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 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

APR 05 2012

John A. Clarke, Executive Officer/Clerk
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OLBERMANN BROADCASTING EMPIRE,
 INC. and KEITH OLBERMANN,

Plaintiffs,

v.

CURRENT TV, LLC; and DOES 1-50,
 inclusive,

Defendants.

Case No. **BC 482335**

COMPLAINT FOR:

- (1) Breach of Contract;
- (2) Breach of Implied Covenant of Good Faith and Fair Dealing;
- (3) Declaratory Relief re: Uncured Default Under the Agreement for Alleged Failure to Promote;
- (4) Declaratory Relief re: Uncured Default Under the Agreement for Alleged Disparagement;
- (5) Declaratory Relief re: Uncured Default Under the Agreement for Alleged Unauthorized Absences;
- (6) Declaratory Relief re: Uncured Default Under the Agreement for Alleged Unauthorized Selection of Guest Host;
- (7) Declaratory Relief re: Uncured Default Under the Agreement for Alleged Refusal to Meaningfully Consult; and
- (8) Declaratory Relief re: Uncured Default Under the Agreement For Alleged Disclosure of Confidential Economic Terms

DEMAND FOR TRIAL BY JURY

Glaser Weil Fink Jacobs
 Howard Avchen & Shapiro LLP

1 Plaintiffs Olbermann Broadcasting Empire, Inc. ("OBE") and Keith Olbermann (collectively
2 "Olbermann" or "Plaintiffs"), by their attorneys Patricia L. Glaser and Jill Basinger of Glaser Weil
3 Fink Jacobs Howard Avchen & Shapiro LLP, for their complaint against defendants Current TV,
4 LLC ("Current") and Does 1-50 (the "Doe Defendants") (collectively "Current" or "Defendants")
5 allege as follows:

6 **NATURE OF THE ACTION**

7 1. After being enticed to leave MSNBC and come to Current with promises of editorial
8 control, freedom from corporate influence, and the professional support to produce a high-caliber
9 political commentary show of the type his viewers have come to expect, Keith Olbermann was
10 disheartened to discover Al Gore, Joel Hyatt, and the management of Current are no more than
11 dilettantes portraying entertainment industry executives. This action is necessary as Current has
12 repeatedly and willfully breached its written agreement with Olbermann (the "Agreement"), often
13 continuing to do so after receiving specific notices to cure such breaches. In its most recent breach,
14 Current unilaterally, and without cause, terminated its Agreement with Olbermann. Current's
15 sudden and public termination of Olbermann was the latest in a series of increasingly erratic and
16 unprofessional actions undertaken by Current's senior management.

17 2. When Gore and Hyatt courted Olbermann to leave MSNBC and join Current, they
18 promised Olbermann an unprecedented level of control and resources to build a new progressive
19 network. In addition to providing Olbermann with full editorial control over "Countdown with
20 Keith Olbermann" (the "Program"), Current gave Olbermann the title of Chief News Officer,
21 promised Olbermann full editorial control over all of its special coverage of major political events
22 and elections ("Program Specials") and promised to include Olbermann in major decisions
23 regarding Current's primetime line-up. Current further promised to create a website dedicated to the
24 Program (the "Program Website") which would play a central role in Current's strategy to retain
25 Olbermann's audience from his MSNBC program. Unfortunately, shortly after Olbermann joined
26 Current, Hyatt fired Mark Rosenthal, its only experienced cable senior executive, and inserted
27 himself into an executive role at a cable news channel because he lived his "adult life ... in politics."
28 Admitting that he and Gore "had expertise lacking in order to strategically execute the vision [they

1 had] committed to” Hyatt created an environment in which major business errors and technical
2 failures became commonplace and acceptable. Hyatt also attempted to isolate Olbermann from his
3 professional representatives in an awkward attempt to form a close personal friendship with his new
4 star. When Olbermann did not reciprocate Hyatt’s advances, Hyatt reacted by withholding
5 necessary production resources, disparaging Olbermann in the press, denying him his contractually
6 guaranteed editorial control over Current’s election coverage and the Program Website, failing to
7 obtain Olbermann’s approval over the use of Olbermann’s image and the guest hosts of the
8 Program, cutting out Olbermann of internal discussions regarding other programs on Current, and
9 directing Current’s attorneys to harass Olbermann with vague and spurious claims of breach.

