9 **FIRST CAUSE OF ACTION**

10 **Declaratory Relief (No Breach of Contract)**

11 **(By TCFTV Against All Respondents)**

12 40. Claimants incorporate paragraphs 1-39 above, inclusive, of this Demand as though  
13 fully set forth herein.

14 41. TCFTV has complied fully with all of its obligations under the Agreements.

15 42. At present, an actual, substantial controversy exists between TCFTV and  
16 Respondents. Respondents contend that TCFTV has violated the Agreements in several respects,  
17 including by entering into transactions with Affiliated Companies on terms that are not  
18 comparable to those that the Affiliated Company gives to unrelated third parties, by miscalculating  
19 MAGR, by failing to consult with them about the MAGR definitions or syndication, by failing to  
20 allow a full and complete audit, and by classifying episodes by the season in which they were  
21 produced rather than the season in which they aired.

22 43. TCFTV, in contrast, contends and seeks a declaration here that it has complied with  
23 the Agreements in good faith and has not breached any obligation to Respondents, and that  
24 Respondents are entitled to no remedy whatsoever for any alleged self-dealing, miscalculation of  
25 MAGR, failure to consult, failure to allow a full and complete audit, or misclassification of  
26 episodes.

1 **SECOND CAUSE OF ACTION**

2 **Declaratory Relief (No Breach of Implied Covenant of Good Faith and Fair Dealing)**

3 **(By TCFTV Against All Respondents)**

4 44. Claimants incorporate paragraphs 1-43 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 45. TCFTV has complied fully with all of its obligations under the Agreements.

7 46. At present, an actual, substantial controversy exists between TCFTV and  
8 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
9 Complaints that TCFTV has breached the covenant of good faith and fair dealing by, among other  
10 conduct, licensing the Series at below-market rates, altering the license agreement without  
11 informing Respondents, and miscalculating MAGR.

12 47. TCFTV, in contrast, contends and seeks a declaration that it has complied fully  
13 with all of its obligations under the Agreements and has not committed any breach of the covenant  
14 of good faith and fair dealing, and that Respondents are entitled to no remedy whatsoever for any  
15 alleged self-dealing, alteration of licenses, or miscalculation of MAGR.

16 **THIRD CAUSE OF ACTION**

17 **Declaratory Relief (No Fraudulent Inducement)**

18 **(By All Claimants Against Reichs and Josephson)**

19 48. Claimants incorporate paragraphs 1-47 above, inclusive, of this Demand as though  
20 fully set forth herein.

21 49. At present, an actual, substantial controversy exists between Claimants and Reichs  
22 and Josephson regarding the parties' rights, duties, and obligations. Reichs and Josephson allege  
23 in their Complaints that the 2009 Release is a result of fraudulent inducement.

24 50. Claimants, in contrast, contend and seek a declaration that the 2009 Release was  
25 not the result of fraudulent inducement, that the 2009 Release is valid and binding on Reichs and  
26 Josephson, and that Reichs and Josephson are entitled to no remedy whatsoever with respect to the  
27 2009 Release.

28

1 **FOURTH CAUSE OF ACTION**

2 **Declaratory Relief (No Fraudulent Concealment)**

3 **(By All Claimants Against Reichs)**

4 51. Claimants incorporate paragraphs 1-50 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 52. At present, an actual, substantial controversy exists between Claimants and Reichs  
7 regarding the parties' rights, duties, and obligations. Reichs alleges in her Complaint that  
8 Claimants fraudulently concealed material facts relating to their intentions to modify the licensing  
9 agreement between FBC and TCFTV in order to induce her into signing the 2009 Release.

10 53. Claimants, in contrast, contend and seek a declaration that they did not conceal any  
11 material facts with respect to the 2009 Release, that the 2009 Release is valid and binding on  
12 Reichs, and that Reichs is entitled to no remedy whatsoever with respect to the 2009 Release.

13 **FIFTH CAUSE OF ACTION**

14 **Declaratory Relief (No Unfair Competition)**

15 **(By TCFTV, FEG, and FBC Against Josephson)**

16 54. Claimants incorporate paragraphs 1-53 above, inclusive, of this Demand as though  
17 fully set forth herein.

18 55. At present, an actual, substantial controversy exists between Claimants and  
19 Josephson regarding the parties' rights, duties, and obligations. Josephson alleges in his  
20 Complaint that TCFTV, FEG, and FBC engaged in unfair competition by, among other actions,  
21 engaging in improper self-dealing, miscalculating MAGR, and fraudulently threatening to cancel  
22 *Bones* in order to secure the 2009 Release.

23 56. Claimants, in contrast, contend and seek a declaration that they have not engaged in  
24 unfair competition, that they have not engaged in any improper self-dealing, that they did not  
25 miscalculate MAGR, that the 2009 Release is valid and binding on Josephson, and that Josephson  
26 is entitled to no remedy whatsoever on his unfair competition claim.

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1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief (No Inducement of Breach of Contract)**

3 **(By 21CF, FEG, and FBC Against All Respondents)**

4 57. Claimants incorporate paragraphs 1-56 above, inclusive, of this Demand as though  
5 fully set forth herein.

6 58. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and  
7 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
8 Complaints that 21CF, FEG, and FBC induced TCFTV to breach the Agreements.

9 59. Claimants, in contrast, contend and seek a declaration that they did not induce  
10 TCFTV to breach the Agreements, and that Respondents are entitled to no remedy whatsoever on  
11 their inducement of breach of contract claims.

12 **SEVENTH CAUSE OF ACTION**

13 **Declaratory Relief (No Intentional Interference With Contract)**

14 **(By 21CF, FEG, and FBC Against All Respondents)**

15 60. Claimants incorporate paragraphs 1-59 above, inclusive, of this Demand as though  
16 fully set forth herein.

17 61. At present, an actual, substantial controversy exists between 21CF, FEG, FBC and  
18 Respondents regarding the parties' rights, duties, and obligations. Respondents allege in their  
19 Complaints that 21CF, FEG, and FBC intentionally interfered with the Agreements between  
20 TCFTV and Respondents.

21 62. Claimants, in contrast, contend and seek a declaration that they did not interfere  
22 with TCFTV's performance of its obligations under the Agreements, and that Respondents are  
23 entitled to no remedy whatsoever on their interference claims.

24 **EIGHTH CAUSE OF ACTION**

25 **Declaratory Relief (No Entitlement To an Accounting)**

26 **(By All Claimants Against All Respondents)**

27 63. Claimants incorporate paragraphs 1-62 above, inclusive, of this Demand as though  
28 fully set forth herein.

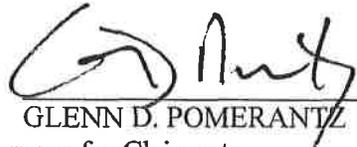


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- c. Reichs's and Josephson's signing of the 2009 Release is not the result of fraudulent inducement;
  - d. Reichs's signing of the 2009 Release is not the result of fraudulent concealment;
  - e. The 2009 Release is valid and binding on Reichs and Josephson;
  - f. TCFTV, FBC, and FEG did not engage in unfair competition;
  - g. 21CF, FEG, and FBC did not induce TCFTV to breach any of the Agreements;
  - h. 21CF, FEG, and FBC did not intentionally interfere with TCFTV's performance of the Agreements;
  - i. Respondents are not entitled to an accounting;
  - j. Respondents are not entitled to declaratory relief; and
2. For such other and further relief that the Arbitrator may deem just and proper.

DATED: January 11, 2016

MUNGER, TOLLES & OLSON LLP

By:   
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TWENTIETH CENTURY FOX FILM CORPORATION; FOX ENTERTAINMENT GROUP, LLC; TWENTY-FIRST CENTURY FOX, INC.; FOX BROADCASTING COMPANY

# **Exhibit B**

**COPY**

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13 **f/s/o Barry Josephson**

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**OF ORIGINAL FILED**  
**Los Angeles Superior Court**

**NOV 25 2015**

**Sherril R. Carter, Executive Officer/Clerk**  
**By: Moses Soto, Deputy**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 **WARK ENTERTAINMENT, INC., a**  
17 **California corporation, f/s/o Barry Josephson,**

18 **Plaintiff,**

19 **vs.**

20 **TWENTIETH CENTURY FOX FILM**  
21 **CORPORATION, a Delaware corporation;**  
22 **FOX BROADCASTING COMPANY, a**  
23 **Delaware corporation; FOX**  
24 **ENTERTAINMENT GROUP, INC., a**  
25 **Delaware corporation; and DOES 1-20,**  
26 **inclusive,**

27 **Defendants.**

**CASE NO. BC 6 0 2 2 8 7**

**COMPLAINT FOR:**

- 28 **(1) BREACH OF CONTRACT;**
- (2) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (3) INDUCING BREACH OF CONTRACT;**
- (4) INTENTIONAL INTERFERENCE WITH CONTRACT;**
- (5) UNFAIR COMPETITION;**
- (6) FRAUDULENT INDUCEMENT;**
- (7) DECLARATORY RELIEF; and**
- (8) ACCOUNTING**

**DEMAND FOR TRIAL BY JURY**

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1 Plaintiff Wark Entertainment, Inc. f/s/o Barry Josephson (“Josephson” or “Plaintiff”), for  
2 its complaint against defendants Twentieth Century Fox Television, a unit of Twentieth Century  
3 Fox Film Corporation (“Fox”), Fox Broadcasting Company (“FBC”), Fox Entertainment Group,  
4 Inc. (“Fox Entertainment”), and Does 1 through 20, inclusive (collectively, “Defendants”), hereby  
5 alleges as follows:

6 INTRODUCTION

7 1. This action arises out of Fox’s unrelenting efforts to deprive Barry Josephson—the  
8 executive producer of Fox’s highly rated and longest running one-hour drama *Bones* (“*Bones*” or  
9 the “Series”)—of his contractual entitlement to share in the profits of the Series. Fox hired  
10 Josephson to perform executive producer services on the Series and to work alongside the Series’  
11 showrunner Hart Hanson. Through the efforts and talents of Josephson, Hanson, and others, Fox  
12 and FBC have reaped hundreds of millions of dollars in advertising, syndication, foreign sales,  
13 streaming, and other revenues from *Bones* for their parent companies Fox Entertainment and 21st  
14 Century Fox. But while Josephson has performed to the letter every promise made in his  
15 agreement with Fox, and then some, Fox has not reciprocated. Rather, Fox has repeatedly  
16 breached its agreement with Josephson by systematically depriving him of compensation to which  
17 he is contractually entitled and by failing to maximize its profits on the Series—all to the benefit  
18 of its parent company and the detriment of Josephson and the other profit participants on the  
19 Series.

20 2. *Bones* is produced by Fox, broadcast domestically on FBC, aired in syndication on  
21 several Fox-affiliated stations, broadcast throughout the world on numerous Fox-affiliated  
22 international networks, and rated highly in the United States and around the world. Discussing its  
23 worldwide popularity, Gary Newman, the Chairman and CEO of Fox Television Group, called  
24 *Bones* “one of the most popular shows in the world” and “the show I’m most asked about when I  
25 travel abroad,” noting that the Series has been translated into “45 languages” and “airs in over 150  
26 territories across six continents.” *Bones* began airing domestically on FBC in September 2005.  
27 As of the date of this complaint, *Bones* is currently airing its 11th broadcast season. Through its  
28 first 10 seasons, FBC aired 211 original episodes of *Bones*. As of its 206th episode, *Bones*

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1 became the longest running one-hour drama in the history of FBC. An 11-season run for a one-  
2 hour scripted drama, with over 200 episodes produced, is extraordinary in the television industry  
3 and speaks to the incredible success of the Series and the skilled and diligent efforts of its creators.  
4 Indeed, James Murdoch, the CEO of Fox parent company 21st Century Fox, personally told  
5 Josephson that *Bones* was perhaps the most profitable show in Fox's history.

6           3. Josephson brought *Bones* to life for Defendants—he discovered the book upon  
7 which the Series is based, partnered with Series' showrunner Hanson, cast the Series, produced its  
8 pilot episode, and produced every subsequent episode of the Series. Pursuant to a written contract  
9 with Fox, Josephson agreed to serve as executive producer on the Series. As compensation for his  
10 services, Josephson is entitled to receive certain guaranteed compensation as well as "backend"  
11 contingent compensation based on the success of the Series; *i.e.* Josephson is entitled to participate  
12 in the profits of *Bones*.

13           4. By now, however, it should come as no surprise that Fox's method of calculating  
14 those profits, and, more importantly, accounting to profit participants such as Josephson for those  
15 profits, leaves much to be desired. So-called "Hollywood accounting" in the entertainment  
16 industry—whereby studios keep nearly all profits for themselves through creative accounting  
17 practices while reporting "losses" to profit participants on long-running and highly profitable  
18 series—is so commonplace as to be cliché. Television studios define the pools of profits in which  
19 participants share through dense, nearly impenetrable contractual "definitions" that often approach  
20 50 single-spaced pages. (For example, Josephson's "Prenegotiated Television Definition of  
21 Defined Modified Adjusted Gross Receipts" appended to his contract is 45 pages long, the last 11  
22 pages of which are a glossary of defined terms.) Such opaque profits definitions are used to  
23 manipulate and artificially depress participants' reported "profits" while keeping the majority—if  
24 not all—of the profits for the studio. This complaint highlights several such methods by which  
25 Fox has artificially and improperly reduced Josephson's profits on *Bones*.

26           5. Profit participants like Josephson who enter into contingent compensation  
27 agreements with television studios have only one way to catch the studios in the act of such  
28 "Hollywood accounting"—through an audit. Television studios employ teams of accountants and

1 “contract administrators” to analyze contracts, profit definitions, and revenue streams and then  
2 generate accounting statements to participants. Individual profit participants, on the other hand,  
3 might employ a single accountant or business manager, and the one- or two-page accounting  
4 statements issued by the studio, with generic line entries for revenues and expenses, reveal next to  
5 nothing about how the studio is actually calculating the revenues and expenses from a television  
6 series.

7         6.         So, profit participants may be able to negotiate (depending on their stature and  
8 leverage) to be “allowed” (under the strict terms of their agreements) to (upon written notice to the  
9 studio) hire (at the participant’s sole cost and expense) an outside accounting firm (which must be  
10 approved by the studio) to go to the studio (at a time and place of the studio’s choosing) and  
11 review the studio’s books and records (but not copy or remove any document). Other onerous  
12 terms are imposed by studios that only add to a participant’s financial burden. For example,  
13 participation statements are deemed “incontestable” and therefore unauditible unless an audit is  
14 commenced within a specified timeframe. But the lag time between a profit participant noticing  
15 an audit and the audit actually commencing is often a year or more. And the audit itself often  
16 takes over a year from commencement to conclusion, depending on how accommodating and  
17 forthcoming the studio is. At the conclusion of its fieldwork, the auditing firm will provide the  
18 profit participant with an “audit report” detailing its findings. A typical audit of a studio’s books  
19 and records pertaining to a television series can cost from \$50,000 to well over \$100,000.

20         7.         After an audit report is prepared, the next step in the process is even more farcical.  
21 The profit participant submits the audit report to the studio as an official “objection” to the  
22 studio’s accounting methods and requests a meeting with the studio to discuss the audit’s findings.  
23 Unsurprisingly, such a meeting is often a very long time coming. If and when such a meeting ever  
24 occurs, the studio will likely dispute every claim in the audit report. If the participant is  
25 particularly lucky, the studio may offer a nominal sum to settle all the claims in the audit report.  
26 This is what happened here with Josephson’s audit of Fox’s books and records for *Bones*:  
27 Josephson went through the laborious and expensive process of conducting an audit that  
28 uncovered tens of millions of dollars in claims against Fox, every one of which Fox summarily

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1 rejected. Nearly a year after rejecting all his claims, Fox offered Josephson a negligible sum on  
2 only one claim in the audit report, effectively forcing his hand and the instant complaint.

3 **JURISDICTION AND VENUE**

4 8. Jurisdiction is proper in the Superior Court of the State of California for the County  
5 of Los Angeles pursuant to section 410.10 of the Code of Civil Procedure.

6 9. Venue is proper in Los Angeles County, California pursuant to sections 392 *et seq.*  
7 of the Code of Civil Procedure because Los Angeles County is where Defendants have their  
8 principal places of business and is where the contracts at issue were entered into, where they were  
9 to be performed, and where their breaches occurred.

10 **THE PARTIES**

11 10. Plaintiff Wark Entertainment, Inc. is a corporation organized and existing under the  
12 laws of the State of California, with its principal place of business located in Los Angeles County,  
13 California. At all relevant times, Wark Entertainment, Inc. was and is a "loan-out" company  
14 through which Josephson provides his services in the entertainment industry. Josephson is a  
15 television and film producer who supervised the development of *Bones* and worked as an  
16 executive producer on the Series from 2005 to the present.

17 11. Defendant Twentieth Century Fox Television, a unit of Twentieth Century Fox  
18 Film Corporation ("Fox"), is a corporation organized and existing under the laws of the State of  
19 Delaware, with its principal place of business in Los Angeles County, California. Fox is the  
20 television production studio that produces the Series. Twentieth Century Fox Television is not a  
21 legal entity distinct from Twentieth Century Fox Film Corporation, and therefore Twentieth  
22 Century Fox Film Corporation is liable for all acts and omissions made by or on behalf of  
23 Twentieth Century Fox Television. Plaintiff is informed and believes, and on that basis alleges,  
24 that Fox is a wholly-owned subsidiary of Fox Entertainment and/or 21st Century Fox.

25 12. Defendant Fox Broadcasting Company ("FBC") is a corporation organized and  
26 existing under the laws of the State of Delaware, with its principal place of business in Los  
27 Angeles County, California. FBC is the broadcast network that broadcasts the Series in the United  
28

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1 States. Plaintiff is informed and believes, and on that basis alleges, that FBC is a wholly-owned  
2 subsidiary of Fox Entertainment and/or 21st Century Fox.

3 13. Defendant Fox Entertainment is a corporation organized and existing under the  
4 laws of the State of Delaware, with its principal place of business in Los Angeles County,  
5 California. Plaintiff is informed and believes, and on that basis alleges, that some or all of the  
6 foregoing defendant entities are owned (in whole or in part) or otherwise affiliated with Fox  
7 Entertainment. Plaintiff is further informed and believes, and on that basis alleges, Fox  
8 Entertainment, in turn, is a wholly-owned subsidiary of 21st Century Fox. 21st Century Fox is  
9 among the largest media conglomerates in the world whose businesses include filmed  
10 entertainment, domestic and international broadcasting, and cable networks and programming.

11 14. Plaintiff is currently unaware of the true names and capacities of defendants Does 1  
12 through 20, inclusive, and therefore sues those defendants by fictitious names. Plaintiff will seek  
13 to amend this complaint to allege the true names and capacities of Does 1 through 10, inclusive,  
14 when and if they are discovered. Plaintiff is informed and believes, and on that basis alleges, that  
15 Does 1 through 20, inclusive, and each of them, participated in the wrongful acts alleged herein,  
16 and are liable for those acts. Plaintiff is informed and believes, and on that basis allege, that Does  
17 1 through 20, inclusive, knew and participated in one or more of the specific acts committed by  
18 Fox, counseled Fox and other Doe defendants in perpetrating those wrongful acts, and/or aided  
19 and counseled Fox and other Doe defendants in concealing those acts from Plaintiff, as alleged  
20 more fully herein.

21 15. Plaintiff is informed and believes, and on that basis alleges, that in doing the acts  
22 alleged herein, each of the Defendants was the agent, principal, employee, or alter ego of one or  
23 more of the other Defendants, and acted with the other Defendants' knowledge, consent, and  
24 approval. As such, each of the Defendants is responsible for the liabilities of the other  
25 Defendants, as alleged herein.

26  
27  
28



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1 things, Free Television Rentals (e.g., license fees from broadcast networks in North America), Pay  
2 Television Receipts (e.g., license fees from cable networks), Home Video Receipts (both domestic  
3 and foreign), and On-Demand Receipts (both domestic and foreign). On the other side of the  
4 ledger are Fox Distribution Fees (set percentages of the aforementioned revenue streams),  
5 Distribution Expenses (e.g., dubbing, printing, and freight; guild payments and royalties; and  
6 advertising and other promotional costs), a Fox Administrative Charge (a flat 12.5% of Production  
7 Charges), and Production Charges (the costs associated with producing the Series).

8       20. In effect, Fox passes on its distribution expenses to participants such as Josephson  
9 on a dollar-for-dollar basis. That is, for every dollar in Distribution Expenses incurred by Fox,  
10 MAGR is reduced by a dollar. Fox's Distribution Fees, by contrast, are essentially commissions,  
11 which vary depending on the particular revenue stream at issue. For example, Fox charges  
12 Distribution Fees of 12.5% on U.S. and Canadian Free Television Rentals and on Pay Television  
13 Receipts. But Fox charges a Distribution Fee of 30% on domestic Home Video and On-Demand  
14 Receipts. (That figure jumps to 45% for foreign Home Video and On-Demand Receipts.) And, as  
15 mentioned above, Fox charges a 12.5% Administrative Charge on the Series' Production Charges  
16 to cover its putative overhead.

17       21. As a result, the MAGR Definition itself incentivizes "creative" accounting  
18 treatments by Fox. For example, from Fox's perspective, it is better that an expense be classified  
19 as a Production Charge (which earns a 12.5% fee) rather than a Distribution Expense (which is  
20 simply passed along to profit participants). Similarly, because Fox retains 80% of Home Video  
21 receipts (and because Josephson's 20% share of Home Video receipts is further reduced by 30%  
22 or 45% distribution fees, depending on whether the home video revenue is domestic or foreign),  
23 after the applicable distribution fees are taken into account, participants such as Josephson see  
24 only 14 and 11 cents of every domestic and foreign home video dollar, respectively.

25       22. The MAGR Definition also provides the sole mechanism by which Josephson may  
26 challenge Fox's accountings and payments on the series: through an audit and, if the audit's  
27 claims "are not resolved amicably," through litigation. Paragraph VI.H.2 of the MAGR Definition  
28 provides, "Participant agrees that Participant's sole right to receive accountings in connection with

1 the Program, to examine Program Records, and/or to object as to transactions or items of  
2 information and/or any other matter with respect to Participant's Participation and/or to maintain  
3 or institute any action or proceeding shall be only as provided in this Exhibit." Paragraph VII.F of  
4 the MAGR Definition provides, "Participant waives any right which Participant may have at law  
5 or equity to revoke, terminate, diminish or enjoin any rights granted or acquired by Fox and its  
6 affiliated entities hereunder by reason of any claim which Participant may assert for non-payment  
7 of any monies claimed due and payable hereunder, it being agreed that Participant shall be limited  
8 to an action at law for recovery of any such monies claimed and for damages (if any) as a result of  
9 a non-payment." (Emphasis added.)

