UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT KIRKMAN, et al.,

Plaintiffs,

v.

AMC FILM HOLDINGS LLC, et al.,

Defendants.

Case No. 2:22-cv-09101-FLA (AFMx)

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS [DKT. 25]

RULING

Before the court is Defendants AMC Film Holdings LLC, AMC Network Entertainment LLC, and AMC Networks Inc.'s (collectively, "AMC" or "Defendants") Motion to Dismiss the Complaint. Dkt. 18 ("Mot."); Dkts. 18-1, 25 ("Mot. Br.").[1] Plaintiffs Robert Kirkman ("Kirkman"), Gale Anne Hurd ("Hurd"), Valhalla Entertainment, Inc., David Alpert ("Alpert"), Circle of Confusion Productions LLC, New Circle of Confusion Productions LLC, Charles Eglee ("Eglee"), United Bongo Drum, Inc., Glen Mazzara ("Mazzara"), and 44 Strong

[1] The court cites documents by the page numbers added by the court's CM/ECF System, rather than any page numbers included natively.

Productions, Inc. (collectively, "Plaintiffs") oppose the Motion. Dkt. 27 ("Opp'n"). On March 6, 2023, the court found this matter appropriate for resolution without oral argument and vacated the hearing set for March 10, 2023. Dkt. 36; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15.

For the reasons stated herein, the court GRANTS the Motion as to the third cause of action without prejudice. The Motion is otherwise DENIED.

BACKGROUND

On December 19, 2022, Plaintiffs filed the Complaint in Los Angeles County Superior Court, asserting two causes of action for breach of contract and one cause of action for a permanent injunction. Dkt. 9-3 (Compl.) at 2.[2] Plaintiffs Kirkman, Hurd, Alpert, Eglee, and Mazzara allege they are key members of the creative team behind the television series *The Walking Dead*, and that they entered into written agreements with Defendants under which AMC agreed to pay Plaintiffs compensation contingent on the series' success, through a percentage of contractually defined profits known as modified adjusted gross receipts ("MAGR"). *Id.* ¶ 1. According to Plaintiffs, each of their contracts also entitle them to "most favored nation" ("MFN") status with respect to the payment of this contingent compensation, which guarantees they will be treated equally with other profit participants. *Id.* ¶¶ 31, 33. Copies of the parties' agreements are attached as exhibits to the Complaint. *Id.* at 21–149. The parties agree the agreements are governed by New York law. Mot. at 18; Opp'n at 11.

On or around July 16, 2021, Defendants entered into a settlement agreement with non-parties Frank Darabont, Ferenc, Inc., and Darkwoods Productions, Inc.

[2] The third cause of action requests the court permanently enjoin Defendants from proceeding with an arbitration Defendant AMC Film Holdings LLC filed with JAMS on May 26, 2022. Dkt. 9-3 (Compl.) ¶¶ 61, 72, 75, 76(b). Defendants move to dismiss the third cause of action on the grounds that they have already dismissed the arbitration voluntarily. Mot. at 18. Plaintiffs do not object to the dismissal of this cause of action without prejudice. Opp'n at 6 n. 1. Accordingly, the court DISMISSES the third cause of action without prejudice.

(collectively, "Darabont"), and Creative Artists Agency ("CAA"), in connection with litigation over the proper calculation of their MAGR interests in *The Walking Dead* (the "Darabont Settlement"). Dkt. 9-3 (Compl.) ¶¶ 2, 39, 44, 47. Plaintiffs contend the Darabont Settlement constitutes a more favorable MAGR definition, computation, or payment and that Defendants are obligated to adjust Plaintiffs' MAGR interests accordingly under the MFN provisions of their contracts. *Id.* ¶¶ 49–52. Plaintiffs Kirkman, Hurd, and Alpert also claim similar contingent compensation rights in connection with the spin-off series *Fear the Walking Dead*. *Id.* ¶¶ 40, 56–59.

DISCUSSION

I. Legal Standard

Under Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)"), a party may file a motion to dismiss a complaint for "failure to state a claim upon which relief can be granted." The purpose of Rule 12(b)(6) is to enable defendants to challenge the legal sufficiency of the claims asserted in the complaint. *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). A district court properly dismisses a claim under Rule 12(b)(6) if the complaint fails to allege sufficient facts "to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter … to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations and brackets omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citations and parentheticals

omitted). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679).