10 3. Gore and Hyatt also hired David Bohrman (“Bohrman”), an individual without
11 relevant experience, to be the new network president. Olbermann objected to this hiring but was
12 assured that Bohrman would fix the problems that beset the show. Bohrman admitted that the
13 Program had “significant technical issues,” a “less than high-class production environment,” and
14 that the network had no “core competency” to produce television. Yet, Bohrman did nothing to
15 rectify the problems. In fact, under his stewardship the ratings declined and the Program’s
16 production value deteriorated even further.

17 4. Current’s dysfunction permeated all levels of the organization. After being on the air
18 for nearly eight months – long after all “growing pains” should have ceased – Current still couldn’t
19 manage to, literally, keep the lights on. Since the time that Hyatt crowned himself CEO, the
20 Program was plagued by further logistical nightmares, technical failures, and media disasters. Just
21 some of the failings included: the lights going off during a live broadcast; disruptions of the
22 Program’s news feed (if it rained); incorrect settings for DVRs that precluded such devices from
23 finding and recording the Program; the absence of the Program from cable lineups, thus limiting
24 viewers’ ability to tune in to the Program; substandard production quality, including terrible sound
25 and filming the show in “standard definition” resolution when Bohrman admitted that “high
26 definition” or “HD” was necessary; lost video feeds of guests during on-air interviews; frozen text
27 on teleprompters forcing Olbermann to ad lib for significant periods during live broadcasts; video
28 monitors going out at Olbermann’s desk and Olbermann’s ear piece going out, precluding

1 Olbermann from seeing or hearing guests or the video segments, or hearing the show's director and
2 producers in the control room; video segments that did not match the stories being reported;
3 repeated failures of graphics packages; a dearth of promotional/advertising initiatives; and routine
4 loss of original written and video content, including the show open itself, due to computer failures.
5 These, and a myriad of other failings, irreparably tarnished the "Countdown" brand that Olbermann
6 brought with him to Current. Although editorially Countdown was better than it had ever been, the
7 myriad of technical failings and the inability to find the Program or follow it on the Web caused a
8 precipitous decline in ratings as Olbermann's loyal audience was shut out and other viewers simply
9 gave up.

10 5. When assessing the Program's 33rd Street studio in an October 5, 2011 e-mail to
11 Olbermann, Current President David Bohrman admitted "the 33rd St. facility is never going to be a
12 professional facility. We need to move to HD, and a better location." He further admitted in that
13 same e-mail, "We are paying for a Porsche and getting a Yugo." Bohrman's e-mail then thanked
14 Olbermann for his patience, and acknowledged that Olbermann had "more patience than I would
15 have had." Olbermann thought he had made a deal with a legitimate network and instead got an
16 unprofessional cable-access show.

17 6. In addition to the myriad of technical problems that plagued Countdown as a result of
18 Current's refusal to invest money and resources into an appropriate facility, Current also repeatedly
19 and willfully breached both the spirit and the letter of the Agreement. It did so by: (1) broadcasting
20 advertisements containing Olbermann's likeness without his consent; (2) using guest hosts for
21 Olbermann's Program without obtaining Olbermann's approval; (3) refusing to allow Olbermann to
22 exercise his contractually granted editorial control over special election coverage; (4) disclosing the
23 confidential terms of the Agreement; (5) linking Olbermann's name and goodwill with corporate
24 endorsements without his consent; (6) ignoring Olbermann's consultation rights; (7) disparaging
25 Olbermann publicly; and (8) refusing to invest resources and hire appropriate personnel in order to
26 professionally and competently produce the Program. Current even refused Olbermann's request,
27 and contractual right, to stream segments of the Program and additional web-only content over the
28 Program Website. It is both sad and ironic that a channel owned and founded by Al Gore, for the

1 stated purpose of creating an independent perspective, free from the control of large corporate
2 interests, restricted the rights of its most celebrated commentator and Chief News Officer to fully
3 broadcast his opinions over, of all things, the internet.