10 Josephson's Audit of Fox's Books and Records Pertaining to *Bones*

11 23. By letter agreement dated December 2, 2010, and in reliance on Paragraph VI.H.2  
12 of the MAGR Definition, Josephson and other *Bones* profit participants engaged the Los Angeles  
13 accounting firm Sills & Gentile (now known as Green Hasson & Janks LLP) to perform an audit  
14 of Fox's books and records pertaining to *Bones* from the inception of the Series (September 2005)  
15 through September 2011. This time period covers the first seven accounting statements Fox  
16 issued to profit participants on *Bones*. Fox allowed fieldwork on the audit to commence on  
17 January 12, 2012, over a year after the auditing firm was retained and the audit was requested.  
18 The audit report is dated May 14, 2014 (nearly two and a half years after fieldwork commenced)  
19 and was submitted to Fox that month as Josephson's official objection to Fox's accountings on the  
20 Series. Simply put, the audit uncovered a veritable mother lode of accounting chicanery and self-  
21 dealing.

22 24. During the pendency of the audit, Fox and the *Bones* profit participants (including  
23 Josephson) entered into a series of agreements tolling the participants' contractual deadlines to  
24 submit objections (*i.e.* an audit report) to Fox and to "file legal action with respect to matters  
25 covered by the audit." The most recent, operative tolling agreement extends the deadline for the  
26 *Bones* profit participants (including Josephson) to file a legal action based on the audit report to  
27 May 31, 2016.

28

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1           25.    The audit revealed, *inter alia*, the following acts by Fox that violate the provisions  
2 of the Agreement and/or the MAGR Definition:

3           A.    Fox breached, and continues to breach, its obligation to accurately report  
4 Defined Gross Receipts under paragraph VI.B. of the MAGR Definition by, among other things:

5                   i.    underreporting foreign free television license fees by more than \$12  
6 million in England, \$4 million in Germany, and \$3 million in Spain;

7                   ii.   failing to report advertising revenue from Series clips and full-length  
8 episodes exhibited on Hulu.com and Fox.com (both Fox-affiliated websites);

9                   iii.   misallocating revenues in package deals with subscription video on  
10 demand media companies in Israel and Japan, in violation of its duty under Paragraph VI.B.2 of  
11 the MAGR Definition to allocate revenues between programs “in good faith and reasonably  
12 related to the financial relationship of the programs to be included”;

13                   iv.   misclassifying \$3,275,000 in revenue from product placement and  
14 integration deals (*e.g.*, consideration from Toyota for featuring Toyota vehicles in the Series) as  
15 “Merchandising and Literary Publishing and Commercial Tie-In Receipts,” and then subjecting  
16 those revenues to Fox’s 40% merchandising administration fee (as if Toyota, for example, was  
17 creating *Bones* merchandise);

18                   v.    misclassifying approximately \$8,000,000 in electronic sell-through  
19 (EST) receipts as “Home Video” receipts, thereby subjecting these receipts to 30% and 45%  
20 distribution fees for domestic and foreign activity, respectively. In fact, the licensing of EST in no  
21 way resembles the categories of distribution expenses enumerated in Paragraph V.D.2 of the  
22 MAGR Definition—namely, “Guild Payments,” “creating and delivering reproduction masters  
23 and delivery materials,” and “music licensing fees”;

24                   vi.   misclassifying approximately \$1,300,000 in video on demand  
25 (VOD) receipts as “Home Video” receipts, net of the 30% and 45% distribution fees for domestic  
26 and foreign activities, respectively. Like EST, the licensing of VOD in no way resembles the  
27 proper categories of distribution expenses enumerated in the MAGR Definition—“Guild  
28

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1 Payments,” “creating and delivering reproduction masters and delivery materials,” or “music  
2 licensing fees.”

3 B. Fox breached, and continues to breach, its obligation to accurately report  
4 Distribution Expenses under Paragraph V.D. of the Definition of MAGR by, among other things:

5 i. misclassifying as “distribution expenses” approximately \$850,000 in  
6 corporate overhead costs (*e.g.*, library services, market research costs, information technology  
7 support services), which a studio customarily absorbs in its Administrative Charge;

8 ii. misclassifying approximately \$150,000 in costs related to the *Bones*  
9 Season 2 DVDs, and approximately \$1,400,000 in music clearances associated with obtaining the  
10 necessary licenses for home video and on-demand exploitation, as “distribution expenses” subject  
11 to the 12.5% Fox administrative charge, rather than as home video costs. Paragraph V.D.2 of the  
12 MAGR Definition expressly states, “the Fox Home Video Distributor ... shall be *solely*  
13 responsible for *all* manufacturing, sales, marketing and distribution costs in connection with the  
14 Home Video Distribution ... of the Program”;

15 iii. charging the Series with approximately \$1.4 million in foreign taxes,  
16 which were available to Fox to be taken as credits against Fox’s U.S. income tax returns. On  
17 information and belief, Fox has taken these credits and thus must offset these credits against the  
18 taxes listed as “distribution expenses”; and

19 iv. charging over \$100,000 in foreign dubbing expenses, with no  
20 Series-specific supporting documentation, in violation of Paragraph V.D.1.h, which entitles Fox to  
21 count only those dubbing costs and other such costs “incurred to make and deliver foreign  
22 language versions *of the Program.*”

23 C. Fox breached, and continues to breach, its obligation to accurately report  
24 Production Charges under V.E.1 of the Definition of MAGR by, among other things:

25 i. classifying Alliance of Motion Picture and Television Producers  
26 (AMPTP) dues as “Production Charges” (which are therefore subject to Fox’s 12.5%  
27 Administrative Charge). In fact, the MAGR Definition defines such dues as “trade association  
28

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1 fees” and/or “industry assessments,” respectively—both of which are components of Distribution  
2 Expenses and therefore not subject to the administrative charge;

3 ii. failing to maintain a separate account for costs associated with a  
4 “Planted Spin-off” (per Schedule I, Paragraph KKK of the Definition of MAGR, a “Television  
5 Series which contains as a leading character a character who was introduced in a non-continuing  
6 role in at least one Episode of the Television Series which gave rise to such spin-off, for the  
7 purposes of using that character in a spin-off”) called *The Finder*. *The Finder* was the title of a  
8 new television series that ran on FBC from January 12, 2012 to May 11, 2012. It was also the title  
9 of a season 6 episode of *Bones*, which introduced *The Finder*’s protagonist and which cost more  
10 than \$3,000,000 more than the average per-episode cost of season 6 to produce. Although Fox  
11 maintained separate bank accounts—one of which included a specific reference to the spin-off  
12 episode (and contained notes referencing *The Finder* “Pilot”)—Fox has insisted that this episode  
13 was not the “pilot” for *The Finder* and therefore refused to segregate production costs associated  
14 with *The Finder*. Fox’s refusal to account for the pilot separately violates of Paragraph VI.B of  
15 the Definition of MAGR, which specifies that for purposes of MAGR, “Each Television Series  
16 shall constitute a single accounting unit....”

17 iii. classifying over \$53,000,000 in production breakage costs (*i.e.*,  
18 costs for particular talent, locations, etc. that increase production costs as well as production  
19 values) as network revenue, which is thereby subject to Fox’s 12.5% administrative charge. In  
20 fact, breakage costs are “Production Charges” (which are not subject to such additional fees) as  
21 defined by Paragraph V.E.1 of the Definition of MAGR (“The aggregate of all costs, charges and  
22 expenses which are paid, incurred or accrued ... directly in connection with or directly allocable to  
23 the preparation, production, completion and delivery of the completed Program, including the  
24 costs of materials, equipment, physical properties, personnel and services utilized in connection  
25 with the Program ...”); and

26 iv. attributing nearly \$2,750,000 in rental of transportation, computer  
27 support, costumer restocking, refreshments, costume box rentals, and document scanning costs to  
28 “Production Charges” (subject to Fox’s 12.5% administrative charge). Such non-Series-specific

1 overhead is not, per the language of Paragraph V.E.1 of the Definition of MAGR, “incurred or  
2 accrued *directly in connection with or directly allocable to* ... the preparation, production,  
3 completion and delivery of the completed Program.” Rather, these overhead costs are indirect and  
4 therefore should be absorbed by the nearly \$50,000,000 Fox has already collected in  
5 Administrative Charges.

6 D. Fox breached, and continues to breach, its contractual obligation in the  
7 Agreement to make transactions with affiliated entities on monetary terms comparable to the terms  
8 on which the affiliated entities enter into similar transactions with unrelated third party distributors  
9 for comparable programs, which has resulted in artificially deflated revenues reported on the  
10 participation statements.

11 i. Fox violated this obligation in its dealings with FBC, which paid  
12 below-market license fees for the Series for each season it has aired. Plaintiff is informed and  
13 believes, and based thereon alleges, that FBC, when dealing with unaffiliated third party  
14 distributors, routinely pays license fees well in excess of—often more than double—what it paid  
15 Fox for the Series. Further, the license agreement for the Series between Fox and FBC (the  
16 “Network License Agreement”) originally provided for deficit recoupment payments from FBC to  
17 Fox beginning in the Series’ fifth season in order to reduce the production deficit incurred in  
18 seasons one through four. Plaintiff is informed and believes, and based thereon alleges, that FBC  
19 customarily agrees to such provisions when dealing with unaffiliated third party distributors. With  
20 respect to *Bones*, these deficit repayments were to be based on an “amount equal to the number of  
21 Programs, including for this purpose the Pilot,” produced in seasons one through four, “multiplied  
22 by [specified] amounts...based on the Nielsen Ranking during the Fourth [season].” The lowest  
23 tier called for deficit recoupment of \$250,000 per episode. But, Plaintiff is informed and believes  
24 that in an email dated on or about May 18, 2009 (which was hidden from Plaintiff until uncovered  
25 in the audit), during the end of the Series’ fourth season, Fox and FBC secretly agreed to amend  
26 this bonus provision to a new formula tied to the Series’ Nielsen ratings (rather than ranking).  
27 Plaintiff is further informed and believes, and on that basis alleges, that on or about October 19,  
28 2009, unbeknownst to Plaintiff, Fox agreed to remove the contractual provision for deficit

1 recoupment from the Network License Agreement altogether. In return, FBC committed to extend  
2 the Network License Agreement to cover seasons 5 and 6 of the Series. This “commitment” was  
3 hollow because the original Network License Agreement contained exclusive, consecutive,  
4 dependent, and irrevocable options for FBC to broadcast the Series through six seasons. FBC and  
5 Fox representatives secretly memorialized these changes to the Network License Agreement not in  
6 a new contract or amendment but in an email. Fox never informed Plaintiff that the deficit  
7 recoupment provision had been removed or that the ratings bonus structure had been changed.

8 ii. Fox further violated this obligation in its dealings with Fox  
9 International Channels Italy, which paid licensee fees for the Series just over 5% of those paid by  
10 an unaffiliated Italian network; with Fox International Channels Espana, which also paid license  
11 fees for the Series just over 5% of those paid by an unaffiliated Spanish network; with MundoFox  
12 (a former Fox affiliate now known as MundoMax), which, on information and belief, paid license  
13 fees for the Series well below what an unaffiliated Spanish language network (e.g., Telemundo or  
14 Univision) would have paid for the Series; and, on information and belief, with other Fox  
15 international affiliates;

16 iii. Fox violated this obligation in its dealings with Fox’s Korean  
17 affiliate, which, on information and belief, also licensed the Series for fees below what an  
18 unaffiliated network would pay for a comparable program; and

19 iv. Fox violated this obligation in its dealings with Hulu (another Fox  
20 affiliate), which, on information and belief, licensed the Series for monetary terms below what it  
21 would pay an unaffiliated third party distributor for a comparable program. Additionally, on  
22 information and belief, Fox misallocated revenues from the Hulu agreement.

23 E. Fox breached its contractual obligation to “accord good faith (meaningful)  
24 consultation to [Josephson] with respect to the initial domestic off-network sales plan” for the  
25 Series, subject to his “reasonable availability and reasonable response time.”

26 F. Fox failed to negotiate the MAGR Definition in “good faith ... within Fox’s  
27 customary parameters for persons of [Josephson’s] stature,” as required by the Agreement.

28

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1 G. Fox breached its contractual obligations to Josephson by classifying certain  
2 episodes as being associated with the season in which they were produced, rather than the season  
3 in which they aired, thereby depriving Josephson of the "escalators" that raised the episodic  
4 license fee every season.

5 **FIRST CAUSE OF ACTION**

6 **Breach of Contract**

7 **(Against Fox)**

8 26. Plaintiff incorporates by reference the allegations in paragraphs 1 through 25 of this  
9 Complaint, inclusive.

10 27. Plaintiff has performed all conditions, covenants, and promises required on his part  
11 with respect to the terms and conditions of the Agreement alleged herein, except as excused,  
12 waived, or made impossible by Fox.

13 28. Fox has materially breached and will continue to breach the Agreement as alleged  
14 above.

15 29. As a direct and proximate result of Fox's breaches, Plaintiff has suffered, and will  
16 continue to suffer, monetary damages in an amount to be proven at trial, which amount exceeds  
17 the jurisdictional minimum of this court.

18 **SECOND CAUSE OF ACTION**

19 **Breach of Implied Covenant of Good Faith and Fair Dealing**

20 **(Against Fox)**

21 30. Plaintiff incorporates by reference the allegations in paragraphs 1 through 25 of this  
22 Complaint, inclusive.

23 31. Implied in every contract, including the Agreement alleged herein, is a covenant  
24 among the parties thereto that no party will do anything to interfere with another party's  
25 enjoyment of its contractual rights and benefits, and that each contracting party will do everything  
26 that the contract presupposes it will do to accomplish the contract's purpose.

27 32. Fox has breached the covenant of good faith and fair dealing implied in the  
28 Agreement alleged herein by engaging in bad faith conduct intended to frustrate Plaintiff's right to

1 receive the benefits of the Agreement. Plaintiff is informed and believes, and on that basis alleges,  
2 that Fox has engaged in bad faith conduct such as, among other things: licensing the Series to its  
3 wholly-owned or controlled entities for below-market license fees and colluding with FBC to keep  
4 the Series license fees artificially low; eliminating the Network License Agreement's deficit  
5 reduction provision by email, without notifying Plaintiff; and altering the Network License  
6 Agreement's bonus formula provision by email, again without notifying Plaintiff.

7 33. As a direct and proximate result of the breaches by Fox of the implied contractual  
8 obligations set forth in the Agreement alleged herein, Plaintiff has suffered monetary damages in  
9 an amount to be proven at trial, which amount exceeds the jurisdictional minimum of this Court.

10 **THIRD CAUSE OF ACTION**

11 **Inducing Breach of Contract**

12 **(Against FBC, Fox Entertainment, and Does 1-20)**

13 34. Plaintiff incorporates by reference the allegations in paragraphs 1 through 33 of this  
14 complaint, inclusive.

15 35. Fox was a party to the Agreement, which is a valid and binding contract.

16 36. At all relevant times, defendants FBC, Fox Entertainment, and Does 1-20 were  
17 aware of the Agreement and its terms.

18 37. As set forth above, Fox breached the Agreement, including its implied covenant of  
19 good faith and fair dealing, in various ways.

20 38. Defendants FBC, Fox Entertainment, and Does 1-20 intended to influence, direct,  
21 or cause Fox to commit the above-described breaches because these defendants knew they would  
22 benefit from such breaches.

23 39. Through the conduct described above, defendants the FBC, Fox Entertainment, and  
24 Does 1-10 caused Fox to breach the Agreement as set forth above. But for the influence or  
25 direction of these defendants, Fox would have had no incentive, basis, and/or ability to collude  
26 with these defendants; rather, absent such collusion, the primary goal of Fox would have been to  
27 maximize the revenues and profits from the Series and to obtain market-level license fees for the  
28 Series.



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1 for the sole purpose of advancing the larger Fox empire's financial interests at the expense of and  
2 in conscious disregard of the rights of profit participants like Plaintiff.

3 48. Defendants FBC, Fox Entertainment, and Does 1-20 collaborated and/or  
4 participated with Fox in the conduct described above because these defendants knew they would  
5 benefit from such conduct. Defendant FBC benefited by paying less to license the Series for  
6 broadcast, thus decreasing costs and increasing profits for the network. Defendant Fox  
7 Entertainment benefited by increasing its reported revenue and decreasing its costs as a result of  
8 denying Plaintiff its shares of the revenues from the Series.

9 49. Through the conduct alleged above, defendants FBC, Fox Entertainment, and Does  
10 1-10 intended to disrupt or prevent the performance by Fox of the Agreement as set forth above,  
11 and did disrupt or prevent that performance.

12 50. Through their conduct, defendants FBC, Fox Entertainment, and Does 1-20 have  
13 thus directly and proximately caused damages to Plaintiff by collaborating and/or participating in  
14 acts that delayed and diminished Plaintiff's receipt of his participation in the MAGR of the Series.  
15 At the very least, Defendants have reduced the MAGR for the Series and thereby reduced  
16 Plaintiff's share of the MAGR, in amounts to be proven at trial.

17 51. The conduct of defendants FBC, Fox Entertainment, and Does 1-20 was a  
18 substantial factor in causing Plaintiff's harm, and is without justification or privilege.

19 52. In engaging in the misconduct alleged herein, FBC, Fox Entertainment, and Does  
20 1-20 have acted with malice, oppression, or fraud, and in willful disregard of Plaintiff's rights and  
21 interests, thus entitling Plaintiff to an award of punitive damages in an amount appropriate to  
22 punish or make an example of FBC, Fox Entertainment, and Does 1-20, pursuant to Civil Code  
23 section 3294.

24 **FIFTH CAUSE OF ACTION**

25 **Unfair Competition (Bus. & Prof. Code § 17200 et seq.)**

26 **(Against All Defendants)**

27 53. Plaintiff incorporates by reference the allegations in paragraphs 1 through 52 of this  
28 complaint, inclusive.

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1           54. Defendants' conduct as described herein constitutes unlawful, unfair, and  
2 fraudulent business acts or practices prohibited by the California Unfair Competition Law,  
3 Business & Professions Code section 17200 *et seq.* (the "UCL"). Defendants have engaged in at  
4 least the following conduct constituting "unfair competition" under the UCL:

5           A. Engaging in a wrongful pattern of self-dealing at Plaintiff's expense. As  
6 described above, the Agreement provides for continued calculations of MAGR going forward as  
7 additional revenue is received by Fox from the exhibition of the Series. Furthermore, pursuant to  
8 the Agreement, Defendants will have further opportunities to negotiate agreements for the  
9 exhibition of the Series. Because Fox Entertainment controls FBC (the licensee and broadcast  
10 exhibitor of the Series) and Fox (the owner and licensor of the Series), Fox effectively sat on all  
11 sides of the bargaining table and "bargained" with itself for the rights to the broadcast exhibition  
12 of the Series. This self-dealing resulted in artificially decreased license fees for the Series, and  
13 allowed FBC and Fox to avoid paying Plaintiff his true share of the profits derived from the  
14 Series.

15           B. Engaging in a wrongful pattern and practice of forcing profit participants to  
16 sign releases setting the license fees for series produced by Fox and airing on Fox-affiliated  
17 networks at unfairly low levels, thereby reducing the profits shared with participants on those  
18 series. Defendants' preferred technique is to fraudulently threaten to cancel or not renew a series  
19 unless profit participants sign these releases. Defendants engaged in this pattern and practice with  
20 respect to (at least) *Bones* and, on information and belief, other series airing or that have aired on  
21 Fox-affiliated networks.

22           55. Plaintiff is informed and believes, and based thereon alleges, that in or about May  
23 2009, Fox executives approached Josephson, Hanson, *Bones* writer and producer Kathleen  
24 Reichs, *Bones* stars David Boreanaz and Emily Deschanel, and talent agencies International  
25 Creative Management and the William Morris Agency (now known as William Morris Endeavor)  
26 (collectively, the "Participants") and presented them with a written agreement and release  
27 acknowledging that the license fees for seasons 5 and 6 of the Series would be set at \$2,000,000  
28 per episode (the "Release"). On information and belief, this amount was far below what the

1 Network License Agreement required for the seasons 5 and 6 license fees and purposefully  
2 subverted the Network License Agreement's deficit recoupment requirement for those seasons.  
3 The \$2 million license fees for seasons 5 and 6 did not begin to recoup the Series' deficit.

4 56. Fox executives presented the Release to the Participants as a "take it or leave it"  
5 proposition: Fox fraudulently threatened Josephson and, on information and belief, the other  
6 Participants that, if they did not sign the Release, the Series would be cancelled. Specifically, on  
7 or about May 13, 2009, Fox senior executives Gary Newman and Dana Walden telephoned  
8 Plaintiff regarding the Release. On this call, the Fox executives told Plaintiff that he would have  
9 to accept lower license fees for Seasons 5 and 6 of the Series or that it would be cancelled if he did  
10 not. On or about the same day, FBC senior executive Peter Rice telephoned Plaintiff and told him  
11 that FBC had "two schedules" for its prime time programming for the upcoming broadcast season:  
12 one including the Series and one without it. Mr. Rice told Plaintiff that, if he did not sign the  
13 Release, the Series would be cancelled and would not appear on FBC's upcoming broadcast  
14 season. Fox executives also informed Plaintiff or his representatives that all the other Participants  
15 had signed or would sign the Release.

16 57. Fox's threat to cancel the Series unless all the Participants signed the Release was  
17 false when made. First, not all the Participants signed the Release. On information and belief, at  
18 least Series actors Mr. Boreanaz and Ms. Deschanel did not sign. Yet the Series was not  
19 cancelled. Second, Fox made the same threat again for the renewal for seasons 7 and 8, yet the  
20 Series was again not cancelled, even though this time Josephson and other Participants refused to  
21 sign another release. Third, the Series' ratings in season 4, preceding the season 5/6 renewal, were  
22 the highest ratings the Series had achieved in its first four seasons. If Fox did not cancel the Series  
23 when Josephson refused to sign the release for seasons 7/8, it had no real intention of cancelling  
24 the Series after season 4. Fifth, the Release's recital that "Fox has negotiated with [FBC] the  
25 terms and conditions for renewal of the television series 'BONES' ('Series') for its fifth and sixth  
26 production seasons" was both untrue and misleading. Plaintiff is informed and believes, and on  
27 that basis alleges, that there was never any real "negotiation" between Fox and FBC regarding the  
28 renewal of the Series for seasons 5 and 6, and this sham "negotiation" was simply another strong-

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1 arm tactic used by Fox to induce Plaintiff to sign the Release. Sixth, Fox provided no  
2 consideration for the Release. Because Fox and FBC had no intention of cancelling *Bones*  
3 regardless of whether Plaintiff or the other Participants signed the Release, Plaintiff received no  
4 consideration for doing so, rendering the Release unenforceable.