When evaluating a complaint under Rule 12(b)(6), the court "must accept all well-pleaded material facts as true and draw all reasonable inferences in favor of the plaintiff." *Caltex*, 824 F.3d at 1159. Legal conclusions "are not entitled to the assumption of truth" and "must be supported by factual allegations." *Iqbal*, 556 U.S. at 679. The court need not accept as true allegations that contradict matters properly subject to judicial notice or established by exhibits attached to the complaint. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *amended on other grounds*, 275 F.3d 1187 (9th Cir. 2001). "Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Id.*

A court must normally convert a Rule 12(b)(6) motion into a motion for summary judgment under Fed. R. Civ. P. 56 if it considers evidence outside the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003). "A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Id.*

II. Analysis

A. Breach of Contract under New York Law

Under New York law, "[t]he essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach." *Legum v. Russo*, 133 A.D.3d 638, 639 (N.Y. App. Div. 2015). "A contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document

itself. Consequently, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." *Id.* (citations and brackets omitted). "A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion." *Id.* (brackets, citations, and quotation marks omitted). "Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties' intent, or when specific language is susceptible of two reasonable interpretations." *Id.* (citation and quotation marks omitted). "Where a contract is ambiguous, extrinsic evidence may be considered to determine the parties' intent." *Id.* "Whether a contract is ambiguous is an issue of law for the courts to decide." *Id.* at 640 (quotation marks and citation omitted).

B. The Parties' Agreements

The contingent compensation provisions of Kirkman's agreement with Defendants state in relevant part:

a. If AMC orders the Series and it is based upon the Work, and provided [Kirkman] is not in material breach hereof, [Kirkman] shall be entitled to contingent compensation ("Contingent Compensation") in an amount equal to 5% of 100% of the modified adjusted gross receipts ("MAGR") derived from the Series, allocated one-half to the rights in the Work granted to AMC ("Rights Participation") and one-half to Author's executive producer services ("Producing Participation").

b. MAGR shall be defined, computed, accounted for and paid in accordance with the standard definition thereof used by the third party supplier producer/deficit financier, subject to good faith negotiation (including as to distribution fee and overhead) within the usual parameters of such supplier producer/deficit financier (or of AMC if there is no third party supplier producer/deficit financier) consistent with Author's stature; provided, however, that (i) MAGR shall include home video/DVD and merchandising, and (ii) in no event shall MAGR be defined, computed, or paid on a basis less favorable than for any other non-cast individual participant on the Series. AMC will not

> charge sales, distribution or similar fees unless it (or an affiliated company) actually handles distribution or licensing, in which case AMC will be entitled to the same distribution fees and overhead charge (without any double deduction thereof) as the third party distributor referenced above. No network sales fee shall be charged regarding AMC's initial license fee.

Dkt. 9-3 (Compl. Ex. A) at 25. As the term "modified adjusted gross receipts" is not defined in the agreement, *see id.* at 22–23 ("DEFINITIONS" for the agreement), it is "defined as commonly understood in the entertainment industry." *See id.* at 30.

Alpert's agreement states in relevant part:

> If the Series is produced without any third-party supplying producer/ deficit financier, MAGR shall be defined, computed and paid by American Movie Classics Company LLC ("AMC") in accordance with AMC's MAGR definition (which shall be furnished to [Alpert]), which definition shall specify an imputed license fee in connection with AMC's license and rights to exhibit the Series on AMC and its related services to be included in the calculation of "Gross Receipts" in AMC's MAGR definition, but no television distribution fee shall be charged with respect to the Gross Receipts attributed to such imputed license fee. In addition, for purposes of the calculation of [Alpert's] participation hereunder, AMC's MAGR definition shall include the following terms and conditions: (A) television distribution fees shall be capped at twenty percent (20%) and shall be inclusive of all sub-distributor, barter and sales fees (but specifically excluding any advertising agency fees charged on barter), provided there shall be no television distribution fee on the sale to the initial network licensee, including all extensions and renewals thereof; (B) the administrative overhead charge shall be capped at fifteen percent (15%) (and no studio supervisory fee shall be charged by AMC or any affiliated entity); (C) no overhead will be charged on interest and no interest will be charged on overhead or interest; (D) the interest charge shall not exceed prime plus one percent (1%) per annum, and interest will be calculated at the midpoint of each production period; (E) in no event shall the combined distribution fee and overhead charge exceed thirty percent (30%) in the aggregate regardless of the defined terms for same in the third party's definition; and (F) gross receipts shall include revenue from home video and merchandising on a royalty basis as further defined in AMC's MAGR definition.