4 7. Olbermann repeatedly requested that Current stop breaching the Agreement and
5 provide him the resources and autonomy necessary to produce a high quality program. Instead of
6 honoring its agreements with Olbermann - and only in response to notices of breach from
7 Olbermann - Current often made vague and unsubstantiated counter-claims of breach against
8 Olbermann. After exploiting Olbermann's goodwill to once again re-launch itself, in an attempt to
9 evade its substantial financial obligations to Olbermann and to avoid fixing an admittedly broken
10 studio, Current decided to terminate its Agreement with Olbermann by manufacturing baseless and
11 petty accusations, all of which will be disproven.

12 8. By way of example only, one of the purported "Uncured Defaults" in Current's
13 baseless termination letter is Olbermann's "unauthorized absences." After one gets through the
14 chest thumping and smoke and mirrors, it becomes clear that Current is alleging that Olbermann had
15 exactly two "unauthorized" absences. First, Current alleges that on January 30, 2012, Current told
16 Olbermann that a vacation he took back on January 9 through January 13 was not authorized. Too
17 little, too late. Current is not allowed to retroactively disapprove vacation. Second, Current falsely
18 alleges an "unauthorized" absence on March 5, 2012, the day before "Super Tuesday." Current
19 paints this absence as an attempt by Olbermann to shirk work and somehow hurt Current. What
20 Current fails to mention is that Olbermann had volunteered to host a three hour live election special
21 the very next night—something Olbermann was not obligated to do—and due to persistent throat
22 problems needed to take off March 5th to rest his voice and prepare for the election special. Current
23 also fails to note that instead of putting in a guest host for "Countdown," Current eventually decided
24 to pre-empt the Program that day (March 5th) so that the staff could prepare for the three hour live
25 program special. Ironically, after the special, Bohrman praised Olbermann for the content.
26 Current's other "reasons" for Olbermann's termination are equally specious. Current persistently
27 and consistently ignores the language and spirit of the Agreement.

28

10. As a result of Current's material breaches and bad faith termination of the Agreement, Olbermann has incurred significant damages that will be proven at trial. Not only has Current failed to pay tens of millions of dollars owed to Olbermann in cash compensation, Current has already damaged the value of Current as a company — thereby harming the value of Olbermann's ownership stake — and improperly seeks to deprive Olbermann of the benefit of his stock options in the company. Based upon prior representations by Current, the total package of Olbermann's cash and equity compensation that is still due him under the Agreement is equal to between approximately \$50 million and \$70 million.

11. Plaintiff Olbermann Broadcasting Empire, Inc. ("OBE") is a New York corporation whose principal place of business is in New York, New York. OBE is a "loan out" company whose primary asset is the artistic services of Keith Olbermann. Artists such as Keith Olbermann customarily are employees of "loan out" companies such as OBE. Such companies normally contract with entertainment-related entities, such as Current, for the services of their artists.

12. Plaintiff Keith Olbermann is a natural person who is a citizen of New York, New York. Keith Olbermann is the third-party beneficiary to the Agreement between Current and OBE and is also a signatory to the Agreement.

13. On information and belief, Defendant Current is a Delaware limited liability company whose principal place of business is in San Francisco, California. Current is a cable broadcast company engaged in the development, production, and marketing of entertainment, news, and information to a global audience.

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JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court pursuant to Paragraph 16(e) of the Agreement. Furthermore, jurisdiction is proper in this Court pursuant to Article VI, Section 10 of the California Constitution.

15. Venue is proper in Los Angeles County pursuant to Paragraph 16(e) of the Agreement.

GENERAL ALLEGATIONS

I. Olbermann's Arrival At Current

16. Prior to joining Current, Olbermann hosted a program entitled "Countdown with Keith Olbermann" on MSNBC, which was the highest rated daily program in the history of MSNBC. Although informed that Olbermann still had two years remaining in his contract with MSNBC, Current's principal shareholders, former Vice President Al Gore and Joel Hyatt, convinced Olbermann that Current offered a unique amount of editorial control and freedom from corporate interference with the Program. Current also promised to create a technologically sound and professionally staffed cable news enterprise with Olbermann as its Chief News Officer and the face of the network, giving Olbermann a voice in shaping the channel beyond the Program. Hyatt vowed the show on Current would be superior to Olbermann's show on MSNBC. Gore stressed that it was Current's intent to produce the best progressive news commentary program on television.