5 58. This unfair conduct by Defendants—precisely the type of conduct that the UCL is  
6 designed to prohibit—has wrongfully permitted Defendants to retain within their corporate empire  
7 revenues from the Series rightfully belonging to Plaintiff. Plaintiff is therefore entitled to an order  
8 of restitution or disgorgement of the profits or other ill-gotten gains derived from Defendants’  
9 unfair, unlawful, and/or fraudulent conduct prohibited by the UCL.

10 59. Plaintiff further requests the appointment of a receiver to oversee the distribution of  
11 the revenues from the Series to make sure that Fox is not entering into “sweetheart deals” with  
12 affiliates or otherwise giving them special treatment, that Fox is not improperly charging costs and  
13 expenses to the Series, that Fox and FBC continue to accord Plaintiff his right of meaningful  
14 consultation, that Fox is otherwise properly accounting for the Series’ contingent compensation  
15 and/or MAGR to its participants, and any other orders necessary to accomplish complete justice  
16 between the parties.

17 **SIXTH CAUSE OF ACTION**

18 **Fraudulent Inducement (Civil Code § 1572)**

19 **(Against Fox and FBC)**

20 60. Plaintiff incorporates by reference the allegations in paragraphs 1 through 59 of this  
21 complaint, inclusive.

22 61. Fox’s statements to Plaintiff with respect to the Release alleged above were false  
23 when made.

24 62. Fox knew these representations to be false when it made them to Plaintiff.

25 63. Fox made these representations with the intent to induce Plaintiff to rely on them  
26 and to sign the Release.

27  
28

**SEVENTH CAUSE OF ACTION**

**Declaratory Relief**

**(Against Fox)**

64. Plaintiff incorporates by reference the allegations in paragraphs 1 through 63 of this complaint, inclusive.

65. An actual controversy has arisen and now exists between Plaintiff and Fox concerning their respective rights and duties under the Agreement they and their principals and/or alter egos entered into with respect to the Series. Plaintiff contends that Fox has deliberately misinterpreted the provisions of the Agreement alleged herein. Plaintiff is informed and believes that Fox contends otherwise. As a result, Plaintiff is informed and believes, and on that basis alleges, that the accounting statements rendered by Fox and issued to Plaintiff are false or inaccurate.

66. Plaintiff desires a judicial determination of the rights and duties of the parties and a declaration of Fox's obligations to honor the terms and conditions of the Agreement referenced herein. A judicial determination is necessary and appropriate at this time in order to ascertain the parties' rights and duties to one another.

**EIGHTH CAUSE OF ACTION**

**Accounting**

**(Against Fox)**

67. Plaintiff incorporates by reference the allegations in paragraphs 1 through 66 of this complaint, inclusive.

68. By virtue of the Agreement alleged herein and Plaintiff's entitlement to receive contingent compensation thereunder, including the right to audit Fox's books and records, Plaintiff is entitled to an accounting from Fox. Fox is in the best position to know the true and correct amount of profits the Series has earned under the applicable definitions of contingent compensation because the books and records necessary to make such determinations are in the exclusive possession, custody, and control of Fox. Plaintiff is informed and believes, and based thereon alleges, that the accounts related to the profits of the Series are so complicated that

1 alleging a fixed sum owed is impracticable. The true and correct balance due to Plaintiff can only  
2 be ascertained by an accounting performed under the supervision of the Court.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as  
6 follows:

- 7 1. For monetary damages in an amount to be proven at trial;  
8 2. For a judicial declaration of the parties' contractual rights and duties in connection  
9 with the Series and the Agreement alleged herein;  
10 3. For an accounting under Court supervision of the profits of the Series and the  
11 amounts due and payable to Plaintiff in accordance with the Agreement alleged herein;  
12 4. For restitution;  
13 5. For recession of the Release;  
14 6. For punitive damages in an amount to be proven at trial;  
15 7. That Plaintiff be awarded all pre-judgment interest allowable by law;  
16 8. That Plaintiff be awarded its costs of suit as allowable by law; and  
17 9. For such further relief as the Court may deem just and proper.

18  
19 DATED: November 25, 2015

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

20  
21 By: 

22 Dale F. Kinsella  
23 Attorneys for Plaintiff Wark Entertainment, Inc.  
24 f/s/o Barry Josephson  
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**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands trial by jury on all issues and causes of action triable by jury.

DATED: November 25, 2015

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By:   
Dale F. Kinsella  
Attorneys for Plaintiff Wark Entertainment, Inc.  
f/s/o Barry Josephson

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, CA 90071-1560.

On May 10, 2016, I served true copies of the following document(s) described as **STIPULATION REGARDING CLAIMS IN ARBITRATION** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document to be sent from e-mail address - rhonda.clarke@mto.com - to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 10, 2016, at Los Angeles, California.

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Rhonda Clarke

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Via Email & Federal Express

# **Attachment 8(c)**

**JAMS ARBITRATION CASE REFERENCE NO. 1220052735**

**TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation; TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,**

**Claimants,**

**vs.**

**WARK ENTERTAINMENT, INC. f/s/o BARRY JOSEPHSON; TEMPERANCE BRENNAN, L.P. f/s/o KATHLEEN REICHS; SNOOKER DOODLE PRODUCTIONS, INC. f/s/o EMILY DESCHANEL; and BERTHA BLUE, INC. f/s/o DAVID BOREANAZ,**

**Respondents.**

**Amended Final Award**

**WARK ENTERTAINMENT, INC. f/s/o BARRY JOSEPHSON; TEMPERANCE BRENNAN, L.P. f/s/o KATHLEEN REICHS; SNOOKER DOODLE PRODUCTIONS, INC. f/s/o EMILY DESCHANEL; and BERTHA BLUE, INC. f/s/o DAVID BOREANAZ,**

**Counter-Claimants,**

**vs.**

**TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; FOX ENTERTAINMENT GROUP, LLC, a Delaware limited liability corporation; TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; and FOX BROADCASTING COMPANY, a Delaware corporation,**

**Counter-Respondents.**

**Amended Final Award**

## AMENDED FINAL AWARD

The Undersigned Arbitrator, having been designated by the parties, and having read and considered the submissions, documentary and testimonial proof, arguments and allegations of the parties, finds, concludes and issues this Final Award, as follows:

### I.

#### INTRODUCTION

##### Summary of Contentions

At issue in this Arbitration are the claims of Respondents Wark Entertainment, Inc. f/s/o Barry Josephson (“Josephson”), Temperance Brennan, L.P. f/s/o Kathleen Reichs (“Reichs”), Snooker Doodle Productions, Inc. f/s/o Emily Deschanel (“Deschanel”), and Bertha Blue, Inc. f/s/o David Boreanaz (“Boreanaz”) (collectively, “Respondents” or “Participants”) against Twentieth Century Fox Film Corporation (“TCFTV”), Fox Entertainment Group, LLC (“FEG”), Twenty-First Century Fox, Inc. (“21CF”), and Fox Broadcasting Company (“FBC”) (collectively, “Claimants” or “Fox”) relating to the television series “Bones.” The series was based on the best-selling fiction novels by Reichs, and the characters were played by Deschanel and Boreanaz. Josephson served as the executive producer who developed the Series.

The claims emanate from Respondents’ agreements with TCFTV (“Agreements”) which include “backend” contingent compensation. Respondents contend that Fox breached its obligations under these Agreements in multiple licensing transactions – domestic broadcasting, international licensing, and streaming - and they assert claims for breach of contract, fraud, tortious interference with contract and inducing breach of contract. Fox denies the claims brought by Respondents and asserts that it carried out all of its contractual obligations and duties. Fox further contends that contrary to the allegations and assertions of Respondents, its comportment and business decisions affecting the show actually secured the show’s future and at the same time enhanced the remuneration ultimately paid to its Participants.

In that regard, Fox determined that it did not make business sense to exercise a full cost of production option for Season 5 as it would have resulted in a loss of millions of dollars if those fees were paid over the two-season period. To quote Fox’s opening brief: “*Bones was a middling show with middling ratings*” and did not justify a license fee of that magnitude. Rather,

Fox declined its option for Bones and negotiated a new license fee with TCFTV. The parties eventually agreed on a \$2 million per episode fee, along with a [REDACTED], for two seasons.

Fox argues that the evidence demonstrates unequivocally that its only viable business alternative was to pay a \$2 million per episode license fee or let the show be cancelled. Moreover, the license agreement finally negotiated for Bones Seasons 5 and 6 (i.e. the \$2,000,000 per episode amount) actually kept the show alive and in the end generated millions more in revenue for Respondents. Fox is adamant that the license fee eventually agreed upon and negotiated for the show was on “monetary terms comparable” to “similar transactions” for licenses between itself and third parties for “comparable programs.”

Fox believed that not one of its competitors would pay a higher license fee and in Fox’s view, it was better off losing Bones than risking millions of dollars with a full cost fee. Additionally, Fox contends that Josephson and Reichs are barred from challenging the license fees for Seasons 5 and 6 as they both knowingly and willingly executed a Release.

While each side has proffered many more contentions and defenses than outlined above, their respective arguments will be addressed in further detail below.

## II.

### PRELIMINARY ISSUES

#### All Claims Presented Are Arbitrable

At the outset, the Arbitrator finds it necessary to address an issue that was long ago put to bed and long ago the subject of a painstakingly detailed stipulation by and among counsel. Astonishingly, Fox, now for the first time, takes the position that certain critical issues presented and argued by Respondents are not arbitrable and as such outside the purview and authority of this Arbitrator and the matters before him.<sup>1</sup>

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<sup>1</sup> To provide perspective as to the timeliness of this contention, it is to be noted that Fox raised this argument for the first time in the final hour of closing arguments, after 4+ weeks of hearings and 2 & 1/2 years of proceedings. Not one word of arbitrability was ever mentioned or addressed in any pre-trial hearings or in Fox’s opening briefs.

To highlight the Arbitrator's dismay as well as Fox's indefensible position in this regard, a chronology of Fox's actions will be discussed. It must be noted that the following facts are incontrovertible.

First, it was Fox that filed the Demand for Arbitration which gave rise to the proceedings herein. Fox did not wait to compel arbitration; it actually proceeded with its demand and initiated the arbitration prior to any motion and always took the position that all claims presented were and are arbitrable, save and except Respondents' claims for an audit.

Second, and perhaps most interesting to this analysis is that while counsel for Respondents did pursue a State Court action *attempting to avoid arbitration*, it was Fox who, once again, took the position that arbitration of Respondents' claims was mandated per the terms of the agreements between TCFTV and its Participants. In fact, Fox doubled down on this position before the Honorable Richard E. Rico when it filed its motion to compel arbitration. Fox prevailed, and arbitration was ordered, and the State Court action was stayed. Accordingly, the doctrine of judicial estoppel precludes any late proffered position to the contrary.

Third, having prevailed in State Court with its motion to compel and once again raising this issue with the Arbitrator at the first Arbitration Management Conference, the parties not only stipulated that the claims presented here are to be arbitrated but in addition thereto *highlighted by hand* those pleadings and causes of action that are the subject of these proceedings so as to avoid the very issue and argument now being proffered at the stroke of midnight. The parties did exactly what was ordered by the Arbitrator. Not only was a stipulation entered into, but with their own hands, the parties highlighted all claims subject to these proceedings and the jurisdiction of the Arbitrator so as to leave no doubt that this argument should not have been brought.

Hence, Fox, in presenting this belated contention, must overcome the following:

1. Judicial estoppel which precludes any and all assertions to the contrary;
2. A Stipulation that it willingly entered into; and
3. Waiver with respect to any argument to the contrary.

Each of these points will be addressed below so as to leave no doubt that Fox's position is disingenuous at best and specious at worst.

Fox specifically addresses two claims which it argues are not arbitrable:

- (1) Respondents' ownership claim related to Hulu, and
- (2) Respondents' "reasonable and nondiscriminatory" claim.

Under California law, "parties may expressly agree to arbitrate: (1) in a contract signed before a dispute arises, . . .; or (2) in a binding stipulation to arbitrate entered into after a dispute has arisen." Douglass v. Serenivision, Inc., 20 Cal. App. 5<sup>th</sup> 376, 387 (2018). In this instance, both a signed contract and a binding stipulation are present and cannot be argued to the contrary.

In January 2016, Fox submitted its Statement of Claim to JAMS. In its Statement of Claim, Fox set forth the claims alleged in the Complaint: against TCFTV for breach of contract, breach of the covenant of good faith and fair dealing, and declaratory judgment; against FBC, FEG and 21CF for inducing breach of contract and intentional interference with contract; against TCFTV, FBC and FEG for unfair competition; and against all Claimants for fraudulent inducement, fraudulent concealment, and an accounting. (Statement of Claim, ¶ 25.) Fox's demand went on to state: "***All of the claims raised in those Complaints, however, are subject to the parties' agreements to arbitrate. Indeed, binding and applicable arbitration provisions are found in the very Agreements that the Respondents claim they want enforced.***" (Statement of Claim, ¶ 26.) (Emphasis added.)

Fox explicitly states that through its Demand, it "seeks to enforce the parties' agreement to arbitrate these disputes." (Id. at ¶ 32.) It went on to state that "***[i]o the extent that Respondents seek to raise any additional claims against Fox in their Superior Court Complaints on the basis of those Agreements, Fox also seeks to resolve those disputes in this binding arbitration before JAMS.***" (Id.)(Emphasis added)

Thereafter, Fox moved to compel arbitration of the claims brought by Respondents in the Superior Court. On April 8, 2016, Judge Rico issued an Order granting Fox's motion to compel and staying the non-arbitrable claims. More specifically, he found that the Self-Dealing, 2009 Release, and Non-Contractual Claims are all subject to arbitration, and the Contingent Compensation Claims are not subject to arbitration. (See 4/8/16 Order, pp. 3-7.) Fox, having obtained the relief it sought in Superior Court, is now prevented from currently asserting an inconsistent position under the doctrine of judicial estoppel.

Even beyond Judge Rico's Order, during the Arbitration Management Conference held on April 26, 2016 (a mere 18 days after the Court's order), the Arbitrator, in a desire to ensure that all parties were clear about the issues subject to arbitration and the claims to be resolved, raised this very issue so as to put to rest the potential for a later claim that the arbitrator resolved a matter reserved for the court. As a result, the Arbitrator ordered the parties to meet and confer to reach a formal stipulation as to each and every claim that is the subject of the Cross Demands for Arbitration. (Scheduling Order No. 1 dated May 2, 2016)

Subsequently, the parties submitted such a stipulation entitled "Stipulation Regarding Claims in Arbitration" and to it is attached the Statement of Claim. The parties set forth their understanding of Judge Rico's April 8, 2016 Order regarding the claims subject to arbitration. As they represent in the Stipulation:

[T]he parties understand the April 8 Order to pertain to four categories of claims alleged in the KBTF Respondents' Complaint: (1) "Self-Dealing Claims," which are claims related to the allegations that TCFTV entered into transactions with affiliates on terms that were not comparable to the terms on which the affiliated entity entered into similar transactions with unrelated third parties; (2) "2009 Release Claims," which are claims related to 2009 release agreements concerning Seasons 5 and 6 of *Bones*; (3) "Contingent Compensation Claims," which are claims that TCFTV miscalculated, misclassified, or improperly allocated the contingent compensation to which the KBTF Respondents are due or failed to negotiate their contingent compensation to which the KBTF Respondents are due or failed to negotiate their contingent compensation definitions in good faith; and (4) "Failure to Permit Audit Claims," which are allegations by the KBTF Respondents that TCFTV failed to provide the auditor with documents it was contractually obligated to provide.

(Stipulation, ¶ 2.) The parties then state: "The Self-Dealing and 2009 Release Claims are arbitrable; the Contingent Compensation and Failure to Permit Audit Claims are not." (*Id.*) They even highlighted the exact claims in the Complaint that "are fully arbitrable." (*Id.* at ¶ 2.)

To be clear, Fox belatedly challenges only two claims. In its Reply Brief re Arbitrability, it argues that it was the Superior Court ruling that set the scope of the arbitration and cannot be challenged. It is interesting to note that it was Fox that sought the Superior Court ruling and entered into the very stipulation it now seeks to disavow. Having initiated the Demand for Arbitration and having likewise stipulated to arbitrate the very claims presented by the Respondents, Fox now argues that Judge Rico's order actually circumscribes these proceedings

and somehow likewise circumscribes/nullifies the stipulation it entered into. Judge Rico's order does no such thing and does not void the operative stipulation.

Simply put, the two claims challenged by Fox are clearly within the scope of this Arbitration, as they relate to the Self-Dealing Claims which the parties explicitly agreed to arbitrate - in both a signed agreement before a dispute arose and in a "binding stipulation to arbitrate entered into after a dispute has arisen."

As analyzed herein, the Hulu ownership claim is part of Respondents' claim that Fox licensed in-season streaming rights for Bones to its affiliate Hulu on artificially low monetary terms in violation of the self-dealing protections. More specifically, the issue of whether TCFTV or FBC owned the in-streaming rights to Bones must be decided as a factual predicate to the self-dealing claim. Respondents' claim to their share of \$95.9 million that should have been included in TCFTV's Gross Receipts presupposes that TCFTV possessed the in-season streaming rights for Bones on Hulu.

The reasonable and nondiscriminatory claims look at the same conduct by TCFTV in its licensing that is challenged by Respondents and examines whether it also breached TCFTV's obligation to distribute Bones "on a reasonable and non-discriminatory basis." "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." Cal. Civ. Code § 1642. Here, the "reasonable and non-discriminatory" standard of Paragraph VII.BB applies to the "distribution . . . of the Program directly or by any Subsidiary, Affiliate, or other Party," and thus modifies the "complete, exclusive and unqualified discretion and control as to time, manner, and terms of [] distribution" standard found in Paragraph 10(a) of the Agreements. To determine whether Fox breached its contractual obligations through self-dealing, it is necessary to look at Paragraph VII.BB in conjunction with Paragraphs 10(a) and (b) to ascertain what those obligations were.

Certainly, the Hulu ownership and reasonable and non-discriminatory claims do not fall within the ambit of the Contingent Compensation and Failure to Permit Audit Claims which are the only claims remaining in Superior Court. Judge Rico's order distinguished between claims that "challenge Fox's calculation or reporting of Plaintiff's contingent compensation under . . . the MAGR Definition," which are not arbitrable, and claims that "challenge Fox's decision to broadcast the series on Fox," which are arbitrable.

Even if the parties' explicit agreements to arbitrate are not enough, which the Arbitrator finds that they are, Fox has waived the right to make jurisdictional challenges regarding any of the claims. Under JAMS Comprehensive Arbitration Rules & Procedures, "jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreements under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator." JAMS Rule 11(b). The California Court of Appeal has held that the incorporation of JAMS Rule 11 "serves as clear and unmistakable evidence of the parties' intent to delegate such issues [of arbitrability] to an arbitrator" and "authorized the arbitrator to make the *final* decision regarding what issues were arbitrable." Greenspan v. LADT, LLC, 185 Cal. App. 4<sup>th</sup> 1413, 1442-43 (2010) (internal quotations and citation omitted; emphasis in original).

"Jurisdictional challenges under Rule 11 shall be deemed waived, unless asserted in a response to a Demand or counterclaim or promptly thereafter, when circumstances first suggest an issue of arbitrability." JAMS Rule 9(f). Fox has waived any challenge to the arbitrability of any of the claims in this matter by willingly participating over the past two and a half years without contesting the Arbitrator's jurisdiction. Not only did Fox initiate this Arbitration, but it has willingly engaged in discovery, submitted discovery disputes to the Arbitrator, offered witnesses for deposition, and notably, engaged in an over a month-long arbitration hearing. During all this time, Fox has never disputed that the Arbitrator had authority to make a final disposition of all claims presented.<sup>2</sup>

Fox asserts that the Hulu ownership claim was first raised in Ms. Zigler's April 30, 2018 expert report, yet Fox does not even attempt to explain its delay of over four months to first raise an objection to arbitrability. Moreover, as Fox points out, this issue was raised much earlier – in one of the Superior Court complaints that Fox compelled to arbitration and in the first depositions in this case. (Respondents' Arb. Br. Ex. 1 at Ex. B, p. 13, ¶ 25; Ex. 5 at 178:9-

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<sup>2</sup> Fox argues that it could not have waived its arbitrability argument because the burden was on Respondents to amend their claims. However, no amendment was needed since the claims are within the scope of arbitration. Moreover, the burden was on Fox as the party challenging arbitrability to raise this issue "when circumstances first suggest an issue of arbitrability." Clearly, Fox did not do so and likewise Fox gave no hint of any arbitrability issues at any time during this case as it cannot point to any time prior to the closing hours of the hearing wherein it even suggested such an issue.

179:2.) Similarly, Fox was aware of Respondents' Paragraph VII. BB breach claims before the hearing yet failed to raise any objections. (Respondents' Pre Hrg. Br. at 2, 4.)

Not only is a finding of waiver compelled by JAMS Rules, but it is also supported by case law independent of Rule 9(f). Fox, relying on Ficek v. S. Pac. Co., 338 F.2d 665, 657 (9<sup>th</sup> Cir. 1964), suggests that waiver can only apply if a party waits until after the arbitrator's decision to raise an objection. However, the Ninth Circuit held that Ficek is "equally applicable" to objections raised before the arbitrator's decision, reasoning that "[i]t would be unreasonable and unjust to allow [the defendant] to challenge the legitimacy of the arbitration process, in which he had voluntarily participated over a period of several months." Fortune, Alsweet & Eldridge, Inc. v. Daniel, 724 F.2d 1355, 1357 (9<sup>th</sup> Cir. 1983) (per curiam).

The Arbitrator disagrees entirely with Fox's assertions, which represent a transparent attempt to derail this Arbitration before the final award is issued. See Nghiem v. NEC Elec., Inc., 25 F.3d 1437, 1440 (9<sup>th</sup> Cir. 1994) (affirming arbitrator's decision where claimant initiated arbitration, attended hearing with representation, presented evidence, and submitted closing brief before getting cold feet and filing suit in state court prior to decision; stating "[o]nce a claimant submits to the authority of the arbitrator and pursues arbitration, he cannot suddenly change his mind and assert lack of authority"). It is frivolous for Fox to claim belatedly that certain claims have arisen that suggest an issue of arbitrability. These very same arguments and issues have been heavily litigated throughout this case and certainly during the month and a half arbitration hearing.

In sum, from the inception of this case, Fox sought to compel arbitration of the present claims, and its attempt to offer last-minute arguments otherwise is unsupported factually and legally. Accordingly, all claims presented herein are arbitrable and the Arbitrator has the power to issue a binding award as to the claims presented herein.

