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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 MELVIN WILLIAM SMITH, JR., a/k/a
17 MEL SMITH, an individual,

18 Plaintiff,

19 v.

20 AMC NETWORKS, INC., a Delaware
21 corporation; AMC FILM HOLDINGS, LLC,
22 a Delaware limited liability company; AMC
23 NETWORK ENTERTAINMENT, LLC, a
24 Delaware limited liability company, d/b/a
25 AMC a/k/a American Movie Classics;
26 SKYBOUND PRODUCTIONS, INC., a
27 California corporation; CIRCLE OF
28 CONFUSION PRODUCTIONS, LLC, a
California limited liability company; NEW
CIRCLE OF CONFUSION
PRODUCTIONS, LLC, a California limited
liability company; VALHALLA
ENTERTAINMENT, INC., f/k/a
VALHALLA MOTION PICTURES, INC., a
California corporation; ROBERT
KIRKMAN, LLC, a Kentucky limited
liability company; ROBERT KIRKMAN, an
individual; DAVID ALPERT, an individual,

Defendants.

Case No:

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT, ETC.**

JURY TRIAL DEMANDED

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SUMMARY OF THE CASE

1. This is a civil action for copyright infringement of protected elements of plaintiff’s three-volume comic book series entitled DEAD AHEAD, and for breach of fiduciary duty with respect to same, which defendants copied and subsequently used, performed and exploited without permission in the television series FEAR THE WALKING DEAD.

JURISDICTION AND VENUE

2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 & 1338(a).

3. This Court has personal jurisdiction over defendants because they conduct business in the State of California, both in connection with the facts giving rise to this lawsuit and during the general course of their affairs, and have sufficient minimum contacts in this State, or otherwise intentionally avail themselves of the markets within or the laws of the State of California, through the promotion, sale, and marketing of their goods or services, so as to render the exercise of jurisdiction by this Court proper and necessary.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) & (3) as well as 28 U.S.C. § 1391(c) in that the unlawful acts alleged below were intentional and were conceived, carried out, or made effective by defendants, and caused harm to plaintiff, within this District.

PARTIES

Plaintiff

5. Plaintiff MELVIN WILLIAM SMITH, JR., also known as MEL SMITH, is an individual residing in this District. He is a published comic book artist, writer and creator.

Defendants

6. Defendant AMC NETWORKS, INC. is a publicly-owned corporation organized and existing under the laws of Delaware. It is licensed to do business in this State.

7. Defendant AMC FILM HOLDINGS, LLC is a limited liability company organized and existing under the laws of Delaware. It is licensed to do business in this State.

8. Defendant AMC NETWORK ENTERTAINMENT, LLC is a limited liability company organized and existing under the laws of Delaware. It is licensed to do business in this State. AMC Network does business as AMC, also known as AMERICAN MUSIC CLASSICS,

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1 exhibits (broadcasts) FEAR THE WALKING DEAD via cable television, and does so in
2 cooperation with other AMC entities including those named here as well as with the following
3 named defendants.

4 9. Defendant SKYBOUND PRODUCTIONS, INC. is a corporation organized and
5 existing under the laws of California with its principal place of business in California. It is in
6 the business of publishing comics and producing film and television projects.

7 10. Defendant CIRCLE OF CONFUSION PRODUCTIONS, LLC is a limited
8 liability corporation organized and existing under the laws of California with its principal place
9 of business in California. It is in the business of producing film and television projects.

10 11. Defendant NEW CIRCLE OF CONFUSION PRODUCTIONS, LLC (“NEW
11 CIRCLE”) is a corporation organized and existing under the laws of California with its principal
12 place of business in California. It is in the business of producing film and television projects.

13 12. Defendant VALHALLA ENTERTAINMENT, INC. is a corporation organized
14 and existing under the laws of California with its principal place of business in California. It is
15 in the business of producing film and television projects.

16 13. Defendant ROBERT KIRKMAN, LLC is a limited liability company organized
17 and existing under the laws of Kentucky with its principal place of business in California. It is
18 in the business of writing and producing television programs.

19 14. Defendant ROBERT KIRKMAN is an individual residing in the State of
20 California. At all relevant times, he was Chief Operating Officer of Image Comics, located in
21 Berkeley, California, and the original publisher of DEAD AHEAD, a principal of defendant
22 SKYBOUND ENTERTAINMENT, and is credited as an executive producer and “creator” of
23 FEAR THE WALKING DEAD.