17. Initially, Olbermann was encouraged by the fact that Current's CEO at the time of his hiring was Mark Rosenthal ("Rosenthal"), a highly respected and experienced cable television executive. Olbermann believed that, as Current's Chief News Officer, he could work with Rosenthal to help build a first-class cable news network. Unfortunately, Hyatt had other plans.

II. The Agreement

18. In January 2011, Current and Olbermann entered the Agreement through which Olbermann would provide services to Current. The parties fully negotiated the many provisions of the Agreement, including, among other things, granting Olbermann full editorial control of the Program Specials and Program Website, granting him approval rights over the use of his name and

1 likeness, granting him approval over the guest hosts of the Program, and granting him the rights to
2 be meaningfully consulted on the shows that are broadcast before and after the Program.

3 **III. Genesis Of The Problem: Replacing Experience With Incompetence**

4 19. The problems began almost immediately. Hyatt attempted to run the network as a
5 personal hobbyhorse. Shortly after Olbermann's hiring, Hyatt anointed himself as the co-CEO of
6 Current. Hyatt ignored the advice of the experienced members of Current's team with respect to
7 technical decisions regarding equipment, personnel, and ratings data in favor of his own whims.
8 Hyatt's leadership was highly erratic. Just days before the premiere of the Program, Hyatt even
9 threatened to fire Olbermann and the loyal staff members who had followed him from MSNBC to
10 Current. Hyatt behaved as if he had just paid Olbermann to become his puppet instead of the Chief
11 News Officer of the network. Not content to share the stage as a co-CEO, Hyatt fired Rosenthal and
12 named himself Current's new sole CEO, despite no prior experience in the broadcast or cable
13 television business. Hyatt accidentally acknowledged his own lack of qualification for the CEO
14 position in his announcement of Rosenthal's termination stating, "Al Gore and I lived our adult
15 lives, in different capacities, in politics. So it was a natural thing for me to become co-CEO. We
16 had expertise lacking in order to strategically execute the vision we'd committed to." In other
17 words, after two months of training, Hyatt believed he was ready to run a cable news channel on his
18 own. Rosenthal's exit marked the departure of the last "adult" within Current's inner circle.

19 20. After Rosenthal's departure, the technical problems that had beset the Program from
20 the beginning went from bad to worse. Olbermann asked Hyatt to hire an experienced cable
21 television executive. When Olbermann was asked his opinion of Bohrman, he told Hyatt he had
22 grave reservations about Bohrman as "head of programming," the position for which he was told
23 Bohrman was being considered. Remarkably, Hyatt nevertheless named Bohrman (not "head of
24 programming") but President of Current.

25 21. Despite Olbermann's reservations about Current's new leadership, Olbermann tried
26 to make the best of an increasingly bad situation. In early August 2011, Olbermann's manager,
27 Michael Price ("Price"), sent Hyatt a detailed list of necessary technical upgrades, publicity, and
28 marketing needs and a requisite list of production positions for the "Countdown" staff. Although

1 both Hyatt and Bohrman initially indicated that Current would address the myriad of technical
2 failures afflicting "Countdown," Current never followed through on its promises and the problems
3 became increasingly worse. Finally, having exhausted all other avenues to address his legitimate
4 grievances internally, Olbermann asked his attorneys to notify Current that its actions constituted
5 material breaches of the Agreement and request a cure. In response, Current refused to cure such
6 problems, made petty counter-claims against Olbermann, and disparaged Olbermann in the press.