#### **Punitive Damages Are Available for the Tort Claims**

Another issue raised by Fox for the first time during its closing argument and in its Post-Hearing Brief is the availability of punitive damages. Fox argues that the Agreements expressly bar Participants' claim for punitive damages. Fox relies on the following from Paragraph 10(b):

Each of Company and Artist agrees that Company's and Artist's sole remedy against Fox for any alleged failure by Fox to comply with the terms of this paragraph shall be actual damages, and Company and Artist hereby waive any right to seek or obtain preliminary or permanent injunctive relief *or punitive relief* in connection with any such alleged failure (Emphasis added).

The Arbitrator finds that this limit on punitive damages in Paragraph 10(b) does not apply to the alleged tortious conduct of Fox. To begin with, on its face, the waiver applies only to "any alleged failure by Fox to comply with the terms of [Paragraph 10(b)]." In other words, it applies to the contract claims only, and Respondents do not seek punitive damages related to the contract claims.

Furthermore, "Fox" as used in Respondents' agreements is defined as "Twentieth Century Fox Television, a unit of Twentieth Century Fox Film Corporation." Therefore, the "alleged failure" referenced in the waiver is the Studio's failure to comply with Paragraph 10(b). The waiver does not apply to Respondents' tort claims against the non-studio Claimants and fraud claim against TCFTV.

Even beyond the plain language of the waiver and its inapplicability to the tort claims here, California Civil Code § 1668 provides:

All contracts, which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the persons or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

As courts have found, "This section made it clear that a party could not contract away liability for his fraudulent or intentional acts . . . ." Gardner v. Downtown Porsche Audi, 180 Cal. App. 3d 713, 716 (1986). Indeed, "[i]t is now settled—and in full accord with the language of the statute—that notwithstanding its different treatment of ordinary negligence, under section 1668, a party [cannot] contract away liability for his fraudulent or intentional acts or for his negligent violations of statutory law, regardless of whether the public interest is affected." Health Net of Cal., Inc. v. Dept. of Health Servs., 113 Cal. App. 4th 224, 234 (2003) (internal quotations and citations omitted). Thus, any alleged waiver of tort claims and punitive damages in Paragraph 10(b) is barred by Section 1668. See Ting v. AT&T, 182 F. Supp. 2d 902, 925 (N.D. Cal. 2002) (contractual provision limiting recovery to direct damages, but precluding

punitive damages, was impermissible under section 1668), *aff'd in part, rev'd in part* on other grounds, 319 F. 3d 1126 (9<sup>th</sup> Cir. 2003).

Fox seeks to argue that it “does not matter that Participants are alleging tort, rather than contract, claims as the basis for punitive damages.” It relies on Judge Rico’s order that tort claims are only arbitrable because they arise out of Paragraph 10(b) as “self-dealing claims.” Fox’s reliance on Judge Rico’s finding regarding the *arbitrability* of the tort claims is sorely misplaced. In no way can Judge Rico’s determination that tort claims that arise out of the contractual relationship are subject to the parties’ arbitration provision be twisted to bar available remedies at law for intentional torts.

Thus, Fox overreaches with its argument based on the language of Paragraph 10(b). The plain language of Paragraph 10(b) does not apply to prevent an award of punitive damages against the non-Studio Claimants for intentional torts and against TCFTV for fraud.

### III.

#### **BREACH OF CONTRACT THROUGH THE RELEASE AND FRAUD**

##### **The Claim for Breach of Contract**

Respondents argue that TCFTV (also sometimes referred to as the Studio) breached the Affiliate Transaction Protection provision in all of Respondents’ Agreements for Seasons 5-8. They argue that not only did TCFTV fail to transact with its affiliates on comparable monetary terms to its transactions with unrelated third-party distributors for comparable programs, but that it likewise had no intention of complying.

Fox, on the other hand, argues that FBC (also sometimes referred to as the Network) determined that it did not make business sense to exercise the full-cost option for Season 5 because *Bones* was a middling show with middling ratings. Instead, Fox claims, FBC declined its option for *Bones* and negotiated a new license with the Studio. It asserts that the *Bones* Seasons 5 and 6 license agreement not only permitted *Bones* to stay on the air and continue generating millions in revenue for Respondents, but it was also on “monetary terms comparable” to “similar transactions” for licenses between FBC and third parties for “comparable programs,” as were the licenses for Seasons 7 and 8. These assertions, however, do not comport with the evidence presented.

As early as January 2009 there is no doubt, based on the email sent by Peter Ligouri dated January 11, 2009 (Exhibit 417A), that FBC had already decided, resolved and determined that it was not going to pay a full cost-of-production license fee for the fifth and sixth seasons of Bones. As far as FBC was concerned, Bones was not worth the cost or effort of further production on a full cost-of-production basis. Or so it led its talent to believe. These facts are undisputed and confirmed by both the documentary evidence and the testimony of the FBC witnesses themselves. Additionally, this was confirmed by the Fox Studio witnesses who were supposed to be aligned with Respondents.

Hence, with zero surprise, FBC declined its option. While FBC takes the position that it knew it might risk losing the show to another network the real question is, did FBC truly intend on cancelling the show or was another strategy in play? Once again and without any controverting evidence, the Fox Studio executives (TCFTV), knowing the fate of its show as early as January 2009, did absolutely nothing to ensure its survivability until the stroke of midnight whereupon the testimony demonstrates a feckless effort to protect its own interests and the interests of Respondents.

While feigning protest and an inability to do nothing other than capitulate, the Studio executives (TCFTV) became willing partners with the Network (Fox) to lead its talent into a deal that was not only favorable to the its parent network but likewise assuring itself no participant leakage. The parties did eventually agree on a \$2 million per episode license fee, along with a [REDACTED] for two seasons, but the cost of doing so for Respondents came at the cost of a release and a complete disregard for the contractual obligations owed by TCFTV.

The analysis begins with the Affiliate Transaction Protection provision found in Paragraph 10(b) of the Participant Agreements (“Paragraph 10(b)”), which provides:

b. Dealings with Affiliates: Each of Company and Artist acknowledges that Fox is part of a diversified, multi-faceted, international company, whose affiliates include, or may in the future include, among others, exhibitors, television “platforms”, networks, stations and programming services, video device distributors, record companies, internet companies, so called “E. Commerce companies”, publishers (literary and electronic) and wholesale and retail outlets (individually or collectively, “Affiliated Company or Companies”). In consideration thereof, Fox agrees that Fox’s transactions with Affiliated Companies will be on monetary terms comparable to the terms on which the

Affiliated Company enters into similar transactions with unrelated third-party distributors for comparable programs.

The Arbitrator agrees with Respondents that not only did TCFTV fail to comply with Paragraph 10(b) but that it also never intended to comply with Paragraph 10(b).

Fox's documents and testimony establish that TCFTV had no intention or ability to transact with its affiliates "on monetary terms comparable to the terms on which [Fox Affiliates] enter[ ] into similar transactions with unrelated third party distributors for comparable programs." The evidence in this regard is uncontroverted by both the Fox Studio witnesses and the Network witnesses. Every witness from both TCFTV and FBC testified that TCFTV executives did not have access to, or they did not seek, information concerning FBC's transactions with unaffiliated third-party studios at the time they entered into any of the agreements for Bones.

First, Mr. Howard Kurtzman, head of Business Affairs for TCFTV, testified that he has no recollection of ever having conversations with FBC about comparable programs. (7/12/18 Tr. at 800:9-801:17; 905:15-907:6; 942:14-943:23; 950: 9-951:2; 907:2-6.) He testified that he had no access to FBC's license fee information with third party distributors. (*Id.* at 943:5-12.) When asked whether TCFTV ever asked for third party agreements in connection with Seasons 5 and 6 license negotiations, Kurtzman responded, "I don't believe so. We weren't - - we weren't privy to those agreements." (*Id.* at 943:19-23.)

Next, Ms. Dana Walden, Co-President of TCFTV, testified as follows:

Q. In fact, you didn't make any effort as part of the negotiations over Season 5 of Bones to learn what FBC paid any unaffiliated third-party studio for any other series in Seasons 5 and 6; correct?

A. We were not allowed to get that information from the Network.

(7/16/18 Tr. at 1307:20-1308:18.) In fact, she testified that she never read or understood the participant agreements. (*Id.* at 1263:23-1266:23.)

Although Ms. Walden claimed that she was more on the "creative" side as Co-President of TCFTV, her complete lack of knowledge of the agreements of those whose interests she represented is either shocking if true, or disingenuous if false. Her understanding of the Studio's obligation to participants under the Affiliate Transaction Protection clause is that the "deals must

be as good as marketplace deals. So that when we're making a deal with a sister company, we are making a deal that we feel is a fair marketplace deal." (Id. at 1265: 1-7.) Ms. Walden, at this point in time in 2009, had been a co-head of the Studio for ten years and had absolutely no idea what the standard was with respect to dealing with affiliates.

Mr. Barron, the Studio CFO, similarly testified that he had no access to the information and no insight to share. (8/13/18 Tr. at 5169:8-20; 5170:3-9.) He was not involved in anything at FBC, so there was no comparability analysis involving FBC numbers. (Id. at 5155:15-23.)

This testimony of the Studio was consistent on the Network side. Mr. Ira Kurgan, Head of Business Affairs for FBC, testified that nobody ever mentioned the comparable terms standard. When asked whether the Studio ever told him that he was obligated to pay the license fee for Bones on monetary terms comparable to what the Network was paying for other shows, he said "that never came up":

Q. And nobody from the Studio ever said the license fee for Bones has to be on comparable terms to your agreements with unaffiliated studios because we have a contractual obligation to the participants, right?

A. Yeah, that never came up.

(7/18/18 Tr. at 1814:10-21.) As a result, he never told the Studio what FBC was paying for comparable programs. (Id. at 1815: 22-25.)

Mr. Peter Rice, Chairman of FBC, testified that he did not look at comparable programs or ask anybody to do so:

Q. I'll do this one slowly again. At any time during the year 2009, did you personally ever embark upon the task of trying to figure out if there was a show that was comparable to Bones?

A. Not that I recall.

Q. Did you ever instruct anybody to do that?

A. Not that I recall.

Q. At any time during the time you were negotiating the license fee for Seasons 5 and 6 of Bones, did you ever embark upon the task of trying to find out what comparable programs of Bones here were on other networks?

A. Not that I recall.

(7/13/18 Tr. at 1057:9-1058:9.)

As Respondents point out, it is necessary to address Mr. Gary Newman's testimony last since everybody pointed to Mr. Newman as the person who would know about the comparability standard. Mr. Newman, the other Co-President of TCFTV, testified he did not recall whether he asked anybody at the Network for the requisite comparable information, and he did not recall whether anybody from the Network ever provided him with that information. (7/23/18 Tr. at 2381: 5-18.)

Then, Mr. Newman revealed that he was involved in the group that conceived of Paragraph 10(b):

Q. Now, from being involved in the group that conceived this paragraph, do you have an understanding of what the goals were in terms of this particular language?

A. Yes.

Q. What are the goals?

A. You know, as we were trying to come up with a standard of dealing that, that would be as objective as we could make it, we decided to utilize the comparable terms that the affiliated company, so in our case it would have been the Fox network, had entered into with third parties."

(Id. at 2543:17-2544:10.)

In direct contrast to Ms. Walden's understanding of the Studio's obligation to participants, Mr. Newman stated that the goal of Paragraph 10(b) was to make an objective standard. He explained why:

[W]e felt that was a better standard than the more subjective ones, like fair market value or other such things. We wanted something that you could actually go find data and be able to draw your conclusions from, from that data.

(Id. at 2544:1-10.)

Not only do each of the co-presidents of the Studio initially vary widely in their understanding of the obligations the Studio had toward its talent, Ms. Walden actually attempted to provide a completely different interpretation, enabling Fox to defend itself on the basis of fair market value. This concept nowhere appears in the contract.

Ironically, when Mr. Newman was recalled to the stand on behalf of Fox, he then tried to adopt Ms. Walden's concept of fair market value and move away from the very language of the provision itself and one he helped develop. By attempting to morph the language of the

operative contract to one of fair market value, both the Network and the Studio are in sync with one another in their defense of the breach claims. However, this attempt to adopt the same understanding only serves to highlight the breach and their impeachment.

Even after stating that the standard was an objective one requiring data, Mr. Newman did not recall whether he himself ever did any research or asked anybody to do research to aid in the Studio's negotiations with the Network. (*Id.* at 4088:14-24.) Instead, Mr. Newman claims he went to agents to get marketplace information regarding Season 5. (*Id.* at 4087:15-4089:4.) Essentially, this "marketplace information" was gathered from a single lunch conversation about CBS's renegotiation on Ghost Whisperer with ABC Studios. (Respondents' Ex. 2159-0001.) Not only did this testimony lack any specificity, but more importantly, to reiterate, "*market information*" is not the standard under Paragraph 10(b).

Fox's own witnesses – from the Studio and the Network - establish that Fox did not even attempt to comply with Paragraph 10(b). In fact, there is no evidence that even one Fox employee asked for, received, or reviewed a "similar transaction[] with unrelated third party distributors for comparable programs."

The testimony of both Mr. Newman and Ms. Walden regarding "marketplace information" is not only troubling but extremely disconcerting. The more these individuals testified the more incredulous their testimony appeared. Specifically, their testimony was not only "*NOT*" at odds with the Network but actually served the interests of the Network, meaning if they could successfully morph the standard of third party comparables to some marketplace value it would then serve to argue that no breach occurred since the value of Bones was fairly calculated and achieved.

This is not a case of insufficient, questionable, or unreliable information. Rather, this is a case of a complete absence of information, and the plain words of Paragraph 10(b) require that Fox look at "similar transactions with unrelated third- party distributors for comparable programs." This was not done, and Fox cannot deny this fact.

While admitting that it did not look at similar transactions at the time it negotiated for Seasons 5-6, 7 and 8-9 of Bones, Fox argues that the express language of Paragraph 10(b) allows it to look to later transactions. In other words, faced with an undisputed and undeniable breach,

Fox now asserts an interpretation that strains credulity and devoid of common sense. Fox argues that it can look both prospectively and presently – “in the event of any dispute” - to other similar transactions between itself and a third-party to justify what it plainly did not do.

Fox relies on the word “enters” in Paragraph 10(b). However, Fox’s interpretation ignores the words “will be” – “Fox’s transactions with Affiliated Companies will be on monetary terms comparable . . . .” This mandatory language does not mean the challenged transaction “was” on comparable monetary terms with third-party deals. Furthermore, “enters” is present tense, not future tense, and plainly refers to other transactions existing at the time of the affiliate transaction when read in conjunction with the promise that the monetary terms of future affiliate transactions “will be comparable” to those of third-party transactions.

Both parties contend that the language of Paragraph 10(b) is not ambiguous. It is well-settled that the interpretation of a contract involves a two-step process whereby the court provisionally receives evidence concerning the parties’ intentions to determine “ambiguity,” i.e. whether the language is “reasonably susceptible” to the interpretation urged by a party. See Wolf v. Superior Court, 114 Cal. App. 4<sup>th</sup> 1343, 1351 (2004) (describing two-step approach to consideration of extrinsic evidence). It is hardly surprising that Fox argues that the language of Paragraph 10(b) is not ambiguous since the extrinsic evidence from its own witnesses directly contradicts Fox’s interpretation and unequivocally establishes the breach.

In this regard, it is interesting to note that Fox, in both of its closing briefs, distances itself greatly from the testimony of its own witnesses. In fact, the post-hearing briefs submitted resemble a motion for summary adjudication rather than a closing brief. Fox goes to great lengths to ignore the testimony of its witnesses, as it must, since to do otherwise would unquestionably establish the breach Respondents assert.

Mr. Newman testified that TCFTV was looking for the most “objective” standard of dealing possible, so that “*when we make a deal with an affiliated party we’re going to be able to anticipate whether or not we’re opening ourselves up for liability from claims profit participants.*” (7/23/18 Tr. at 2543:17-3545:13.) Mr. Chernin (another high-ranking executive) also confirmed his understanding that the standard “will be applied at the time Fox enters into self-dealing transactions so that [participants] will be paid fairly when the accounting statements arrive.” (7/16/18 Tr. at 1392:5-1394:1, 1482:9-20.) Upon a review of this extrinsic evidence,

the Arbitrator determines that the language of Paragraph 10(b) is not reasonably susceptible to the interpretation proffered by Fox, and no extrinsic evidence is needed to aid in the interpretation of the contract. See Wolf, 114 Cal. App. 4<sup>th</sup> at 1351 (“If in light of the extrinsic evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step – interpreting the contract.”).

According to Fox’s present assertion, the standard of Paragraph 10(b) will only be employed if a particular transaction is challenged. Under this scenario, then, there is no metric by which the Studio and Participants have to measure the fairness of the transaction, no certainty that what the Network indeed agreed to was fair, and no way for the Studio to belatedly bring the transaction into compliance. In fact, under Fox’s construction, a transaction that complies with Paragraph 10(b) at the time of licensing could subsequently become non-compliant if TCFTV’s affiliates thereafter enter into benchmark agreements on more favorable monetary terms. Fox cannot seriously contend that any party, let alone the Studio and Participants, actually agreed to unknown, subsequently occurring “similar transactions” standard to be the controlling standard. This interpretation is illogical and untenable.

Following this assertion that later transactions can be examined, Fox claims that Bones’ license fees are comparable to those of Fringe. However, having determined that Fox’s interpretation of Paragraph 10(b) is not proper, the Arbitrator does not reach the parties’ arguments regarding the comparability of Fringe. Once again, the Arbitrator is somewhat surprised by this latest contention by Fox since Fringe *premiered three years after Bones*. As such, its fifth- year license fee could not have been considered at the time of licensing. To state it plainly, Fringe was not even in existence at the time the parties were negotiating Seasons 5 & 6 of Bones. How could Fringe be used for anything in this analysis? It can’t.

With respect to House, both parties presented arguments regarding the comparability of House. Respondents claim that House is the only comparable program to Bones since its Seasons 5-8 each preceded Bones by one year. However, the evidence shows that Fox did not even request information regarding House during the requisite time period.

Ms. Walden stated that she never requested information regarding House. (7/16/18 Tr. at 1307:6-15.) Mr. Rice stated that he did not discuss House with Mr. Newman or Ms. Walden. (7/13/18 Tr. at 1059:14-1060:4.) Mr. Newman testified that he did not analyze House as a

comparable program. (7/23/18 Tr. at 2404:14-19.) He stated that Mr. Kurtzman would have done research, but he didn't know whether Mr. Kurtzman ever asked for any House information. (Id. at 2385:5-8.)

Moreover, Fox erroneously argues that Respondents have not carried their burden to establish a breach of Paragraph 10(b) because they do not properly evaluate Bones and House by taking into account differences in ratings, rankings, advertising revenue, awards and brand impact that affect their relative values and overall profitability. Again, this is not the test – the test is measured by Fox's actions in entering into transactions with Affiliated Companies on comparable monetary terms to transactions with unrelated third-party distributors for comparable programs.

Thus, it is undisputed that the Studio had the contractual obligation set forth in Paragraph 10(b) and simply did not comply. More specifically, this meant that Ms. Walden, Mr. Newman and Mr. Kurtzman were obligated to protect the Participants' interests when negotiating with the Network by ensuring that the license fees for Bones were comparable to the license fees entered into with third parties. This was not done.

Interestingly, both Ms. Walden and Mr. Newman testified that they engaged in tough negotiations and fought for the Participants. However, the evidence belies these assertions. How could they fight if they were not properly armed with the requisite information? What negotiations were there if the information mandated by the contract was not examined, called for or even investigated?

Moreover, additional and troubling evidence reveals that not only did the Studio know that it would be in breach of the "Dealing with Affiliates" provision, but that it sought indemnity from FBC to cover the breach.

On May 6, 2009, Mr. Kurtzman wrote to Mr. Kurgan reminding him that "[REDACTED]" (Respondents Ex. 490.) Similarly, in the later negotiations, there was an email regarding splitting liability of Season 7. (Respondents Ex. 762.) On May 2, 2011, Mr. Kurtzman wrote that TCFTV and FBC "[REDACTED]" (Respondents Ex. 767.) Again, for

Seasons 8-9, there also appears to have been consideration of extending the “ [REDACTED] [REDACTED] ” from Season 7 to Seasons 8-9, though it is unclear whether that occurred. (Respondents Ex 863.)

There is no doubt that the Studio realized that it was not going to win the fight with its affiliate and therefore not only capitulated to the wishes of the Network but also became an accomplice to fraud with respect to the Network’s desire to limit both the Studio’s and Network’s exposure for its breach and failure to negotiate in accord with the operative contractual standards. A breach occurred, was known to have occurred, and was attempted to be papered over by way of a release.

### **The Release and Fraud**

Fox argues that Josephson and Reichs are barred from challenging the license fees for Seasons 5 and 6 since they both signed a release. “In general, a written release extinguishes any obligation covered by the release’s terms, provided it has not been obtained by fraud, deception, misrepresentation, duress, or undue influence.” Skrbina v. Fleming Companies, 45 Cal. App. 4<sup>th</sup> 1353, 1366 (1996). However, as argued by Respondents and established at the Hearing, the release was procured by fraud and is a nullity on its face. To prove fraudulent inducement, Josephson and Reichs must prove: (1) a “fraudulent statement” by TCFTV/FBC; (2) that TCFTV/FBC “knew that the representation was not true”; (3) that TCFTV/FBC “made the representation to persuade [Respondents] to agree to the [Release]”; (4) that Respondents “reasonably relied on this representation”; and (5) that Respondents “would not have entered into the contract if [they] had known that the representation was not true.” CACI No. 334.<sup>3</sup>

As a starting point, there is no reasonable dispute that executives and lawyers from both TCFTV and FBC told Participants that Fox would cancel *Bones* unless it received a signed release from *all* Participants. This point is simply incontrovertible.

On May 13, 2009, Josephson got a call from Mr. Newman and Ms. Walden and another call from Mr. Rice saying the show will be cancelled if all Participants do not sign off on the license fee. (Respondents Ex. 2202.) However, Mr. Rice testified that a deal was already in

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<sup>3</sup> The elements of fraudulent concealment are identical, except instead of making a fraudulent statement, the defendant must have “concealed or suppressed a material fact.” Prakashpalan v. Engstrom, Lipscomb & Lack, 223 Cal. App. 4<sup>th</sup> 1105, 1129 (2014).

place with the Studio to put the show on the air before he called Josephson. (7/13/18 Tr. at 1138:21-1139:5; 1247:20-1248:2.)