24 15. Defendant DAVID ALPERT is an individual residing in the State of California.
25 At all relevant times, he served as an agent representative of plaintiff SMITH, was a principal of
26 defendants SKYBOUND ENTERTAINMENT and CIRCLE OF CONFUSION, the business
27 manager and business partner of defendant KIRKMAN, and is credited as an executive producer
28 of FEAR THE WALKING DEAD.

1 16. Plaintiff is informed and believes, and thereon alleges, that each defendant is in
2 some manner responsible for the wrongs and damages alleged below, and in so acting was
3 functioning, at least at times, as the agent, servant, partner, alter ego or employee of the other
4 defendants, and in doing or not doing the actions mentioned below was acting within the course
5 and scope of his or her or its authority as such agent, servant, partner or employee with the
6 permission and consent of the other defendants. Further, all acts herein alleged were approved
7 of and ratified by each and every other defendant.

8 **FIRST CLAIM FOR COPYRIGHT INFRINGEMENT**

9 **(Against All Defendants)**

10 17. Plaintiff realleges paragraphs 2 through 16, above.

11 18. In or about 2007-08, plaintiff SMITH authored or commissioned others to co-
12 author with him the literary work DEAD AHEAD. DEAD AHEAD is original to plaintiff and
13 his co-authors and is copyrightable subject matter under U.S. law.

14 19. In or around Feb. 2017, plaintiff registered DEAD AHEAD with the U.S.
15 Copyright Office. The Copyright Office acknowledged receipt of that registration on or about
16 Feb. 9, 2017, registration number pending.

17 20. Plaintiff is an owner and exclusive administrator of all right, title and interest in
18 and to the foregoing copyright. DEAD AHEAD has been published or otherwise exploited by
19 plaintiff, or by others under plaintiff’s authority or license (including pursuant to a 2007 written
20 license agreement by Image Comics), in conformity with the Act.

21 21. At no time has plaintiff authorized defendants, or any of them, to reproduce,
22 distribute, perform, create derivative works based on or otherwise exploit all or any portion of
23 DEAD AHEAD.

24 22. Within the last three years, defendants, and each of them, infringed plaintiff’s
25 copyright in DEAD AHEAD by, among other things, broadcasting or otherwise exploiting the
26 second season of FEAR THE WALKING DEAD. Portions of that season’s 13 episodes were
27 copied from plaintiff’s copyrighted literary work DEAD AHEAD.
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1 23. Defendants continue to infringe plaintiff’s copyright by broadcasting or
2 otherwise exploiting the second season of FEAR THE WALKING DEAD. Accordingly,
3 plaintiff is entitled to the equitable and legal remedies set out in the federal Copyright Act.

4 **SECOND CLAIM FOR BREACH OF FIDUCIARY DUTY**

5 **(Against All Defendants)**

6 24. Plaintiff realleges paragraphs 2 through 23, above.

7 25. As plaintiff’s agent representative for the purposes of consulting with motion
8 picture and television studios on the use or exploitation of DEAD AHEAD, defendant ALPERT
9 (acting by and through defendant CIRCLE OF CONFUSION) owed and continues to owe
10 plaintiff a fiduciary duty to act with the highest fidelity and utmost good faith regarding all
11 matters related to DEAD AHEAD.

12 26. Defendant ALPERT violated and continues to violate his fiduciary obligation to
13 plaintiff by engaging in a pattern and practice of self-dealing, placing his own interests ahead of
14 the interests of his principal and client, wrongfully depriving plaintiff income from the use and
15 exploitation of DEAD AHEAD, including the ideas embodied therein, and using his principal’s
16 and client’s intellectual property to enrich himself. In so doing, defendant ALPERT failed both
17 to preserve his confidential communications with plaintiff and to disclose to plaintiff the conflict
18 inherent in his business and creative involvement with the other named defendants.

19 27. All the other defendants named above knew or, in the exercise of reasonable
20 diligence, should have known of defendant ALPERT’s fiduciary relationship with plaintiff. By
21 the acts and conduct alleged above, including working closely and in concert with defendant
22 ALPERT in all aspects of the production and distribution of FEAR THE WALKING DEAD,
23 these defendants substantially assisted and therefore aided and abetted defendant ALPERT in
24 breaching his fiduciary duty to plaintiff. As such, those actions and conduct were a contributing
25 and substantial factor in causing harm to plaintiff.

26 28. As a direct and proximate result of the foregoing acts and conduct, plaintiff has
27 been damaged in an amount which he cannot ascertain with complete certainty plus interest
28 thereon, to be proven at trial.

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JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: June 26, 2018

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ David M. Given
David M. Given
Attorneys for Plaintiff

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