7 **IV. Current's Failure To Produce a Minimally Acceptable Program Or To Run the**
8 **Company In a Professional Manner**

9 22. Current has repeatedly breached the covenant of good faith and fair dealing by failing
10 to live up to its promises to run a professionally staffed, technologically sound, and intellectually
11 honest network. At the time Olbermann's representatives were negotiating the Agreement on his
12 behalf, Rosenthal was the CEO of Current. As described above, Rosenthal was an experienced
13 media executive with significant expertise in the cable television business, and Olbermann
14 reasonably believed that Current would continue to be run by professionals. Unfortunately, shortly
15 after the Agreement was signed, it became clear to Olbermann that Rosenthal was not being given
16 the authority to run the network in a professional manner. Hyatt apparently listened to his own
17 inexperienced voice above all others and was running the network through executive fiat and
18 emotion.

19 23. Less than two weeks before the premiere of the Program on Current, Hyatt
20 summoned Olbermann to his office for a one-on-one meeting at which Hyatt identified that he was
21 speaking on behalf of himself and Gore and threatened to cancel the Program based on an
22 unconfirmed and inaccurate suspicion that Olbermann's manager had leaked information regarding
23 the Agreement to The Hollywood Reporter. On information and belief, it appears the leak Hyatt
24 complained of originated at Current. During the meeting, Hyatt threatened to derail Olbermann's
25 career and take away the livelihood of the staffers who had loyally followed Olbermann to Current
26 unless Olbermann agreed to not only ban his manager from all interactions related to Current, but
27 also his agents and lawyers. Hyatt blackmailed Olbermann into agreeing to put himself in a position
28 that no other major talent in the entertainment or news industries has been forced into in decades:

1- fending for himself without the benefit of hired advisors. Olbermann gave in to Hyatt's blackmail
2- for the purpose of saving the premiere of the Program and the jobs of those who worked on it.
3- Olbermann left the meeting devastated at having discovered that he was working for a blackmailer.

4- 24. From the first rehearsal, the look and feel of the Program was below that of a local
5- news telecast, much less Olbermann's previous MSNBC program. Most of the problems were due
6- to Hyatt having overruled the recommendations of Current's CEO Rosenthal and other professionals
7- for the purpose of cutting corners, saving money, and stroking Hyatt's own ego at being "the boss."
8- This inexperience was underscored when Current ordered the incorrect equipment and software
9- necessary to produce the Program so close to its launch that there was no choice but to use the
10- inferior products and suffer through the myriad of failings that ensued.

11- 25. The very success of the Program was compromised when Hyatt, displaying his utter
12- lack of industry knowledge, ordered incorrect ratings data and then disseminated it to the media. In
13- essence, Hyatt took what could have been a victory and turned it into an unrecoverable defeat. A
14- show only has one opportunity to be launched. In reality, the Program's premiere had higher ratings
15- than both CNN and MSNBC in the key demographic for advertisers. The incorrect ratings
16- purchased and disseminated by Hyatt, because they did not contain statistics for same day viewing
17- through DVRs and other such methods, did not reveal that the Program had outrated MSNBC.
18- Because Hyatt did not know that there were two types of ratings and ordered the cheaper ones, the
19- Program missed out on its lone opportunity to tout its success.

20- 26. From the beginning, the Program was beset by profound technical issues caused by a
21- lack of resources and proper staffing, all stemming from institutional inexperience. By way of
22- example only: news and guest feeds failed during live broadcasts; the teleprompter frequently froze
23- during live broadcasts; graphic packages consistently failed during live broadcasts; video playbacks
24- did not match the audio; Olbermann's ear piece routinely failed during live broadcasts; editing
25- systems constantly crashed, losing prepared elements of that evening's Program; the Program
26- experienced major transmission errors, resulting in viewers either seeing a "signal error blue screen"
27- or cutting to commercials in the middle of a segment in the live broadcast of the Program; and, as an
28-

1 example of the security given a public figure of Olbermann's notoriety, a homeless man was
2 allowed to wander off the street and into Olbermann's private office.