On May 15, 2009, Ms. Bowles sends the draft release (“Release”) to all Participants. (Respondents Ex. 2253.) “Participants” is a defined term inclusive of all profit participants, and the Recital provides:

(b) The Participants accept the terms for renewal of the Series for the fifth and sixth production seasons (“Renewal”) as follows: an order for 2 full seasons, the fifth and sixth production seasons, at a license fee of \$2,000,000 per episode. The defined term indicates that all profit participants agree to the terms. The signature page contains lines for all Participants.

(c) The Participants acknowledge that Fox has consulted with them regarding the Renewal and accordingly will not and hereby expressly waive any right to assert any claim in connection with the Renewal, the license fee and Fox’s acceptance thereof, with the exception of claims for the enforcement of the terms and conditions of the Renewal.

As Respondents point out, “Participants” includes Boreanaz and Deschanel, and at the time this document was prepared and signed, Fox knew that Boreanaz and Deschanel were not going to sign the prepared release. Boreanaz and Deschanel did not agree to waive any right to assert any claim in connection with the renewal of the license fee.

On May 15, 2009 (the same date as set forth above), Mr. Sam Bramhall said Participants need to approve the Release that day but have the weekend to execute the release itself. (Fox Ex. 2254.) Ms. Lauren Whitney, Mr. Josephson’s agent, testified that it was made very clear by Mr. Bramhall that the series would not be picked up unless all Participants signed. (7/10/18 Tr. at 426:6-10.)

Again, on May 15, 2009, there was an email exchange between Mr. Newman and Mr. Bramhall. (Respondents Ex. 578.) Mr. Newman knew full well that Boreanaz was not signing. (Id.) Interestingly, and contrary to the representations made by Mr. Bramhall to the Participants’ representatives, Mr. Newman took a contrary view and made it clear that he did not care if Boreanaz and Deschanel signed the Release. Yet, Mr. Newman was the very person who called Josephson on this date and told him everybody had to sign. (See also 7/23/18 Tr. at 2467:13-2468: 8.)

Mr. Bramhall was concerned that others would balk if Fox went forward without Boreanaz signing. (Respondents Ex. 578.) Once again, on May 15, 2009, Mr. Bramhall told Boreanaz' representatives good luck in finding Boreanaz another job. (Respondents Ex. 573.) This was either a statement of total dissatisfaction (at best) or a veiled threat of consequences (at worst). There can be no other inferences drawn from such a statement.

On May 16, 2009, Mr. Bramhall tells Ms. Whitney and Mr. Collier, Josephson's attorney, that he "[REDACTED]" and claims that the only changes were "[REDACTED]" and he did not want to open a "[REDACTED]" by putting another version out. (Respondents Ex. 587.) He concludes that "[REDACTED]" (Id.) Again, this is misleading, at best. Mr. Bramhall does not correct the recitals, nor does he remove the signature blocks for Boreanaz and Deschanel. As will be discussed below, the failure to remove the signature blocks is critical.

While Mr. Bramhall claims that he told Whitney and Josephson's representatives that the actors were not signing, this statement is without any documentary proof and stands directly contrary to the testimony from other witnesses and is both troubling and incredulous when juxtaposed with Mr. Rice's testimony below. Nobody corroborates this testimony. (7/10/18 Tr. at 428:12-18, 433:21-434:18 (Whitney); 7/10/18 Tr. at 497:5-498:9 (Collier); 7/25/18 Tr. at 3173:2-3174:10 (Schenkman).)

Unlike Mr. Bramhall, Mr. Rice admits that he knew that Deschanel and Boreanaz were not signing the Release, but he did not tell Josephson or Reichs or instruct anyone to inform them. (7/13/18 Tr. at 1149:17-1150:13.) Both Josephson and Reichs testified that they would not have signed the Release had they known that not all Participants were signing. (7/9/18 Reichs Tr. at 171:8-16; 7/9/18 Josephson Tr. at 272:5-19.) They had no desire to risk cancellation of the Show. Ms. Whitney, agent for both Reichs and Josephson, testified that had she known that Boreanaz and Deschanel were not going to sign the Release, "it would have changed the conversation completely." (7/10/18 Tr. at 440:1-22.)

Notwithstanding the insurmountable evidence that Fox did, in fact, mislead Participants, Fox takes the position that it did not hide anything and the lack of signatures on the Release itself clearly demonstrates that Boreanaz and Deschanel did not sign the Release. Hence, Fox proffers and concludes that the evidence is quite plain, unambiguous and straightforward: *Anyone signing*

*would have seen blank signature spaces and could only conclude that someone was not signing.* Once again, Fox presents a very troubling argument both in terms of credibility and intent. The mere fact that the copy sent to Josephson and Reichs did not contain all the executed signatures of Participants but did contain the signature blocks for the missing signatories is simply not enough and is quite sophomoric.

As is often the case with a document requiring the signatures of many individuals in various locations, it is signed in counterparts. This is especially true when, as in the case here, signatures are needed in a very short time frame from signatories that are scattered throughout the state or country. In fact, unless the parties are to sign altogether in the same room and at the same time, virtually all transactional matters nowadays are signed in counterparts. This is the rule and not the exception.<sup>4</sup>

Again, as already set forth above, Mr. Bramhall represented that he did not circulate a revised version (which would have clearly shown a deletion of signature blocks for Boreanaz and Deschanel) because, as he stated, only insubstantial changes had been made. But the question that is most critical to this part of the case is the following: *How were Josephson and Reichs to divine that Boreanaz and Deschanel did not sign when they were explicitly told the opposite, and the signature blocks for those individuals still remained on the circulated Release?* The answer is simple. *They could not have known* such a fact from the document itself. To argue or proffer to the contrary is specious.

There was no way to infer such a fact by the document itself since the original version was circulated with signature blocks for all Participants and that version had never been changed or edited to reflect the true state of intentions by Boreanaz and Deschanel. Nor is there any evidence to support Mr. Bramhall's assertion that he had informed their representatives. To the contrary, the executives from the Network and the Studio all stated the opposite. All along, Fox's representation had been that all Participants had to sign, or the show would be cancelled. It

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<sup>4</sup> For the same reasons, Fox's assertion that the fraud claims should be barred by the three-year statute of limitations is without merit. The receipt of an agreement signed in counterparts would hardly put Josephson and Reichs on constructive notice that they had been defrauded.

was safe for the signatories to assume that if Boreanaz and Deschanel were not signing, the Show would be cancelled.<sup>5</sup>

In conjunction with the evidence discussed above, there is an additional disturbing nuance supportive of fraud. Mr. Hart Hanson, the showrunner for *Bones*, was likewise presented with the Release. However, Josephson testified that initially both he and Mr. Hanson spoke of the Release, and Mr. Hanson had expressed his reservations about the document since it clearly impacted each's participation points.

It was clear to Josephson that Mr. Hanson was, in all likelihood, not going to sign the Release. Josephson testified that in their initial conversation(s) Mr. Hanson simply did not want to sign. Yet somehow, as the Network's deadline to sign the release was approaching, Mr. Hanson changed his position and so indicated to Josephson, which undoubtedly, put more pressure on Josephson since not to sign would put many jobs at risk.

While there is no one to refute the testimony of Josephson about these conversations (Mr. Hanson did not testify at the hearing) and while Fox argues that Josephson knew Mr. Hanson was seeking a benefit based on a May 14, 2009 email, wherein he stated that "other participants have and are negotiating to gain" (Ex. 3650-0002), there is one fact that is immutable and cannot be denied. Mr. Hanson, on the eve of signing the Release, received from Fox a new "overall agreement" that was clearly to his liking and was kept hidden from the other Participants.

Respondents argue that the secret Hart Hanson modifications make the language of the Release false. In the Release, the integration clause provides:

No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party hereto with respect to the subject matter of this Agreement, except as specifically set forth in this Agreement.

(Release, ¶ 8.) However, as was revealed at the very end of the Arbitration Hearing, Fox was, in fact, negotiating with Mr. Hanson at this critical time "with respect to the subject matter of this Agreement."

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<sup>5</sup> Another fraud claimed by Respondents is Fox's failure to disclose material changes in the Release regarding deficit recoupment and ranking bonuses. The Release makes no reference to elimination of deficit recoupment and ranking bonuses. (Respondents Exs. 561, 2680.) Ms. Whitney testified that she didn't learn about removal of the deficit recoupment until the Audit Report. (Tr. 7/11/18 at 616:16-617:4.) Similarly, Ms. Felker testified that Bramhall never mentioned the deficit recoupment term going away. (7/11/18 at 616: 6-617:4.)

On May 15, 2009, Jeanne Newman, Mr. Gary Newman's wife, sent an email to Mr. Bramhall stating that Hanson "[REDACTED]" (Respondents Ex. 566; see also Respondents Ex. 1483.) To reiterate, Mr. Gary Newman was co-president of TCFTV. After claiming privacy and objecting to producing this document throughout the Arbitration, Respondents finally produced Hanson's Overall Amendment dated May 18, 2009. This is the very same date that Hanson and Josephson signed the Release. There is no doubt that Mr. Hanson's Overall Amendment violated Paragraph 8 of the Release.

It is clear that Fox had no intention of cancelling Bones. It could not proceed without the creator, writer and producer of the Show. It had no choice but to agree to Mr. Hanson's "[REDACTED]" in order to get him to agree to the Release language which, in turn, would set in motion an assurance for the signatures of both Josephson and Reichs. Hence, another critical, yet rhetorical question which highlights this point is: *Why would the Network and Studio go to all the trouble of negotiating a new deal with its showrunner and at the same time make sure that the creator and producer signed a release if the show was truly going to be cancelled?*

The answer is self-evident: The show was not going to be cancelled and there never was an intent to do so. The intent was to continue with the show and at the same time bar any chance for a lawsuit to be brought.

In addition to all of the above, it needs to be pointed out and likewise asked: Why is Fox the Network requesting releases from Participants who have no contractual relationship with it? There is no privity between the Network and Participants and the contractual obligations set forth in the Agreements run only between the Studio and Participants. In a vertically integrated set up between the Studio and the Network, the release became essential so as to continue on with the Show and likewise eliminate any potential liability previously discussed.

It is convenient, coincidental and suspicious that Fox entered into a last-minute overall deal with Mr. Hanson that was not disclosed to the other Participants. In fact, this new overall agreement was not disclosed until the actual arbitration hearing was underway and only upon the issuance of an order from the Arbitrator. All inferences point to a false, hidden and duplicative scenario being presented by Fox.

As a result of the above, Respondents argue that the threat to cancel Bones was fraudulent in and of itself and was the actual launch point for the fraud. To evidence and support this, the Studio, on January 10, 2008, made a presentation of Bones when they were attempting to syndicate the show. (Respondents Ex. 287.). The presentation is quite telling because the Studio sets forth compelling data and reasons as to why the show should continue and clearly establishes the basis as to why Fox had no intent to cancel the show.

In this presentation, Bones was portrayed as the darling of the Network and not the middling show with middling ratings that every Fox witness testified to at the Arbitration hearing.



As the evidence progresses from this point in time, it is revealed that no one seriously contemplated cancelling the Show. For example,

- On January 5, 2009, Mr. Ligouri wrote in an email that Bones, along with Idol and House, were being used to launch new shows. (Respondents Ex. 413.)
- On January 13, 2009, an FBC internal email, copying Kurgan, Ligouri and Beckman, states that Bones is the only show on entire network with an upward trajectory. (Respondents Ex. 419.)
- Mr. Reilly, President of the Network, admits that it “would be highly unusual” not to pick up a show that was on an upward trajectory, and he could not think of a single example where it happened. (7/26/18 Tr. at 3317:22-3318:2.)
- On March 3, 2009, Mr. Reilly sent an email to Mr. Rice regarding discussion of a three season pick up. (Respondents Ex. 457.)
- This would not have been discussed if the Show was being cancelled. (Reilly Tr. 7/26/18 at 3256: 2-22.)
- On March 20, 2009, Mr. Beckman explained to Mr. Rice that Bones is a “[REDACTED]” (Respondents Ex. 449.)

- On March 24, 2009, the Network orders six scripts for Season 5, noting the series has boosted Thursday 18-49 age group by 43%. (Respondents Ex. 451.)
- On May 6, 2009, a Bones presentation took place. Among many glowing statements, it states: “[REDACTED]”  
“[REDACTED]” (Respondents Ex. 510.)
- On May 7, 2009, which is the same day FBC sends the cancellation letter, Kurgan and Beckman exchange emails discussing whether Bones will air on Thursday or move to Friday and noting that Bones will stay on Thursday due to sales success. (Respondents Ex. 531.)
- Mr. Kurgan testified that he has no recollection, despite the May 7 letter, of any discussion of replacing Bones with another show (7/18/18 Tr. at 1882: 2-5) or about actually cancelling Bones (*Id.* at 1921:16-18.).
- On May 13, 2009, Mr. Acosta tells Norma Ceres, “[REDACTED]” which is the no-Bones version. (Respondents Ex. 2208.)
- Ms. Ceres emails the team “[REDACTED]” which is the version with Bones. (Respondents Ex. 549.)
- Mr. Acosta acknowledges that he must have been told by Rice or Kurgan that there was an affirmative decision to go with Bones as of May 13, 2009. (8/7/18 Tr. at 3958:24-3960:14.)
- On May 13, 2009, Mr. Rice tells Earley to book Deschanel’s upfront travel, after Earley says, “[REDACTED]” (Respondents Ex. 548.)

Finally, Respondents point to another exhibit that was presented at the last minute. This exhibit (Exhibit 1456) shows that American Dad, which was in the Ligouri memo, was picked up at [REDACTED] for '08-'09, '09-'10, '10-'11, '11-'12, and '12-'13. In every single one of those years, Bones’ rankings were superior. (*Id.*)

When viewed in totality, the evidence surrounding the Release, from its inception and design to its presentation to Participants, supports a finding of fraud with the intent to get Participants to sign off on their points and at the same time preclude litigation and Participant leakage. Bones was not going to be cancelled, and the Release was procured through a series of

misrepresentations and fraudulent conduct that, in reality, had the Participants known the true facts, they would not have signed since to do so would have cut off their back-end points. The only parties to have gained from the Release were the Studio and the Network, which in a non-vertically integrated world would never have happened.

Accordingly, the Release is void ab initio. The Arbitrator finds that Respondents have established their claims for breach of contract and fraud.

#### IV.

#### INTENTIONAL INTERFERENCE WITH PARTICIPANTS' AGREEMENTS

Respondents claim that the conduct of FBC, FEG and 21CF concerning the license negotiations and the Release constitute intentional interference with the Participants' agreements with TCFTV. To establish a tortious interference claim, a plaintiff must prove: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal. 3d 1118, 1126 (1990). The elements of inducement of breach of contract require an actual breach. See Contemporary Invs., Inc. v. Safeco Title Ins. Co., 145 Cal. App. 3d 999, 1002 (1983).

The Arbitrator once again finds and concludes that the facts presented at the Hearing meet these elements. Specifically, the "Legal Action Plan" and the Release support intentional interference by the Network and FEG/21CF.

#### The Legal Action Plan

On January 12, 2009, Mr. Ligouri sent an email to Mr. Chernin, the Chairman and CEO of the network, referencing "[REDACTED]" (Respondents Ex. 417A.) He states that "[REDACTED]" (Id.) He then outlines the "Issue," including: "[REDACTED]" (Id.) This reflects his knowledge that the Studio has

agreements with Participants that will be affected. As a result, Mr. Ligouri outlines “Next Steps:”

[REDACTED]

(Id.)

In response, Mr. Chernin forwarded this email to Mr. Gelfan stating, “[REDACTED]

[REDACTED]

[REDACTED]” (Id.) Mr. Chernin also copied this email to Studio executives, including Ms. Walden, Mr. Newman and Mr. Kurtzman. (Id.) When asked why he forwarded this email to both the Network and the Studio, Mr. Chernin replied:

Because I, I read Mr. Ligouri’s thing, it sounded like there were issues coming to these intercompany license fees, specifically, and I wanted to make sure that my directives were being listened to, . . . .

I wanted everybody to figure out a way to have these negotiations, to do the best they could for their individual divisions, to honor the profit participants, and have us pay market, market-level license fees.

(7/16/18 Tr. at 1401:12-1402:1.) Nonetheless, when asked why the Studio, Network and Parent were involved in this memo, Mr. Rice testified that he thought it was “unusual.” (7/13/18 Tr. at 1009:4-18). Mr. Kurtzman stated he thought it was “odd.” (7/12/18 Tr. at 890:15-891: 6.)

On January 13, 2009, two days after this directive from Chernin, Mr. Barron of the Finance Department ran an analysis calculating the effect on TCFTV’s profitability for Season 5 of Bones of: (1) full-cost license fees (based on the then-estimated cost of production of \$ [REDACTED] million/episode), which would have resulted in over \$ [REDACTED] million in payments to Participants; (2) the “TCFTV Breakeven” license fee – the lowest license fee TCFTV could receive without incurring any losses – of \$ [REDACTED] episode; and (3) the “Participant Breakeven” license fee – the highest license fee TCFTV could receive without triggering any leakage to Participants – calculated as \$ [REDACTED] million/episode. (Respondents Ex. 418; 8/13/18 Tr. at 5148:7-21, 5149:20-24; 5150:13-21, 5151:2-5153:4 (Barron).) Interestingly, the Participant Breakeven license fee is virtually identical to the \$2 million/episode license fee that TCFTV and FBC eventually agreed to for Seasons 5-6 of Bones. (8/13/18 Tr. at 5153:5-24 (Barron).)

Other evidence reveals that the Network was aware of the Studio's contractual duty to Participants. On January 23, 2009, Mr. Gelfan reached out to Mr. Kurtzman, Mr. Kurgan, Mr. Kender and Mr. Chernin regarding a meeting on 5<sup>th</sup> year license fees for Bones and American Dad, "[REDACTED]" (Respondents Ex. 424A.) On April 3, 2009, Mr. Acosta asked Mr. Mayberry whether the parent is up to speed on the Bones license fee issue, and Mr. Mayberry responds, "[REDACTED]" (Respondents Ex. 456.) On May 6, 2009, Mr. Kurtzman and Mr. Kurgan had an email exchange regarding their discussions of whether the Network had made an offer to the Studio regarding Bones. (Respondents Ex. 490.) The discussions included splitting liability to the Participants "[REDACTED]" (*Id.*) Mr. Kurtzman could not think of other shows between the Network and the Studio wherein the Network floated the idea to cover the participants' claims. (7/12/18 Tr. at 929:10-930:6, 959:1-961:4.)

Finally, Mr. Newman was asked whether he took any measures to try to build leverage in his negotiations with the Network. He responded:

Yes. We did everything that we knew how to do, from threatening to take the show to other networks to quoting him deals that other networks were paying, Ghost Whisperer being at the time the most recent deal. You know, telling him he was going to end up getting us sued by the participants because the license fee wouldn't stand up to the standard of dealing.

(7/23/18 Tr. at 2597: 2-14.)

Despite full knowledge of the terms of the license agreement and Bones' relatively strong performance, there is no indication that anyone from TCFTV ever asked FBC to renew Bones under those terms – even though there was no precedent for FBC paying anything less than full-cost license fees with deficit recoupment and rankings bonuses to any third-party studio for any series licensed for Season 5 or beyond. (7/17/18 Tr. at 1538:23-1543:15 (Walden); 7/18/18 Tr. at 1856:23-1859:5 (Kurgan); 7/23/18 Tr. 2441:23-2443:2, 2457:23-2459:7, 2594:19-2595:15 (Newman); 7/26/18 Tr. 3333:11-15 (Younger).) Indeed, Walden was aware that "the network was setting a new precedent," that "there were different terms that the network was trying to create, a different deal they were trying to create on the fifth season of Bones." (7/17/18 Tr. at 1541:12-20, 1542:6-1543:11, 1646:25-1647:6.)

This can only be explained by the fact that FBC and 21CF/FEG sought to induce TCFTV to accept license fees that were inconsistent with Paragraph 10(b) and FBC's custom, and they knew that entering into below-market licensing agreements with TCFTV was "certain or substantially certain" to cause interference or disruption of Respondents' expectations under their contracts with TCFTV.

Fox attempts to argue that Mr. Liguori's "legal action plan" email is "ultimately innocuous." However, Fox's own actions surrounding this email belies its argument. Fox originally produced this document in redacted form, and then during the first week of Arbitration and after a warning from the Arbitrator, it produced the unredacted document. Further, it should be noted that shortly after Mr. Liguori's Legal Action Plan memo in 2009, Mr. Liguori left Fox and Mr. Peter Rice stepped to be Mr. Liguori's replacement. Somehow, Mr. Liguori does not surface again on Fox's radar until just after January of 2018.

For some reason, Fox now takes another look at Mr. Liguori and believes they need his talent as a producer. This quizzical interest leads to a "First Look Agreement" between FX (a Fox affiliate) and Mr. Liguori. However, this document is never produced and during Mr. Liguori's first trip to the witness box is never mentioned. Yet, near the conclusion of the Arbitration hearing, the Liguori "First Look Agreement" was revealed.

In this First Look Agreement, FX provided Liguori with [REDACTED] [REDACTED] and fixed episodic fees and contingent compensation far exceeding that of top executive producers in Hollywood. (Ex. 1454; 8/9/18 Tr. at 4605:20-4620:4 (Cline).) Why and how did this come about? Mr. Liguori had virtually no experience whatsoever as a Producer, yet the First Look Agreement, when compared to those of top producers in Hollywood, rivals those and in some instances surpasses those deals.

FX President John Landgraf, who reports to Mr. Rice, directed his head of business affairs to make this unprecedented deal with Liguori right after January 1, 2018 (8/9/18 Tr. at 4563:21-4564:10, 4637:21-24 (Cline)), while Respondents' motion to compel production of the

Ligouri memo and related documents was pending.<sup>6</sup> Despite the fact that [REDACTED] [REDACTED] FX apparently issued no press release reporting its deal with Ligouri. (8/9/18 Tr. at 4616:7-4617:23 (Cline).)

When viewed in light of these circumstances, the Ligouri “legal action plan” is far from innocuous. If one juxtaposes the First Look Agreement with Mr. Ligouri’s testimony at the hearing (wherein he downplays the significance of the plan itself), it seems coincidental that Mr. Ligouri disappears for 9 years (from Fox’s radar) and then magically reappears with a First Look Agreement 7 months before he is to testify in these proceedings with a deal in hand that most producers in Hollywood have strived to have their entire entertainment career.

The contents of the Legal Action Plan were followed by both the Studio and the Network from January 2009 through May 2009, and the conduct of each clearly reflects the key components of that plan.

#### **The Release in Relation to the Intentional Interference Claim**

Respondents also argue that the evidence surrounding the Release supports intentional interference. Mr. Rice testified that the Release was his idea. (7/13/1 Tr. at 1123:17-1124:7; 1218:14-20.) He claimed that he suggested the Release because he had conversations in which concerns about liability to Participants came up. (7/13/18 Tr. at 1029:21-1031:9.) Specifically, he stated, “I think I must have had conversations about potential liability because that must -- that was my motivation for asking for the release to be signed.” (*Id.*) This begs the question of why Mr. Rice would be concerned about the Studio’s liability to Participants.