Dkt. 9-3 (Compl. Ex. C) at 85. "In no event shall [Alpert's] MAGR participation be defined less favorabl[y] than the MAGR definition accorded to the Author or any other individual executive producer on the Series." *Id.* at 86. Hurd, Eglee, and Mazzara's agreements each contain substantially similar provisions. *Id.* at 63 (Compl. Ex. A, Hurd), 107 (Compl. Ex. D, Eglee), 135–36 (Compl. Ex. F, Mazzara).

The Walking Dead was produced without a "third party supplier producer/deficit financier," and AMC issued a MAGR definition to Plaintiffs on or around March 16, 2011 (the "2011 MAGR Definition"). Dkt. 18-6 (Samplin Decl. Ex. C); *see also* Mot. Br. at 13; Dkt. 9-3 (Compl.) ¶ 37. The 2011 MAGR Definition computes MAGR for *The Walking Dead* "by deducting from 'Gross Receipts' all 'Distribution Fees[,'] all 'Distribution Charges[,'] all 'Other Participations,' and the 'Cost of Production,' in that order on a continuing basis." Dkt. 18-6 at 6. "Gross Receipts" include, inter alia, all fees actually received and earned by AMC in connection with the distribution of exhibition of *The Walking Dead* by both "Standard Television" (defined as "television exhibition and display by means of a UHF or VHF broadcast television station…") and "Non-Standard Television" (defined as "any and all forms of electronic or electromagnetic or other non-tangible exhibition or transmission of audiovisual programming … for display on a television receiver or other form of display device …, other than exhibitions by means of Standard Television, Consumer Video Devices and Non-Theatrical Distribution"). *Id.* at 2–3, 5.

C. Analysis

The first cause of action alleges Defendants breached the MFN provisions of the parties' agreements, by failing to: (1) pay each Plaintiff an amount proportionally equivalent to the value attributable to MAGR given to Darabont in his settlement agreement; (2) provide each Plaintiff with the benefit of an immediate payout of their unaccrued MAGR interests; and (3) give Plaintiffs the benefits of any additional licensing revenue for streaming of *The Walking Dead*. Dkt. 9-3 (Compl.) ¶ 52. In the second cause of action, Kirkman, Hurd, and Alpert allege their agreements entitle

them to have their contingent compensation for the spin-off series *Fear the Walking Dead* treated identically as for *The Walking Dead*. *Id.* ¶¶ 58–59.

Defendants contend Plaintiffs' contracts are clear and unambiguous, and foreclose Plaintiffs' claims when interpreted according to the plain meaning of their terms. Mot. Br. at 18–19. According to Defendants, the MFN provisions "could only be triggered by the Darabont Settlement if it changed the 'MAGR definition' applicable to Darabont so that his contractual right to MAGR was defined, computed, or paid in a way more 'favorable' than for Plaintiffs." *Id.* Defendants note Darabont and CAA agreed to dismiss their lawsuit and forego any right to any compensation from *The Walking Dead* and all related series, past and future, in exchange for a $200 million lump-sum payment and a specified share of revenue received from future streaming of *The Walking Dead* and *Fear the Walking Dead*. Mot. Br. at 16, 20. Additional details regarding the Darabont Settlement are discussed in the unredacted version of Defendants' brief. Dkt. 25 at 16, 20–21. Defendants, thus, argue that the settlement agreement did not constitute a more favorable MAGR definition or computation, but was simply a payment made to resolve litigation. Mot. Br. at 19–24.