In an email exchange between Mr. Kurgan and Mr. Kurtzman, Mr. Kurgan actually suggests to “[REDACTED]” (Respondents Ex. 2152.) Then, on May 7, 2009, Ms. Minna Taylor sent a letter to Mr. Kurtzman which stated:

[REDACTED]

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<sup>6</sup> The Agreement itself is dated three days after Fox agreed to produce the redacted version of the Ligouri memo and related documents. (Ex. 1607; Ex. 1606-0011-12.)

(Respondents Ex. 518.) During the testimony, this became known as the “cancellation letter” and was shown to be highly unusual, to say the least. Mr. Newman testified that this letter was unprecedented in his career. (7/23/18 Tr. at 2432:7-17.) Ms. Walden testified that she had never seen a letter like it before in her career. (7/16/18 Tr. at 1353:12-21.)

Clearly, an unaffiliated network would not have needed to send this letter because cancellation would have occurred by telling the studio that the show would not be renewed or by allowing the option deadline to expire. Here, however, this unprecedented letter was part of the legal action plan.

The sharing of this “legal action plan” between the Studio and the Network evidences the beginning of the Network’s process to ensure the Show continued at less than a full-cost of production license fee. When it received the legal action plan memo, the Studio should have realized that the Network had no intention of paying a full-cost of production license. The Network suggested the Release, but it was the Studio’s contractual exposure to Participants, not the Network’s. The Network had no privity with the Participants with any contractual agreements.

So why is the Network interested in a release that could only be between the Studio and its talent? For example, if NBC network was negotiating with TCFTV about a license fee, why would NBC be interested in making sure the participants of the show issue some sort of contractual waiver or release of claims? The answer is they would not. However, if the Studio and the Network are integrated (as is the case here) then the conflict and the reasons therefor become obvious.

Moreover, it is unclear why Mr. Rice made the phone call to Josephson about the Release when it was the Studio’s responsibility to look out for its participants. An unaffiliated network would never have an interest in a contract between talent and the studio, and certainly, it would not seek a release from the talent or speak to talent about such a document. To reiterate, there is simply no privity between the participants and the network. An unaffiliated studio would have no interest or reason to seek a release from its talent. It would present the following options to its participants:

(1) they can proceed with a less than full-cost license knowing that their backend points would be delayed;

(2) inform them that the network is seeking a release, and they can decide what they want to do; or

(3) negotiate hard with the network as to the license fee and actually represent the participants.

However, here, the Studio knew in January 2009 that the Network was not going to pay the full cost of production license. Yet, as alluded to above with respect to the breach of contract claim, the Studio not only failed to apply the standard set forth in the Agreement, but it also failed to zealously negotiate on behalf of its Participants. As the evidence developed, it became difficult to distinguish between the actions of the Studio and the Network.

Thus, the Arbitrator determines that both the “legal action plan”—originated by FBC—and FBC’s origination of the Release make abundantly clear that FBC and 21CF pulled the strings and guided the sham “renegotiations” of the Bones license agreement to the detriment of the Series’ license fees and Respondents’ profit participation interests.

The Arbitrator finds Respondents have established their claim for intentional interference with contract and are entitled to recovery on this claim.

## V.

### **BREACH OF PARTICIPANTS’ AGREEMENTS BASED ON THE INTERNATIONAL TRANSACTIONS**

The same Paragraph 10(b) standard applies equally in the international marketplace, and Respondents allege breaches of Paragraph 10(b) with respect to TCFTV licensing of Bones to foreign affiliates. Specifically, Respondents claim that TCFTV breached the Agreements in the United Kingdom, Italy, Spain and other territories. As set forth below, the Arbitrator agrees with Respondents regarding the U.K, Spain and Italy but finds that Respondents have not established their claim regarding the other territories.

## United Kingdom

Similar to the analysis set forth above with respect to the domestic licensing, TCFTV never complied with Paragraph 10(b) with respect to the international licensing of Bones.

Mr. Scott Gregg, Executive Vice President of Strategic Operations for TCFTV Distribution, testified, “We do not look at third-party studio agreements with Sky or other affiliates, and we do not ask for them.” (7/19/18 Tr. at 2072:19-2073:9; 2074:19-2075:13; 2128:9-2129:11.) He stated that there were no discussions of how a negotiator would comply with Paragraph 10(b). (*Id.* at 2070: 12-19.) Mr. Gregg testified that TCFTV determined its license fees based on TCFTV’s historical licensing practices in territories, not the affiliate’s historical licensing practices, and he admitted that TCFTV’s practice was inconsistent with the plain language of the standard set forth in the ATP. (*Id.* at 2070:12-19, 2072: 19-2073:11, 2128:18-2129:11.)

Similarly, Mr. Londono, COO of Fox Networks Group Europe and Africa, testified that he had no knowledge of the Paragraph 10(b) language, and that he had never seen the standard. (7/24/18 Tr. at 2665:9-2666:7.) He stated that he never provided agreements to the Studio. (*Id.* at 2666:24-2667:20.) Mr. Londono testified that it would be difficult to find comparable programs, and that no one at the affiliated networks was ever told the agreements with the Studio needed to be on comparable terms to unaffiliated deals. (*Id.* at 2667:21-2668:10.)

Fox argues that Respondents fail to satisfy Paragraph 10(b) because there is no evidence of third-party deals with BSkyB. It asserts that because Respondents made no effort to obtain such third-party deals, no third-party license agreements with BSkyB are in the record, and therefore, Respondents have not met their burden.

Fox’s argument turns the standard of Paragraph 10(b) on its head. To begin with, TCFTV is the party that promised to comply with Paragraph 10(b) in exchange for Respondents’ waiver of any right to challenge TCFTV’s ability to license to its affiliates, thereby making it TCFTV’s duty to obtain the comparable information in order to comply. However, as testified to by its own employees, the key negotiators were not even aware of the standard or their obligations under Paragraph 10(b). Moreover, as stated above with respect to the domestic licenses, Fox was contractually obligated to meet this standard at the time it entered into the

license agreements with the affiliated studios. It therefore makes absolutely no sense for Fox to argue that Respondents have not met their burden because Respondents did not seek third-party deals at this time.

### **Spain and Italy**

Similar to the U.K., TCFTV's negotiators made no effort to comply with Paragraph 10(b) with respect to licensing in Italy and Spain. They did not request the Fox-affiliated networks' agreements with unaffiliated studios, and never inquired about what the Fox-affiliated networks were paying unaffiliated studios for comparable programs. (7/19/18 Tr. at 2122:18-21, 2123:15-2124:1 (Gregg); 7/24/18 Tr. at 2665:12-2666:7, 2667:7-20, 2668:4-10 (Londono).)

### **Other Territories**

In their Post-Hearing Liability Brief, Respondents appear to specify the "other territories" as Latin America. Regardless, Respondents' international claim(s) concerning the remainder of territories fails as it is based on an extrapolation analysis. This extrapolation, based on the United Kingdom, Italy and Spain, when applied to the remainder of territories is too speculative to serve as the basis for an award of damages.

As Fox argues, extrapolation is not compatible with a Paragraph 10(b) claim which requires Respondents to make an evidentiary showing with respect to each territory. This is true for both a breach and damages. With respect to the latter, the evidence showed that each international market is unique; the buying practices and patterns in one territory cannot be used as a proxy for the buying practices and patterns in another. (7/19/18 Tr. at 2149:5-17 (Gregg); 7/24/18 Tr. at 2634:12-16 (Londono); Cornish Tr. at 4163:4-11; Ex. 3626-0006.) Many factors affect the level and range of pricing and vary from territory to territory. Economies, competitive conditions, licensing structures, and market interest in U.S. content all vary. (*Id.*) As such, the Arbitrator cannot find a breach regarding the licensing in the remainder of the territories.

### **MundoFox**

Respondents appear to have abandoned their MundoFox claim, recognizing that the testimony was in conflict. Steve McDonald testified that he personally called Telemundo, TeleFutura and Univision. (7/16/18 Tr. at 1696:2-6.) Ms. Anjelica Cohn testified that she spoke

to Diana Mogollan and Flavio Morales, the two executives at mun2, and these two said that they had not been contacted about Bones, would have been interested, and would have paid \$50,000. (Cohn Tr. at 2044:3-2047:24.) However, Ms. Mogollan and Mr. Morales both testified that they never spoke to Ms. Cohn about Bones, would not have been interested, and could not have afforded to pay anywhere near \$50,000 for it. (Mogollan Tr. at 4481:15-4482:24; Morales Tr. at 4500:1-4501:25.)

Given this conflicting testimony and with the absence of any other testimony or proof, Respondents have not established their claim as it pertains to MundoFox.

## VI.

### CLAIMS BASED ON FOX'S LICENSING ARRANGEMENTS WITH HULU

Respondents also allege that Fox breached the Participant Agreements through its licensing arrangements with Hulu. They argue that although FEG earned over \$ [REDACTED] million from licensing Bones to Hulu, it passed less than \$ [REDACTED] million on to profit Participants, choosing instead to minimize “leakage” by ensuring that 100% of revenue from full current-season streaming rights was funneled to FBC, even though TCFTV had never licensed those rights to FBC and, thus, retained the right to those revenues. Respondents contend that the same sweetheart agreements also dramatically undervalued both past and current-season rights to Bones.

#### Initial Inquiry: Ownership Rights

Respondents argue that TCFTV is, and at all relevant times was, the copyright owner of Bones. Inexplicably, though, TCFTV permitted parent company FEG, which had no streaming rights, to exploit those rights anyway—and to give nearly all of the revenue from that exploitation to FBC so that this revenue would not be shared with Respondents. Respondents conclude that TCFV's decision to license to Hulu rights worth at least [REDACTED], without receiving any of that consideration for itself, was a clear breach of its obligation to distribute the series “in good faith.” (Ex. 54, ¶ 10(a).) And further, the implied covenant of good faith and fair dealing mandates that TCFTV act in good faith toward profit Participants in the licensing process.

The preliminary question is whether there was an agreement wherein the Network was given the right to exploit *Bones* by the Studio. To begin with, testimony from both the Studio and FBC is consistent that the Studio was the copyright owner for *Bones*, and FBC could obtain the digital rights only through a grant of those rights from the Studio. (7/18/18 Tr. at 1922:25-1923:11 (Kurgan); 7/12/18 Tr. at 948:2-11 (Kurtzman); 7/24/18 Tr. at 2678:14-19 (Pearson).) Next, it is clear that there was no written agreement between the Studio and the Network concerning the digital rights to *Bones*. (7/24/18 Tr. at 2692:11-15 (Pearson); 7/12/18 Tr. at 879:11-18 (Kurtzman); 7/23/18 Tr. at 2493:7-13, 23-25 (Newman).) The question, then, is how did the Studio give full current-season stacking rights to the Network?

To understand the arguments between the parties with respect to these digital rights discussed above, one needs to start with what Fox represented in its Opening Statement:<sup>7</sup>

So there was a deal struck between the Network and the Studio and in this deal they traded off rights. The Network got in-season streaming, meaning the same year that they put the show on TV they could also put it on Hulu and get the revenue stream from that. The Studio got something arguably even more valuable; they got to pierce into this four-year window and sell DVDs earlier, sell re-runs into syndication earlier than the four years, and sell out-of-season episodes earlier than they otherwise would have in this four-year window.

(7/9/19 Tr. at 147:18-148:2.) The Arbitrator asked counsel when this deal, which was represented as an “oral deal,” was cut, and the response was “2008/2007.” (*Id.* at 148:10-25.) However, Mr. Pearson’s testimony at the hearing (the witness that all Fox witnesses pointed to as the person most knowledgeable in this regard) was that this alleged “deal” was struck in 2010.<sup>8</sup>

Specifically, Mr. Pearson testified as follows:

Q: Now, did you testify at your deposition that with respect to digital rights, not just this more narrow full current season, all digital rights, “hard to say we ever had an understanding, we had an ongoing dialogue.” Do you remember giving that testimony?

A: Yes.

Q: And was that truthful testimony?

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<sup>7</sup> The Arbitrator is fully aware that opening statements are not evidence. However, Fox’s position with respect to these digital rights has been extremely difficult to follow since it has been somewhat of a moving target. To evaluate Fox’s oft times shifting arguments it is necessary to understand what its own counsel represented at the outset of the hearings before testimony was taken under oath.

<sup>8</sup> This differed from his deposition testimony.

A: Yes.

(7/24/18 Tr. at 2712:4-11.)

Once again, a pause here is required to acknowledge that Fox witnesses, including the heads of the Studio and Network, testified that they did not know about a digital rights agreement, but that Mark Pearson was the person who would know. Indeed, Mr. Kurtzman, Mr. Newman and Mr. Kurgan, among others, all deferred to Mr. Pearson, who Mr. Chernin identified as “a middle-level strategy guy for the television studio.” (7/16/18 Tr. at 1432:3-6.)

At the hearing, Mr. Pearson, who testified at his deposition that as late as May 2014 he did not believe there was an agreement that FBC would possess the current in-season rights to *Bones*, claimed to recall an “understanding:”

A: I’m recalling now specificity as it relates to that exploitation on Hulu Plus, that that was part of the proposal, and that in fall of 2010 Hulu Plus was to launch and the network needed those rights to satisfy Hulu Plus.

Q: So you’re now recalling that specificity. When did you first recall it? Was it right here on the stand or was it sometime in between your deposition and now?

A: It was right here on the stand when I looked at that timeline and started scrawling some notes, and I made a note to myself 2010 Hulu Plus launch.

Q: This is important for this case. You referred to that as an agreement when you made your line. Do you want to stick with this being an agreement or is it something different?

A: As I said, I’m not an attorney and I don’t understand the legal difference between what an agreement is and what an understanding is. I think it was an understanding and not an agreement, so if I can at this point in time go back and mark it with a green marker, that’s what I would do.

(Id. at 2709:10-25, 2710:20-23, 2711:5-14.)

Mr. Pearson confirmed his testimony that in 2010 there was an understanding with respect to *Bones* that the Network would get full-season stacking rights for Hulu Plus going forward for the 2010/2011 season. (Id. at 2706:15-21.) However, this testimony was impeached by other testimony showing that the Studio, after 2010, continued to assert that there was no digital rights agreement and that it was reserving its right. According to an email written by Mr. Kurtzman on April 28, 2014 and confirmed by him in his testimony, “

[REDACTED]” (Respondents Ex. 1075; 7/12/18 Tr. at 875:1-16.)

On May 1, 2010, Ms. Harris wrote an email to Mr. Kurtzman stating that FBC is currently seeking full stack rights for Hulu Plus subscribers on all of its licensed series going forward. (Respondents Ex. 1075.) Mr. Kurtzman responded that “[REDACTED] [REDACTED] [REDACTED]” (Respondents Ex. 1075.) Mr. Kurtzman again confirmed this in his testimony at the hearing. On the Network side, Mr. Kurgan confirmed that at least as of May 1, 2014, there was no [REDACTED] [REDACTED] (7/18/18 Tr. at 1930:6-9.)

Next, an examination of Mr. Pearson’s claim of what the Studio received in exchange for the digital rights is required. Mr. Pearson stated:

So what the studio got in return for giving the network expanded digital rights for full stacking, the studio got 30-day, prior to subsequent premier, SVOD rights, the studio got early repurposing, early syndication rights.

(7/24/18 Tr. at 2696:11-15.)

Again, however, this testimony is impeached because the Studio already had been exploiting these rights. Mr. Pearson confirmed that in 2008 *Bones* was licensed to Turner in early repurpose which was more than two years before he claims the Studio had the right to license that early repurpose, and also that the Studio licensed the syndication rights to Turner before he claims the Studio had right to do so. (7/24/18 Tr. at 2728:13-2729:5.) Mr. Barron confirmed the Studio did not need early syndication because it was already syndicated. (8/13/18 Tr. at 5218:15-22.) Finally, with respect to the past-season SVOD rights, Mr. Pearson confirmed that under the Netflix deal, which was entered into prior to June 2010, the Studio already had the right to license those past-season rights. (7/24/18 Tr. at 2729:13-23.)

After confirming that the Studio was already exploiting all the rights related to all of the consideration that it purportedly received in return for giving the Network the Hulu SVOD rights, Mr. Pearson was asked what the Studio got in return for giving these rights to the Network. Incredibly, Mr. Pearson stated, “We got their agreement that we would be able to continue to do that.” (7/24/18 Tr. at 2732:25-2733:7.) Mr. Pearson first testified at his

deposition that there never was any understanding between FBC and TCFTV about any Bones digital rights. Then, at this Hearing, after all other witnesses claimed that Mr. Pearson was the person who would know about the digital rights, Mr. Pearson recalled, at that moment, the understanding discussed above.

Simply stated, the Studio did not get those early syndication and past-season SVOD rights in exchange for full current-season stacking. If one were to ask why, the answer would be simple: Because the Studio already had them and were exploiting them. Hence, it received no consideration in exchange for the purported digital rights trade-offs. Moreover, no exhibit, emails, or other documentary evidence was shown to support Mr. Pearson's testimony. Only the impeached testimony of Mr. Pearson himself is the support for this alleged agreement. More specifically, Mr. Pearson had to impeach himself to arrive at some purported understanding. In a few words, the Arbitrator finds Fox's position in this regard to be patently absurd.

Based on the evidence presented, the Arbitrator finds no agreement between the Studio and the Network giving the Network current in-season streaming rights.

Fox argues that the Studio's granting to FBC of certain in-season new media rights was "comparable" under the Distribution Controls Paragraph. It claims that the Network's deal with the Studio in terms of the exchange of digital rights was the same deal the Network had with third-party studios such as NBC Universal and WB. However, again no evidence was presented of any third-party studio granting full current-season stacking rights to FBC. Mr. Kurgan testified that [REDACTED] (7/18/18 Tr. at 2005:6-8; 1007:24-2998:1.)

Accordingly, Respondents have established that TCFTV breached the Participants' Agreements by permitting FEG to grant Hulu full current-season stacking rights, which no unaffiliated third-party studio had ever granted to FBC, and receiving no consideration, and instead allowing that consideration to be directed to FBC and keeping the \$70,690,961 out of the Participants "Gross Receipts."

#### **Breach of Agreements Based on Self-dealing**

Respondents argue that the [REDACTED] FBC received from the Hulu licensing agreement for Bones was artificially deflated as a result of self-dealing between Fox and its affiliate Hulu,

because those deals were based on a share of speculative advertising revenue that no third-party distributor has agreed to when licensing a premium scripted television series to Hulu.

Respondents assert that with respect to past-season episodes (episodes from seasons not currently airing), FEG licensed at least the entire first season of *Bones* to Hulu Classic from 2008-2010 in exchange for a highly speculative [REDACTED] share of advertising revenue with no minimum guarantee.

Mr. Chernin testified that when the [REDACTED] split was agreed to with Hulu, Fox had no idea what the ad revenues would look like that it might later receive from Hulu. (7/16/18 Tr. at 1459:19-23.) He stated that the terms were based on calculating what was needed to keep Hulu at breakeven (meaning viable). (7/16/18 Tr. at 1458:4-20.) The deal was negotiated between the joint venture partners, Fox and NBC, and there was no third party to negotiate. (7/24/18 Tr. 2826:19-24.) Ms. Zigler testified how a third party dealing at arm's length would have arrived at the monetary terms of the Hulu content license agreements: by negotiating a fixed license fee that was commensurate with the exploitation of their content. (7/25/18 Tr. 2901:12-18.)

However, Ms. Brennan, Fox's PMK regarding the Hulu deals, testified that FEG did not even discuss the possibility of getting fixed episodic license fees, or any minimum guarantee, in return for licensing its content to Hulu. (7/24/18 Tr. 2832:21-2833:4.) Mr. Chernin did not recall anyone ever looking into the question of whether the [REDACTED] ad revenue split was reasonable within the industry. (7/16/18 Tr. 1460:13-17.) Indeed, when the Arbitrator asked Mr. Chernin where the negotiation aspect of this deal was, Mr. Chernin responded, "I don't, I don't know whether the agreement reflects negotiations or not." (7/16/18 Tr. at 1447:18-25.)

Neither of Fox's experts was aware of any third party who had been willing to license content to Hulu for a share of ad revenue. (See Wunderlich Testimony, 8/10/18 Tr. 4930:23-4913:4; Homonoff Testimony, 8/8/18 Tr. 4412:22-4413:1.) So, when Fox contends that there is no evidence of a better deal struck by another studio in terms of the percentage of ad revenue, this is true because *no other studio would make such a deal based on the percentage of ad revenue.*

Fox agreed to the same [REDACTED] ad revenue split for the full current-season stacking rights for *Bones* Seasons 6 through 12 to Hulu Plus. There was no evidence that these rights had ever been licensed to any third-party streaming platform at any price. Indeed, no witness or expert

was aware of any third-party studio licensing full current-season stacking rights for any scripted drama to FBC or Hulu. Thus, it seems that Fox was able to license the current-season stacking rights of Bones to Hulu because Hulu was a Fox affiliate.

In addition to all of the above, the Arbitrator now addresses perhaps the most shocking piece of evidence related to the Hulu issues, which is the Fox Content License Agreement itself. Fox actually signed both sides of this agreement. Mr. Dan Fawcett signed the Fox Content License Agreement on behalf of both FEG and Hulu. (Respondents Ex. 278.)

The signature page represents that Mr. Fawcett was President, Digital Media, of FEG and at the same time he was Vice President of Hulu. This puzzle was never resolved at the Arbitration Hearing since Mr. Fawcett was not called by Fox, and Respondents stated that he could not be found since they had no idea where he could be located. When Mr. Chernin was asked how this was possible (meaning a Fox representative signing on behalf of both parties), he replied “*I have no idea.*” (7/16/18 Tr. at 1447:18-25.)

Indeed, the self-dealing analysis is hardly surprising considering that the Fox/FEG executive who negotiated and agreed to the original [REDACTED] ad revenue split was also representing Hulu’s interests at the time. As already stated above, Mr. Fawcett literally signed the agreement for both parties in his representative capacity for both sides. The obvious inferences of self-dealing, conflict of interest and the lack of any arm’s length negotiations leap off the page.

#### **Claim for Tortious Interference/Inducement of Breach**

Respondents argue that TCFTV’s parent company FEG, under pressure of its own parent News Corp./21CF, licensed Bones to Fox affiliate Hulu for highly speculative, below-market monetary terms. Specifically, they claim that the setting of the licensing terms, the [REDACTED] ad revenue split, and the allocation of the current-season revenues to the Network establish tortious interference and inducement of breach by 21CF, FEG, and FBC.

On April 23, 2010, Mr. Newman stated in an email that he opposed splitting 50% of the revenue from the Hulu Plus model with FBC. (Respondents Ex. 669.) He stated that “after the initial rolling period, the availability of the episodes on Hulu+ impacts EST, DVD and syndication all of which are studio business. Therefore, the studio ought to get the revenue.” (Id.)

Mr. Kurgan was asked if there was some larger corporate mandate about digital rights, and he responded that “[t]here were a couple of them. Obviously we had our agreements with Hulu and what we were going to provide Hulu as a company in terms of what rights they were going to be able to exploit.” (7/18/18 Tr. at 1925:22-1926:2.) He further testified that “there was an understanding on a corporate-wide basis that the studio was going to grant us these rights, the network was going to exploit them . . . .” (7/18/18 Tr. at 1951: 19-25.) Mr. Chernin confirmed this when he testified with respect to his Hulu dealing that he “was focused on the conglomerate at large, which included the individual divisions.” (7/16/18 Tr. at 1463:8-18.)

It is undisputed that the Fox conglomerate had an equity stake in Hulu, and the evidence established that “Fox writ large” essentially handed over the digital rights at a low cost to build up value of that enterprise. Even when Mr. Kurtzman was asked whether the digital rights were owned by his company, he said, “Well, our company, we’re a division of a bigger company, so I would say our company is, is, you know, the big organization, 21CF.” (7/12/18 Tr. at 873:2-7.) Ms. Brennan was asked if she knew whether the [REDACTED] of the ad share revenue goes to some Fox entity, and she responded that she wasn’t sure if that mattered because from her point of view, it doesn’t matter – “It’s Fox somewhere.” (7/24/18 Tr. at 2829:18-24.)

While the testimony of Fox’s witnesses establish that Fox was concerned with Fox at large, of which the Studio was a part, the fundamental problem is as stated by Ms. Zigler:

I think Peter honestly may have made a very good decision, maybe even a brilliant decision for his parent company. I think he used the studio’s content to build a brand new business and to raise the value of that business, but building it on the backs of the studio he did nothing to protect the Studio or the profit participants in terms of the revenue they should have received for that exploitation.

(7/25/18 Tr. at 2900:11-20.)

The Arbitrator finds that Respondents have established their claims for tortious interference and inducement to breach. The Parent and Network knew that the Studio had Agreements with Participants. They knew that essentially handing over the digital rights to their affiliate Hulu for an unprecedented ad revenue share would interfere with the Studio’s obligations to its Participants. The ad revenue share to the Studio was less than \$1 million, yet the Network made more than \$70 million in revenues for the current season.

## VII.

### DAMAGES

#### **Breach of Participants Agreements – Domestic Licensing**

“Under general contract principles, when one party breaches a contract the other party ordinarily is entitled to damages sufficient to make that party ‘whole,’ that is, enough to place the non-breaching party in the same position as if the breach had not occurred.” Postal Instant Press, Inc. v. Sealy, 43 Cal. App. 4<sup>th</sup> 1704, 1708-09 (1996) (citations omitted).

Before calculating damages, the Arbitrator addresses Fox’s argument that Participants are not entitled to more than they would have received but-for the breach. Under this but-for scenario, it claims that FBC would not have continued to renew *Bones* because it would have lost tens of millions of dollars. Specifically, Fox asserts that in the but-for world of a full-cost license for Seasons 5-6 and in-season streaming going to TCFTV, FBC would have immediately cancelled *Bones*.

However, there is no evidence that FBC has ever cancelled a top 20 hit like *Bones*; rather, the evidence shows that *Bones* was driving \$ [REDACTED] million in profits to the Studio, outweighing the network’s losses (Ex. 700; Fox Closing Slides, 111). It is simply too convenient for Fox to argue that not only did it not breach Paragraph 10(b), but if it did, there was no damage to Participants. This is consistent with Fox’s constant refrain that it was doing *Bones* a favor by keeping it on air. Had Fox performed its contractual obligations, it would have looked to House as the comparable program (explained below), negotiated fairly, and paid the license fees accordingly. Moreover, as analyzed and established above, Fox had no intention of cancelling *Bones*, and its claim to the contrary is incredulous and found to be fraudulent.

Both parties agree that House is a “comparable” program to *Bones*. Indeed, both parties’ experts agree that House is the only “comparable program” that existed at the times *Bones* was licensed for Seasons 5-8. FBC paid [REDACTED] [REDACTED] for Seasons 5-6 of House, and had never paid anything less in connection with any one-hour scripted series licensed from any third-party distributor prior to the Seasons 5-6 license. As such, there was no basis under Paragraph 10(b) for TCFTV to have accepted lesser monetary terms from FBC for the same seasons of *Bones*. (7/26/18 Tr. at 3333:11-15, 3333:21-3334:12.)

The Arbitrator agrees with Respondents' position that it is not that FBC should have paid the exact same amounts for Bones as it paid for House, a higher-rated series, in order for TCFTV to have complied with Paragraph 10(b). Instead, TCFTV should have received comparable "monetary terms" – "[REDACTED]" (Id. at 3335:12-21, 3336:23-3338:10, 3338:20-3339:17, 3422:5-3423:6.) As was shown at the Hearing, FBC's extended-term license structure already takes into account performance differences across series by [REDACTED] (See Ex. 21, ¶¶ 1(bb)-(hh).)

With respect to Season 7, FBC had paid [REDACTED] for Season 7 of House. As such, there was still no precedent for FBC paying anything other than [REDACTED], yet the Season 7 License for Bones had a license fee of [REDACTED], which was [REDACTED] of the expected production costs (see Ex. 816), and completely eliminated performance bonuses of any kind. (Compare Ex. 21, ¶ 1(hh) with Ex. 767.)

As for Season 8 of House, FBC and Universal agreed in May 2011, which was approximately a year before TCFTV licensed Season 8 of Bones to FBC, to a "[REDACTED]" [REDACTED]/episode license fee without bonuses. (Ex. 871.) While Fox argues that this "flat" \$ [REDACTED] million per episode fee did not amount to a [REDACTED] license fee, there was evidence to the contrary. Regardless, the \$ [REDACTED] million license fee that FBC paid for Bones is not comparable to the \$5 million paid for House, and while FBC could reasonably pay less for Bones than House in Season 8, there is no justification for TCFTV to have received fees at [REDACTED]% of Universal's given the narrowing performance gap between the two series. (7/26/18 Tr. at 3425:18-3427:23; 7/18/18 Tr. at 2014:17-2015:14; Ex. 1228-0019, 0022.)

Respondents' industry expert, Laurie Younger, compared the license agreements for Seasons 5-8 of Bones to the agreements for the same seasons of House. Her analysis ties the [REDACTED] license fee to the production budget for each of Seasons 5-8 of Bones and assumes that all breakage actually paid by FBC would still have been paid under a [REDACTED] license fee, which provides for payment of [REDACTED] approved by the network. (Amended Younger Report Ex. 1270-0030, n. 10; Exs. 118, 107 ¶ 1(cc).)

Fox argues that Participants fail to calibrate for differences between House and Bones. The Arbitrator disagrees. As Ms. Younger explains, the monetary terms of FBC's extended-term license for House seasons 5-7 account for differences in performance by setting license fees at the [REDACTED] and by providing formulas [REDACTED] [REDACTED] (See 7/26/18 Tr. at 3320:13-3321:9; 7/18/18 Tr. at 1808:7-18; 7/26/18 Tr. at 3275:21-3280:12; Ex. 448.)

For Season 8, Ms. Younger took the relative performance of House and Bones into account and capped the license fees that should have been paid to TCFTV at \$ [REDACTED] [REDACTED] for that season. In total for Seasons 5-8, TCFTV could have complied with its contractual obligations to Respondents while still being paid \$ [REDACTED] million less than Universal received from FBC in connection with the same seasons of House. (See Exs. 1501, 1447-0009-13, 200-0010-15.)

According to Younger's analysis, if TCFTV had licensed Seasons 5-8 of Bones on monetary terms comparable to those Universal received for House, it would have been paid the following<sup>9</sup>:

Monetary Term	Season 5	Season 6	Season 7	Season 8
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<sup>9</sup> Sources: Ex. 1270, ¶¶ 59-67; Ex. 21, ¶¶ 1(o), (bb)-(hh); Ex. 1447-0009-13; Exs. 1448, 781; Ex. 200-0010-15; Exs. 600, 624, 687, 766, 816, 898, 904.



With the adjustment of Bones license fees to range from \$ [REDACTED] over the 12 seasons, TCFTV should have received an additional \$59,811,000 in revenue. (Ex. 1260B-0016-17.)

#### *Italy and Spain*

With respect to Italy, TCFTV entered into several relicense agreements with FIC Italy for Bones which started at \$ [REDACTED] per episode. (Ex. 1260B-0038.) Because FIC Italy was not licensing first-run episodes from TCFTV, Mr. Armstrong evaluated relicense agreements for several series in order find apples-to-apples comparisons. (Ex. 1260B-0011.) He determined that the NCIS licenses were the most similar transactions to the Bones licenses because FIC Italy had three relicenses for each series over the first few seasons. (Ex. 1260B-0012.) Furthermore, NCIS was one of the few series that TCFTV considered a rival to Bones in the international marketplace based on the success of each series. The license fees that FIC Italy paid CBS for NICS averaged more than double the Bones license fees. (*Id.*) Mr. Armstrong determined that there should have been \$4,662,508 in additional MAGR revenue over the first six seasons, which are the only seasons for which Armstrong had licensing information sufficient to calculate damages.

With respect to Spain, Mr. Armstrong determined that House was the most comparable program for the first eight seasons because the shows aired around the same time period, the number of runs in the license agreements were similar, the term of the agreements were similar, and Mr. Gregg had previously identified House as an appropriate comparable program. (Ex. 1260B-006-009.) The Bones license fees ranged from \$ [REDACTED] per episode to \$ [REDACTED] per episode during the first eight seasons. The House license fees, on the other hand, ranged from \$ [REDACTED] to \$ [REDACTED], making it higher in every season and more than double the Bones license fees in several seasons. (Ex. 1260B-0036.) Mr. Armstrong determined that TCFTV should have obtained approximately the same license fees for Bones from FIC Spain that FIC Spain paid to NBC/Universal for House, resulting in \$1,112,099 added to MAGR.

For Seasons 9-11 in Spain, FIC Spain obtained the far more valuable first window for Bones, unlike in Seasons 1-8 in which La Sexta had the first window. Therefore, Mr. Armstrong determined that the most appropriate comparable license agreements were FIC Spain's license agreements with CBS for Blue Bloods and Hawaii Five-O, for which FIC Spain obtained the first licensing window. (Ex. 1260B-008.)

FIC Spain paid \$ [REDACTED] for Season 9 of Bones with [REDACTED]% escalators for seasons after that. (Ex. 1260B-0008.) During this same time period, FIC Spain paid license fees between \$ [REDACTED] and \$ [REDACTED] per episode for Blue Bloods and Hawaii Five-O, more than three times the Bones license fees. (Ex. 1260B-0034.) As a result, Mr. Armstrong determined that TCFTV should have received at least \$1,852,404 more from Bones during Seasons 9-11, for a total addition to MAGR of \$2,964,503.

Thus, TCFTV should have obtained \$67,311,000 in additional license fees from its affiliates in international distribution which should have been included in TCFTV's Gross Receipts for purposes of properly accounting to Respondents for the MAGR. This addition to Gross Receipts would result in a total of \$7,078,327 in payments to Respondents. (Ex. 2 (1/9/19 Revised Sippel Report Exhibits), Exs. B, B-3.)

#### **Hulu Claims**

As set forth above, all revenues from all current-season streaming of Bones were credited to FBC as though FBC possessed those rights. However, the Arbitrator has found that FBC claims to ownership to be unfounded. As such, had TCFTV properly asserted its right as the content owner of those streaming rights, TCFTV would have credited to Participants all Hulu revenues received from the exploitation of current season streaming of the Series. As of August 8, 2018, this totaled \$70,690,961. (Ex. 3840.)

The Arbitrator agrees that disgorgement is not a proper remedy. However, Respondents are entitled to the *expectation damages* that will "put [them] in as good a position as [they] would have been in had the contract been performed." Restatement (Second) of Contracts § 347, cmt. a (1981). Here, the \$70,690,961 represents the amount of damages that will put Participants in as good a position as they would have been in had TCFTV protected its rights.

With respect to Respondents' claim against FBC, FEG and 21CF for tortious interference, Respondents seek compensatory damages in the same amount. If FBC, FEG and 21CF had not interfered with Respondents' contracts with TCFTV and had not induced TCFTV's breach of those contracts, TCFTV would have received at least the \$ [REDACTED] wrongfully diverted to FBC for the current-season exploitation of Bones on Hulu, and

Participants, in turn, would have received their shares of those profits after appropriate reductions.

Respondents also seek damages for Fox's self-dealing in connection with the licensing of Bones to Hulu. Vivica Zigler, Respondents' Hulu expert witness, calculated that had TCFTV honored its contractual duty to the Bones participants, it would have contracted with Hulu to receive an estimated license fee of \$685,000 per episode in connection with the full current-season stacking rights to Seasons 6-12 (140 episodes) of Bones.

Ms. Zigler examined license agreements for six CBS series and determined the most comparable benchmarks among them are Elementary, Blue Bloods and CSI. (Ex. 1273-0021.) She took the average of the comparable CBS deals for an approximate episodic license fee of \$ [REDACTED]. (Ex. 1275-0007.) The licenses for Elementary, Blue Bloods and CSI, however, relate to past-season episodes. (Ex. 1275-0005.) The record does not contain any information regarding what Hulu paid third parties for full current-season stacking rights because no third party was willing to license these "crown jewel" rights to Hulu. As such, Ms. Zigler applied a premium as was done with TCFTV's initial license agreement with Netflix for Bones and other series. Specifically with respect to the Netflix deal, a [REDACTED]% premium was applied to the license fee for any current-season episode delivered "[REDACTED] [REDACTED]" which is the same recency with which episodes of Bones were made available to Hulu. (Ex. 652-0008; 7/25/18 Tr. at 2908:20-2909:24; Ex. 1164-0021.) Ms. Zigler therefore applied this [REDACTED]% premium to the average episodic license fee to account for the additional value of current-season episodes of Bones, arriving at an estimated current-season per-episode fee of \$685,000. (Ex. 1275-0007.)

For the past-season episodes of Bones, Ms. Zigler applied an [REDACTED]% ad revenue split to these past-season episodes based on the fact that, prior to execution of the initial Hulu Classic license, third party [REDACTED] refused to license its programming to Hulu for anything less than that share on top of [REDACTED], the value of which Ms. Zigler decided not to include in her calculations. (Ex. 1275-0002 -0004; Ex. 225; 7/25/18 Tr. at 2912:19-2913:22.) Based on Fox's representation that the only past-season episodes ever exhibited on Hulu were the 22 episodes of Season 1, Ms. Zigler calculated damages of \$203,452 for exhibition of past-season episodes on Hulu. (Ex. 1275-0003; Ex. 1231.)

In accord with the above, TCFTV should have included in the Gross Receipts a total of \$96,103,452 for purposes of calculating Respondents' MAGR. As a result, Mr. Sippel calculated total damages of \$10,106,099. (Ex. 1268A-0006.)

Hence, based on the determination that 21CF and FEG interfered with Respondents' agreements with TCFTV in connection with the licensing of both current- and past-season episodes of *Bones* to Hulu for an unreasonable and speculative ad revenue share, 21CF and FEG share TCFTV's liability for those damages. (See Restatement (Second) of Torts § 903, cmt. a.)

### **Prejudgment Interest**

Pursuant to California Civil Code §§ 3287 and 3289(b), Respondents seek prejudgment interest on the full amount of their compensatory damages at the rate of 10% per annum.

The Arbitrator agrees with Fox that prejudgment interest is not appropriate under Section 3287(a), which provides in pertinent part: "A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt." Under California law, prejudgment interest is not appropriate where damages are not "'certain' or 'capable of being made certain by calculation.'" Whisper Corp. v. California Commerce Bank, 49 Cal. App. 4<sup>th</sup> 948, 958 (1996). "Damages are deemed certain or capable of being made certain within the provisions of subdivision (a) of section 3287 where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable but where their dispute centers on the issue of liability giving rise to damage." Esgro Central, Inc. v. General Ins. Co., 20 Cal.App.3d 1054, 1060 (1971).

Here, the amount of damages is subject to a judicial determination and not capable of being a sum certain earlier in time. As set forth above, the amount of damages is subject to multiple methods of calculation that require a judicial determination. Experts have presented methodologies concerning the calculation of damages, requiring the Arbitrator to discern how damages should be calculated. Therefore, the Arbitrator declines to award pre-judgment interest under Section 3287(a). See St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mutual Ins. Co., 210 Cal. App. 4<sup>th</sup> 645, 665-66 (2012) (Where "[t]he trial court [is] asked to choose the

method of allocation, i.e., the basis for computation, and to calculate” damages, prejudgment interest should not be awarded.)

However, the Arbitrator does award prejudgment interest under Section 3287(b), which provides: “Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed.” The Arbitrator, in his discretion, awards prejudgment interest on the damages based upon the contract claims from the date this action was filed, January 11, 2016.

Applying the California legal rate of 10% interest (see Cal. Civ. Code § 3289(b)) to the total award amount of \$32,769,474, the average daily rate of interest is \$8,978.00. The number of days from January 11, 2016 to the date of this Award is 1,120 days. Thus, the total amount of prejudgment interest is \$10,055,360.

### **Punitive Damages**

In addition to actual damages, Respondents seek punitive damages for certain claims. As set forth above, contrary to Fox’s arguments, Paragraph 10(b) does not bar an award of punitive damages for the intentional torts. Further, it is undisputed that the Arbitrator has the authority to award punitive damages. See Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 58 (1995) (finding that if contracting parties agree to include punitive damages claims within the issues to be arbitrated, the FAA ensures the agreement will be enforced according to its terms). As such, the Arbitrator examines Respondents’ request for punitive damages.

### *Tortious Interference*

Respondents seek punitive damages as a result of both the non-studio Claimants’ acts of interference and TCFTV’s and FBC’s acts of fraud. Punitive damages are available for tortious interference with contract and inducement of breach. See Duff v. Engelberg, 237 Cal. App. 2d 505, 508 (1965) (inducement to breach contract supports damages for “unforeseen expenses, as well as for mental suffering, damage to reputation, and punitive damages, by analogy to the cases of intentional injury to person or property”) (quoting Prosser, Torts (3d ed.) ch. 26, sec. 123, pp. 972-73); see also Asahi Kasei Pharma Corp. v. Actelion Ltd., 222 Cal. App. 4<sup>th</sup> 945, 962-64

(2014) (holding that parent company may be liable for tortiously interfering with the contract of its subsidiary and affirming \$30 million in punitive damages against the parent company's individual managers).

Respondents contend that the same evidence establishing FBC's and 21 CF/FEG's tortious interference with, and inducement of breach of, Respondents' Agreements with TCFTV supports an award of punitive damages. (See, e.g., Webber v. Inland Empire Invs., 74 Cal. App. 4<sup>th</sup> 884, 911-12 (1999) (holding that same evidence establishing liability for tortious interference was sufficient to award punitive damages)). The Arbitrator concurs.

The Arbitrator finds that the evidence concerning the legal action plan and the Release establishes that FBC, 21CF and FEG undertook intentional acts designed to interfere with Respondents' contractual relationships with TCFTV. Additionally, such acts constitute malice and fraud and as such, warrant the imposition of punitive damages. See Cal. Civ. Code § 3294(c)(1) (defining "malice" to mean conduct which is intended by the defendant to cause injury to the plaintiff).

#### *Fraud*

Respondents seek punitive damages for TCFTV's and FBC's fraudulent, oppressive and malicious acts in inducing Josephson's and Reich's signatures on the Release. They ask for punitive damages in an amount that the Arbitrator deems to be an "equitable and reasonable" deterrent to Fox's egregious behavior. Mahon v. Berg, 267 Cal. App. 2d 588, 590 (1968) ("[S]ome deterrent to fraud is equitable and reasonable. It is not afforded if the wrongdoer risks only the fruits of his fraud. The broad equity powers invoked in an action of rescission because of fraud should afford such a remedy."); Cal. Civ. Code § 1692 ("A claim for damage is not inconsistent with a claim for relief based upon rescission. The aggrieved party shall be awarded complete relief . . . .")

As Respondents acknowledge, the damages awarded in connection with TCFTV's breach of the ATP in connection with Seasons 5-6 License are already accounted for in the damages for the related tortious interference claim, and therefore, Respondents do not seek dual recovery against TCFTV and FBC for the fraud claim in the form of a multiple of those damages. Rather, they ask that TCFTV share FBC, 21CF, and FEG's liability for that portion of the punitive

damages award arising from their tortious interference in connection with the FBC licenses, and they correctly assert that the fraud is relevant to determining the overall reprehensibility of Fox's conduct.

*Tortious interference related to Hulu licensing*

Respondents seek punitive damages for 21CF's and FEG's tortious conduct related to the licensing of Bones episodes to Hulu. They point to the testimony of Peter Chernin, 21CF's President at the time of the Hulu launch, that he did not consider it 21CF's "job to protect [its] old business." (7/16/18 Tr. at 1425:24-1428:16.)

The Arbitrator determines that the same evidence establishing 21CF's and FEG's tortious interference with contractual relations and inducing breach of contract in connection with the Hulu/FEG agreements supports an award of punitive damages. As Mr. Chernin bluntly stated, 21CG and FEG sacrificed TCFTV's business for the sake of Hulu's success, and did so knowingly, thereby damaging Respondents by keeping \$96,104,452 from MAGR. This constitutes a reckless disregard for Respondents' rights and as such warrants the imposition of punitive damages.

**Amount of Punitive Damages Award**

"An award of punitive damages hinges on three factors: the reprehensibility of the defendant's conduct; the reasonableness of the relationship between the award and the plaintiff's harm; and, in view of the defendant's financial condition, the amount necessary to punish him or her and discourage future wrongful conduct." Kelly v. Haag, 145 Cal. App. 4th 910, 914 (2006). Beyond consideration of the above factors, there is no legally prescribed formula to determine the amount of punitive damages, nor is there a bright-line ratio that a punitive damages award may not exceed. State Farm Mutual Auto Ins. Co. v. Campbell, 538 U.S. 408, 424-25 (2003). The finder of fact has "wide discretion to determine what punitive damage award is proper . . . . [T]here is a wide range of reasonableness for punitive damages reflective of the fact finder's human response to the evidence presented." McGee v. Tucoemas Fed. Credit Union, 153 Cal. App. 4th 1351, 1362 (2007).