Plaintiffs respond their MAGR rights apply to the Darabont Settlement because that settlement establishes how Darabont's MAGR is defined and paid, and provides Darabont and CAA with: (1) a greater monetary value of MAGR, point for point, than what Plaintiffs received; (2) a payout of Darabont's unaccrued MAGR; and (3) a guaranteed portion of additional licensing revenue for streaming of *The Walking Dead*, which Plaintiffs have not received. Opp'n at 11. Plaintiffs also note Defendants issued a profit participation statement to Plaintiffs in January 2022 that stated, in relevant part:

> The "Insurance, Permits and Other Distribution Costs" line includes a current period charge of $19,823,573, the portion of the recent litigation settlement which would have been paid to settling plaintiffs pursuant to future statements and payments regarding the Series.

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> The amount is on that line in the statement because that is where legal expenses reside. Absent the litigation and settlement, that amount (in the aggregate) would have appeared over time on the "Deferments & Percentage Participations" line item as statements were issued and paid.

Dkt. 9-3 (Compl.) ¶ 46. Plaintiffs further allege Kirkman, Hurd, and Alpert's statements for the same period for *Fear the Walking Dead* included similar language stating a period charge of $18,828,997, represented the portion of the recent litigation settlement which would have been paid to Darabont and CAA pursuant to future statements and payments regarding the series. *Id.* According to Plaintiffs, "[t]his post-settlement profit participation deduction is an accounting admission by AMC that the Darabont Settlement was directly attributable to Darabont's MAGR rights." Opp'n at 13.

Viewing the allegations of the Complaint and the documents referenced therein liberally and in context, the court finds Plaintiffs plead plausibly that the Darabont Settlement constitutes a more favorable computation and definition of MAGR than the 2011 MAGR Definition. Defendants admit Darabont and CAA surrendered their MAGR-related claims and rights to contingent compensation under their prior agreements in exchange for a lump-sum payment and contractually specified share of potential future streaming revenue. Mot. Br. at 16, 20–21. The license fees Defendants receive from streaming services, such as Netflix, Inc. or Hulu, LLC, qualify as fees received and earned in connection with distribution by Non-Standard Television under the 2011 MAGR Definition. *See* Dkt. 18-6 (Samplin Decl. Ex. C) at 4. Similarly, the amounts Defendants agreed to provide Darabont and CAA in exchange for their future MAGR rights for both series may be computed from Defendants' profit participation statements. *See* Dkt. 9-3 (Compl.) ¶ 46. As the Darabont Settlement is a contractual agreement whereby Defendants, on the one side, and Darabont and CAA, on the other, agreed upon the share of the gross receipts Darabont and CAA would receive as contingent compensation for *The Walking Dead* and *Fear the Walking Dead*, these provisions of the Darabont Settlement constitute a

computation of MAGR under the plain meaning of the parties' agreements, from which a definition of MAGR may be determined. *See id.* ¶¶ 47, 51.

The Complaint also alleges sufficient facts to plead plausibly that the MAGR computation in the Darabont Settlement is more favorable than the 2011 MAGR Definition. *See id.* at 11, ¶ 37 ("AMC has made billions from *The Walking Dead* franchise. Yet, when AMC Studios issued a MAGR definition to Plaintiffs in March 2011—with full knowledge of the first season's historic success—it unilaterally imposed financial terms so unfair and so far outside industry norms that the definition would not have yielded a penny of contingent compensation for the profit participants involved in *The Walking Dead* notwithstanding the historic success of the Series."). Accordingly, the court finds Plaintiffs allege sufficient facts to plead they are entitled to the more favorable MAGR computation and definition Defendants provided to Darabont and CAA, pursuant to the MFN provisions of their agreements.

Defendants argue the Darabont Settlement does not provide a more favorable MAGR because Darabont and CAA "released *any* claim for *any* compensation related to *any* show in *The Walking Dead* universe—not just claims that were already pending in litigation." Mot. Br. at 21 (emphasis in original). Defendants, however, fail to establish Darabont and CAA pleaded plausible claims related to any show in *The Walking Dead* universe beyond *The Walking Dead* and *Fear the Walking Dead*—which are the shows at issue in Plaintiffs' agreements. *See* Mot. Br. Furthermore, Plaintiffs state sufficient facts to plead plausibly that Defendants calculated the portions of the lump-sum payment attributable to Darabont and CAA's contingent compensation rights for *The Walking Dead* and *Fear the Walking Dead* separately from the portions attributable to their other claims. *See* Dkt. 9-3 (Compl.) ¶ 46. The court, therefore, will not grant the Motion on this basis.

Defendants further argue that interpreting the Darabont Settlement to create a new and more favorable definition of MAGR would be commercially unreasonable and contrary to the parties' expectations. Mot. Br. at 25–26 (citing *In the Matter of*

Lipper Holdings, LLC, 1 A.D.3d 170, 171 (N.Y. App. Div. 2003) ("A contract should not be interpreted to produce a result that is absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties") (citations omitted)).[3] The court disagrees.

It is undisputed Defendants were aware of Plaintiffs' agreements and the MFN provisions therein when they entered into the Darabont Settlement. Defendants, thus, knew or should have known Plaintiffs could seek to enforce the MFN provisions to obtain the same computation of their future contingent compensation rights as Darabont and CAA. *See* Mot. Br. at 25 (recognizing "in the entertainment business, profit participation litigation is exceedingly common," and that sophisticated parties negotiating contracts would have been aware of the effect an agreement may have on contracts with other profit participants). It would be an illogical interpretation of the MFN provisions and contrary to the reasonable expectations of the parties in entering into the agreements if the court were to allow Defendants, as a matter of law, to provide Darabont and CAA with increased contingent compensation and a greater share of future gross receipts for the series through a settlement agreement—at Plaintiffs' expense—without providing Plaintiffs the same.

It is immaterial that such computation may be less detailed or involve different components as the computation stated in the 2011 MAGR Definition, as the MFN provisions entitle Plaintiffs to the more favorable of the two definitions or computations based on the plain meaning of the agreements. *See, e.g.*, Dkt. 9-3 at 25 (Compl. Ex. A, Kirkman) ("[I]n no event shall MAGR be defined, computed, or paid on a basis less favorable than for any other non-case individual participant on the

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[3] Defendants also argue Plaintiffs' breach of contract claims are foreclosed by the *expression unius* or negative-implication cannon, because the agreements do not state specifically that settlement payments to other profit participants would trigger the MFN clauses. Mot. Br. at 24–25. Defendants' argument lacks merit based on the plain meaning of the MFN provisions.

Series."), 86 (*id.* Ex. B, Hurd) ("In no event shall Artist's MAGR participation be defined less favorable than the MAGR definition accorded to the Author, Writer, director, or any other individual executive producer on the Series"), 107 (Compl. Ex. D, Eglee) ("MAGR shall be defined, computed, and paid in accordance with the definition thereof applicable to Frank Darabont and Gale Anne Hurd in connection with the Series"). Defendants' argument, thus, fails.

Finally, Defendants contend that allowing the action to proceed would invade Defendants' attorney-client privilege and undermine California's strong public interest in encouraging settlements. Mot. Br. at 27. The court disagrees. Neither discovery into Defendants' communications with Darabont and CAA nor a computation of MAGR based on the terms of the Darabont Settlement and information disclosed in Defendants' profit participation statements would require Defendants to disclose confidential attorney-client communications. Similarly, requiring Defendants to provide the same MAGR computation to Plaintiffs would not violate California public policy regarding settlements, as Defendants knew or should have known Plaintiffs could seek similar contingent compensation based on the MFN provisions when they negotiated and entered into the Darabont Settlement.[4]

Accordingly, the court DENIES in part the Motion as to the first and second causes of action. Having denied the Motion for the reasons stated, the court need not address the parties' remaining arguments.

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[4] Defendants cite *Village Northridge Homeowners Association v. State Farm Fire & Casualty Co.*, 50 Cal. 4th 913, 930 (2010), to argue California has a strong public policy favoring settlements. Mot. Br. at 27. *Village Northridge* does not stand for the proposition that a settling party's unrelated agreements with non-parties to the settlement should be interpreted in a manner beneficial to the settling party if terms in the settlement agreement would render the non-parties' agreements more costly or unfavorable to the settling party. Defendants' argument lacks merit.

CONCLUSION

For the aforementioned reasons, the court GRANTS in part the Motion and DISMISSES the third cause of action without prejudice. The Motion is otherwise DENIED.

IT IS SO ORDERED.

Dated: March 25, 2024

FERNANDO L. AENLLE-ROCHA
United States District Judge