### *Reprehensibility of Fox's Conduct*

To determine the reprehensibility of the defendant's conduct, courts are to consider whether: "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident." State Farm, 538 U.S. at 419.

The parties agree that the first two factors are not present here. With respect to the third factor – Respondents' financial vulnerability, Respondents contend that while they may not be financially vulnerable in the traditional sense, they depended upon Fox for their careers and livelihoods. As detailed herein, Fox held the position of relative financial power and used it in the course of negotiations by threatening to cancel the Show and put them out of work. Respondents' vulnerability in this regard cannot be ignored. See, e.g., Romo v. Ford Motor Co., 113 Cal. App. 4<sup>th</sup> 738, 755 (2003) (plaintiffs "were financially vulnerable relative to defendant's financial resources"); Shahinian v. Cedars-Sinai Med. Ctr., 194 Cal. App. 4<sup>th</sup> 987, 1005 (2011) ("plaintiff was financially vulnerable because he held surgical privileges only at Cedars-Sinai and summary suspension of privileges without opportunity for hearing would foreseeably inflict severe damages to his medical career") (internal quotation marks omitted). Furthermore, the Arbitrator agrees with Respondents that their decision to pursue this lawsuit risked their livelihoods, and it is unlikely that they will ever be hired by either Fox or Disney again.

The fourth factor – whether the conduct involved repeated actions or was an isolated incident – support a finding of reprehensibility. As detailed herein, Fox engaged in tortious conduct related to license fee negotiations for four seasons with the goal of maximizing profits and minimizing participant leakage. See Bardis v. Oates, 119 Cal. App. 4<sup>th</sup> 1, 22 (2004) ("The jury could find that the kickbacks, markups and concealed commissions" proven at trial "were part of a systematic pattern by Oates of bilking his partners out of funds legitimately belonging to the partnership."). The false promises began in 2005 and continued through 2008 and 2012 when Boreanaz and Deschanel negotiated new agreements, and all in accordance with the legal action plan. In 2009, Fox fraudulently induced Reichs and Josephson to execute the Release. At the same time, Fox entered into agreements with Mr. Ligouri (his First Look Agreement) and

Mr. Hanson (May 18, 2009 overall agreement) and attempted to keep these agreements secretive. In addition and as set forth herein, the non-studio Claimants intentionally interfered with Respondents' contracts in connection with the licensing of Bones to Hulu in self-dealing transactions over the last decade.

Also relevant to this factor is the cavalier attitude of Fox's witnesses. None of the witnesses took responsibility or expressed any remorse for their actions. See Bardis, 119 Cal. App. 4<sup>th</sup> at 22 (citing the fact that defendant was "unrepentant at trial, insisting that 'in [his] heart' [he] believed he did nothing wrong" as relevant to the analysis of reprehensibility). Indeed, as described herein, many of the witnesses, including Ms. Walden, Mr. Newman, Mr. Bramhall, Mr. Ligouri, Mr. Pearson and Mr. Rice, appear to have given false testimony in an attempt to conceal their wrongful acts.<sup>11</sup> The Fox witnesses' testimony at the hearing highlighted their pattern of deceit against Respondents.

Furthermore, Fox's cavalier attitude toward its wrongdoing is further reflected in its Punitive Damages Brief and Reply Punitive Damages Brief, which are devoid of any accountability, responsibility or remorse – and this is even after the detailed findings and analysis of evidence and testimony set forth in the Interim Award. Instead, Fox advances arguments that defy comprehension. It contends that since Respondents are receiving a large amount of compensatory damages "for purely economic harm," punitive damages are essentially not warranted. However, the amount of compensatory damages is large because it is the amount of money that Fox wrongfully withheld from Respondents for over 12 years, in violation of the parties' agreements. Similarly, Fox also points to the fact that Respondents, who are "sophisticated and wealthy participants with substantial financial means," received tens of millions of dollars over Bones's 12 seasons. Again, however, this ignores the amount of money that they should have earned absent Fox's unlawful conduct. To suggest that Respondents should somehow be grateful for what they did receive instead of focusing on what they were deceived and cheated out of is audacious and quite frankly astonishing. Fox also states that there is "no evidence of a long-term pattern of reprehensible or unethical behavior" and that "the tortious conduct was limited to the breaking of two promises." Does Fox really suggest that

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<sup>11</sup> Merely describing the testimony as false is far too generous. The Arbitrator is convinced that perjury was committed by the Fox witnesses. Accordingly, if perjury is not reprehensible then reprehensibility has taken on a new meaning.

short-term reprehensible or unethical behavior and the breaking of just two promises is alright? By advancing these arguments, Fox seeks to divorce the detailed analysis and findings set forth herein of a pattern and practice of deceit and half-truths for its own financial gain from any punitive damage analysis, essentially asking the Arbitrator to ignore the reprehensibility of its conduct.<sup>12</sup>

Finally, with respect to the fifth reprehensibility factor, the Arbitrator found above in awarding punitive damages that Respondents' harm was the result of Fox's intentional acts of fraud and malice in connection with its fraudulent inducement of the Release and tortious interference with Respondents' agreements in the licensing of Bones to FBC and Hulu. See Bardis, 119 Cal. App. 4<sup>th</sup> at 22 (finding that "[t]he record []overwhelmingly supports a finding that the harm was caused as the result of intentional fraud, malice and deceit").

Thus, the Arbitrator finds that the third reprehensibility factor leans in favor of reprehensible conduct, and the fourth and fifth factors in the reprehensibility analysis are clearly met. Fox engaged in reprehensible conduct deserving of a punitive damages award at the higher end of the spectrum. Bardis, 119 Cal. App. 4<sup>th</sup> at 22, 26.

*The reasonableness of the relationship between the award and Respondents' harm*

The next factor examined is the relationship between the award and the harm to Respondents. Fox asserts that where compensatory damages are substantial, punitive damages can and should be lower than the compensatory damages award. To begin with, a contractual arbitration is "a private proceeding, arranged by contract, without legal compulsion . . . . Consequently, the arbitration and award themselves [are] not governed or constrained by due process, including its elements applicable to judicial proceedings to impose punitive damages." Rifkind & Sterling, Inc. v. Rifkind, 28 Cal. App. 4<sup>th</sup> 1282, 1291 (1994). California courts have

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<sup>12</sup> Respondents ask the Arbitrator to consider Fox's pattern of tortious behavior that has harmed individuals other than Respondents. See Lopez v. Watchtower Bible & Tract Soc'y of New York, Inc., 246 Cal. App. 4<sup>th</sup> 566, 592 (2016) ("Although punitive damages may not be used to punish a defendant for injury inflicted on third parties, a jury may consider evidence of harm to others in determining the reprehensibility of a defendant's conduct toward the plaintiff."); Johnson v. Ford Motor Co., 35 Cal. 4<sup>th</sup> 1191, 1204 (2005) ("[D]ue process does not prohibit state courts, in awarding or reviewing punitive damages, from considering the defendant's illegal or wrongful conduct toward others that was similar to the tortious conduct that injured the plaintiff or plaintiffs." However, while there was some general testimony about similar contract provisions with participants on other shows and other legal actions against Fox, the evidence was not specific or sufficient enough to allow the Arbitrator to make any findings regarding other similar tortious behavior as set forth in the guiding cases.

disclaimed any ability to review an arbitrator's fixing of punitive damage awards. See Mave Enters., Inc. v. Travelers Indem. Co., 219 Cal. App. 4<sup>th</sup> 1408, 1440 (2013) (“[T]he 15-to-one ratio of punitive damages to compensatory damages does not constitute the type of legal error – assuming it was error – that warrants vacatur under the CAA.”); Shahinian, 194 Cal. App. 4<sup>th</sup> at 1006-07 (any claimed excessiveness of arbitrator's punitive damages award “would be no different from other errors of law, which are generally not reviewable”). As such, Fox's assertion of federal due process standards as a limitation on punitive damages does not apply here to the Arbitrator's discretion in a private arbitration, which was sought by Fox itself.

Moreover, while Fox attempts to assert a bright-line rule requiring a 1:1 ratio between punitive damages and compensatory damages, no such authority prohibits an award exceeding a 1:1 ratio. “While punitive damages must bear a reasonable relation to actual damages, no fixed ratio exists to determine the proper proportion . . . . Rather, calculating punitive damages involves a fluid process of adding or subtracting depending on the circumstances.” McGee, 153 Cal. App. 4<sup>th</sup> at 1361. “[T]here is a wide range of reasonableness for punitive damages reflective of the fact finder's human response to the evidence presented.” Id. at 1362. Although there is no specific formula, courts have found that “[i]n cases where there are significant economic damages and punitive damages are warranted but behavior is not particularly egregious, a ratio of up to 4 to 1 serves as a good proxy for the limits of constitutionality.” Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal of Life Activists, 422 F.3d 949, 962 (9<sup>th</sup> Cir. 2005). On the other hand, “[i]n cases with significant economic damages and more egregious behavior, a single-digit ratio greater than 4 to 1 might be constitutional.” Id.

In the Roby case relied on by Fox, the court found that a lower ratio of punitive damages to compensatory damages was warranted because plaintiff's recovery of emotional distress damages itself contained a “punitive element.” See Roby v. McKesson Corp., 47 Cal. 4<sup>th</sup> 686, 718 (2009) (court noted that out of a \$1,905,000 compensatory damages award, only \$605,000 was for economic losses, resulting in the remaining \$1.3 million awarded for plaintiff's physical and emotional distress and representing a punitive component). In other words, a high amount of non-economic damages may reflect a punitive aspect of the award. Importantly, “[i]n State Farm, the high court suggested that a ratio of one to one might be the federal constitutional maximum in a case involving, as [in Roby], relatively low reprehensibility and a substantial

award of *noneconomic* damages.” *Id.* (Emphasis added.) This is not the case here, with a relatively high reprehensibility and no award of noneconomic damages.

Respondents argue that a punitive damages award of at least four times the amount of Respondents’ actual damages and up to nine times the amount of Respondents’ actual damages is warranted. The Arbitrator finds that a punitive damages award of five times the amount of Respondents’ actual damages is appropriate.

In *Bardis v. Oates*, 119 Cal. App. 4<sup>th</sup> 1 (2004), a partner in a real estate partnership and his corporation, which had engaged in a pattern of self-dealing designed to line the defendants’ pockets at the expense of the partnership, were found liable for intentional interference with economic advantage, intentional misrepresentation, fraudulent concealment, breach of fiduciary duty, and breach of the partnership agreement. *Id.* at 9. While the harm suffered by the plaintiffs was solely economic, the court found that the defendants’ repeated and intentional self-dealing constituted “egregious misconduct” and held that a “high-end punitive damages award” of nine times compensatory damages was justified due to the presence of the fourth and fifth reprehensibility factors alone. *Id.* at 22-23. Similarly, here, Fox engaged in a pattern and practice of fraudulent self-dealing by which it enriched itself in violation of TCFTV’s participation agreements with Respondents.

FBC, 21CF, and FEG’s tortious interference in connection with the FBC licenses caused \$15,585,047 in actual harm to Respondents, while 21CF, FEG and FBC’s tortious interference in connection with the Hulu licenses caused an additional \$10,106,099 in actual harm to Respondents.<sup>13</sup> Clearly, given the precedent in *Bardis* for awarding punitive damages at nine-to-one in economic damages cases involving a company-wide pattern and practice of fraudulent and malicious conduct, punitive damages of five times the amount of Respondents’ actual damages is supported, for a total of \$128,455,730 (\$77,925,235 in punitive damages for tortious interference

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<sup>13</sup> Respondents, relying on *Bardis*, seek to include prejudgment interest with the compensatory damages to form the basis for the punitive damages ratio. However, the Arbitrator is not persuaded that the *Bardis* court included prejudgment interest. See *Bardis*, 119 Cal. App. 4<sup>th</sup> at 17 & n. 7 (noting that the amount the jury awarded was the difference between the total damages figure, including interest, and “Expenses without Documentation” including accrued interest). Furthermore, the award of prejudgment interest under Section 3287(b) and its calculation were not determined until the Interim Award issued.

with contract and \$50,530,495 in punitive damages for tortious interference with Hulu agreement).

*The amount necessary to punish and deter future wrongful conduct*

Finally, with respect to the last of the three factors for determining a punitive damages award, while “all three factors must be satisfied, the most important question is whether the amount of punitive damages award will have deterrent effect – without being excessive.” McGee, 153 Cal. App. 4<sup>th</sup> at 1362; Coll. Hosp. Inc. v. Superior Court, 8 Cal. 4<sup>th</sup> 704, 712 (1994), as modified (Nov. 23, 1994) (“Punitive damages are to be assessed in an amount which, depending upon the defendant’s financial worth and other factors, will deter him and others from committing similar misdeeds.”). “The ultimately proper level of punitive damages is an amount not so low that defendant can absorb it with little or no discomfort . . . nor so high that it destroys, annihilates, or cripples the defendant.” Soto v. BorgWarner Morse TEC Inc., 239 Cal. App. 4<sup>th</sup> 165, 192 (2015), as modified (Aug. 20, 2015).

Fox has stipulated that parent company 21CF’s net worth is \$21.924 billion, and that such evidence is sufficient for the Arbitrator to determine the appropriate amount of punitive damages as to Claimants. (See Jan. 14, 2019 Joint Stipulation Regarding Financial Condition.)<sup>14</sup> As Fox states, punitive damages must be based on the factors set forth and not solely on the defendant’s wealth. State Farm, 538 U.S. at 427 (holding the wealth of a defendant “cannot make up for the failure of other factors, such as ‘reprehensibility,’ to constrain significantly an award that purports to punish a defendant’s conduct” (quoting Gore, 517 U.S. at 585)). Here, there is no danger of the award being based solely on the defendant’s wealth as the Arbitrator has found a higher level of reprehensibility as well as a reasonable relationship between the award and the harm.

Aside from the lack of any bright-line rule, Fox’s assertion that a one to one ratio should be awarded completely ignores any deterrence factor. Indeed, even Fox’s suggestion of such a ratio following the Interim Award reflects its lack of contrition. Moreover, an award of five times the amount of compensatory damages represents 0.6 percent of 21CF’s stipulated net

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<sup>14</sup> As set forth in the Interim Award, the Arbitrator must consider Claimants’ financial condition, on which the plaintiff bears the burden of proof. Adams v. Murakami, 54 Cal. 3d 105, 119 (1991).

worth, which is well below the 10 percent cap recognized under California law. See, e.g., Sierra Club Found. v. Graham, 72 Cal. App. 4<sup>th</sup> 1135, 1163 (1999) (“Finally the award was more than 2 percent of Graham’s net worth, far less than the 10 percent cap generally recognized by our courts.”); Weeks v. Baker & McKenzie, 63 Cal. App. 4<sup>th</sup> 1128, 1166-67 (1998), as modified on denial of reh’g (June 2, 1998) (“It has been recognized that punitive damages awards generally are not permitted to exceed 10 percent of the defendant’s net worth.”). In fact, one could question whether a five to one ratio given Fox’s financial condition and lack of contrition serves to deter the wrongful conduct at issue here, or whether it will be considered part of the cost of doing business.

Courts have approved punitive damages awards equaling far greater percentages of defendants’ net worth. See Bigler-Engler v. Breg, Inc., 7 Cal. App. 5<sup>th</sup> 276, 309 (2017) (award of 5% of defendant’s net worth); Weeks, 63 Cal. App. 4<sup>th</sup> at 1166-67 (award of 5% of defendant’s net worth). Similarly, courts have approved ratios higher than the five to one ratio here. See Las Palmas Assocs. V. Las Palmas Ctr. Assocs., 235 Cal. App. 3d 1220, 1255 (1991) (court preserved a 7.9 to 1 ratio of punitive damages to compensatory damages); Simon v. San Paolo U.S. Holding Co., 35 Cal. 4<sup>th</sup> 1159, 1182-83 (2005) (court reduced a punitive damages award from 340:1 to 10:1); Planned Parenthood of the Columbia/Williamette Inc. v. American Coalition of Life Activists, 422 F. 3d 949, 963 (9<sup>th</sup> Cir. 2005) (court held that a 9:1 ratio did not offend its “constitutional sensibilities”). Fox relies on Mattel, Inc. v. MGA Entertainment, Inc., 801 F. Supp. 2d 950 (C.D. Cal. 2011) wherein the court awarded exemplary damages in “an amount equal to the remitted compensatory damage award.” However, the compensatory damage award was \$85 million, and the punitive damages award was “approximately 3.6% of Mattel’s net worth.” Mattel, 801 F. Supp. 2d at 956. The Mattel court also found that the need for deterrence was low “since other members of the close-knit toy industry have been alerted to Mattel’s misconduct as a result of this litigation . . . .” Id. at 955. By contrast, the need for deterrence is greater here given the private nature of arbitration and the fact that other profit participants have not been alerted to Fox’s misconduct.

As such, in light of Fox’s financial condition, a punitive damages award in the amount of \$128,455,730 is reasonable and necessary to punish Fox for its reprehensible conduct and deter it from future wrongful conduct.

## VIII.

### ATTORNEYS FEES AND COSTS &

### ARBITRATOR FEES AND ARBITRATION COSTS

The parties submitted a Stipulation Re: Memorandum of Costs wherein the parties stipulated that Respondents are the prevailing parties under the parties' respective Agreements. In accordance with the parties' Stipulation, the Arbitrator finds as follows: (1) Josephson is awarded attorneys' fees in the amount of \$2,771,494.30 and costs in the amount of \$787,114, for a total of \$3,558,608.30; and (2) Reichs, Deschanel and Boreanaz are awarded attorneys' fees in the amount of \$3,087,989.50 and costs in the amount of \$754,953.44, for a total of \$3,842,942.94.

With respect to the Arbitrator's fees and Arbitration costs, the Stipulation states that since Respondents are the prevailing parties, they are entitled to "all costs of arbitration." As such, Respondents are awarded the costs of arbitration in the amount of \$264,707.29. This amount is representative of Respondents' share of Arbitration fees and costs.

## IX.

### AWARD

#### Final Comments

At the outset of Fox's closing arguments, counsel for Fox conveyed two observations directed at the Arbitrator. First, that the Arbitrator paid close attention to the examination of the witnesses and the evidence in general and thereon engaged in very rigorous examinations of Fox's witnesses at times. Second, that the Arbitrator seemed to be caught up and swayed by the rhetoric of counsel for Respondents and felt that the Arbitrator may have been inappropriately predisposed by the vitriolic spin, characterizations and strident presentations by counsel for Respondents. To make it very clear, this did not occur; however further discussion is warranted.

Unfortunately, the Arbitrator believes that these two observations must be addressed. As stated during the course of the hearing and repeated again, Respondents' case was presented and made (virtually entirely) through Evidence Code Section 776 witnesses. Or to put it another way,

Respondents' case was presented and supported through the testimony of the Fox witnesses themselves.

It is Fox and Fox alone that is responsible for the evidentiary findings made herein. If this had been a Jury trial, counsel for Fox would be decrying a runaway verdict comprised of passion and prejudice. However, to reiterate this ignores that it was Fox's own employees, executives and witnesses that provided the evidence for the Arbitrator to make the findings set forth above.

Since it is the purview of the Arbitrator to weigh the credibility of the witnesses and in accordance with the testimony detailed above, it can only be concluded that the Fox witnesses lacked credibility and at times appeared to intentionally deviate from the truth even in the face of clear and unequivocal controverting facts. A myriad of explanations by the Fox witnesses cannot account for their complete disregard for obvious and uncontroverted facts. There simply appeared to be a company-wide culture and an accepted climate that enveloped an aversion for the truth.

Yes, the Arbitrator did examine the Fox witnesses proffered. However, this became essential so as to undertake a thorough attempt to find the truth. Arbitrations and Trial Courts are designed and tasked to find the truth. The entire system of justice is designed to be a rigorous search for the truth. The job of any trier of fact be it a judge or an arbitrator is to find the truth by any means necessary.

This was done and done without any pre-disposition, passion or prejudice. The Arbitrator carried out his role in a dispassionate, neutral and surgical manner so as to accomplish what Shakespeare has called: "*truth will out*" (originally found in Shakespeare's play the "*Merchant of Venice*"). Meaning that the truth will eventually be made public.

This Award reflects the evidence, the facts and the truth. Every finding made is supported by the documentary evidence presented and the transcript of the testimony of the witnesses themselves as well as the exhibits. The hearing transcript is extensively cited and quoted with respect to all of the Fox witnesses and leaves no room for any inflection of passion or prejudice.

### **Conclusion**

Accordingly, Respondents have established their claims for breach of contract, fraud, and tortious interference with contract, and they are hereby awarded the following:

- (1) For the breach of contract claim based on domestic licensing: \$15,585,047 in actual damages;
- (2) For the breach of contract claim based on international licensing: \$7,078,327 in actual damages;
- (3) For fraud: Rescission of the Release;
- (4) For breach of contract based on Hulu agreements: \$10,106,099 in actual damages;
- (5) For Tortious Interference with Contract and Tortious Interference with Hulu agreements: \$128,455,730 in punitive damages;
- (6) Prejudgment interest on the breach of contract damages from the date this action was filed: \$10,055,360;
- (7) Attorneys' fees and costs: \$3,558,608.30 total to Josephson; and \$3,842,942.94 total to Reichs, Deschanel and Boreanaz; and
- (8) Arbitrator fees and Arbitration costs representative of Respondents' share only: \$13,664.66

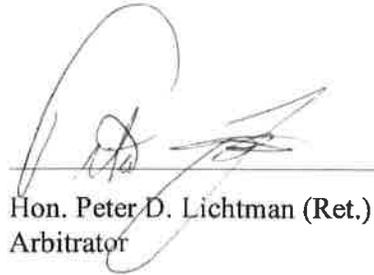
The TOTAL AMOUNT of this Award is: **\$178,695,778.90**.

Accordingly, Respondents are hereby awarded the sum of **\$178,695,778.90** as and for those damages identified above. This award is in favor of Respondents and against the Claimants. Post-judgment interest shall accrue on the full amount of the final award from the date of issuance at the statutory rate.

**Amended Final Award**

This award resolves all claims between the parties submitted for decision in this proceeding and is the arbitrator's final award.

Dated: February 4, 2019



Hon. Peter D. Lichtman (Ret.)  
Arbitrator

**PROOF OF SERVICE BY E-Mail**

Re: Twentieth Century Fox Film Corporation et al. vs. Wark Entertainment, Inc. fso Barry Josephson et al.  
Reference No. 1220052735

I, Jasmine Lu, not a party to the within action, hereby declare that on February 20, 2019, I served the attached AMENDED FINAL AWARD on the parties in the within action by electronic mail at Los Angeles, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,  
CALIFORNIA on February 20, 2019.



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