3 27. In the wake of Rosenthal's termination, Olbermann's manager sent Hyatt a list of all
4 of the substantial technical issues that required attention. Olbermann requested additional
5 production personnel in order to run a well produced, well edited program. By way of example
6 only, Olbermann requested vital redundancies to all technical system, additional transmission
7 capacity to preclude on-air loss of guests and news feeds, HD cameras to improve standard
8 definition picture quality, improved on set lighting design, and an additional edit room. None of the
9 requests were granted and "Countdown" continued to experience embarrassing technical difficulties.
10 Olbermann was flabbergasted that Current would deny him the vital resources necessary to build a
11 competitive network.

12 28. In addition to technical requests, Olbermann also asked for some basic marketing and
13 personnel resources necessary to successfully launch a cable news program on a low rated network.
14 Olbermann requested a press person dedicated to "Countdown," an outside public relations firm to
15 work with the dedicated "Countdown" press person, and an overarching "Countdown" marketing
16 plan with meaningful advertisement expenditures. As the lone senior executive at Current with
17 experience helping to launch a cable news channel, Olbermann understood the marketing
18 commitment necessary for such an undertaking. Hyatt, unreasonably believing that Olbermann's
19 celebrity alone would launch Current, ignored these requests on the grounds that they were too
20 expensive. Olbermann also advised Hyatt that the availability of the Program on the internet had
21 been one of the driving forces behind the rise of "Countdown" at MSNBC, and the wide
22 dissemination of program clips to websites focused on political and cable news content was now a
23 vital component to reaching the desired audience. Olbermann, therefore, requested web-only staff
24 members, a web-only "Countdown" editor/publicist to facilitate daily placement of video clips from
25 "Countdown" on third party news industry websites, and improved design and functionality of the
26 website. Olbermann also requested that the Program be available, on line, in its entirety.

27 29. Current naively and unjustifiably rejected most of these requests. Stunningly, Al
28 Gore's network was not interested in establishing a strong internet presence. Olbermann also

1 requested additional paid contributors for election coverage, which Olbermann regarded as critical
2 to Current's 2012 election coverage. Once again, Current denied Olbermann's request as too
3 expensive. Olbermann tried to put the best face possible on the situation, but it was becoming
4 increasingly clear that Current could not succeed with Hyatt at the helm.

5 30. With the arrival of Bohrman, Current's new President, things quickly went from bad
6 to worse. Early on, Bohrman paid lip service to Olbermann's requests that Current address the
7 technical issues besetting his Program and provide adequate production facilities – production
8 facilities which were so shabby that Olbermann had actually been forced to formally request pest
9 control and working air conditioning. In an e-mail to Olbermann dated October 5, 2011,
10 acknowledging the inadequacy of the production studio, Bohrman wrote, "we need to get out of
11 there, and get into a professional facility... the 33rd St. facility is never going to be a professional
12 facility... thanks for more patience than I would have had." Bohrman suggested that the Program
13 could move into a new facility within "a couple of weeks." Nevertheless, at the time Current
14 terminated Olbermann on March 29, 2012, "Countdown" was still being produced in its original
15 decrepit studio on 33rd Street. Despite a flurry of statements to the contrary, including an October 6,
16 2011 e-mail from Bohrman to Olbermann stating "Your current situation is horrible. We need to
17 move," Bohrman had proven himself incapable or unwilling to organize a move to a professional
18 studio.

19 31. In another stunning admission, Bohrman acknowledged that Current lacked "a core
20 competency to produce television." In the same October 5, 2011 e-mail to Olbermann, Bohrman
21 admitted that Current needed to use HD cameras, as Olbermann had requested two months earlier.
22 Despite these admissions, Current failed to provide the resources to Olbermann to create a "core
23 competency" to produce live television. The technical failures continued on "Countdown,"
24 culminating in the lights going out in the middle of a November live broadcast and then again in a
25 February live broadcast. Olbermann was understandably embarrassed by Current's complete
26 inability to produce a technically sound program. After Bohrman's initial admissions that Current
27 needed to provide Olbermann with the basic minimum resources necessary to produce a live
28 program, all of Olbermann's requests for technical support were denied. Four of the top members

1 of "Countdown's" production staff left the show and were not replaced, and Current even refused
2 Olbermann's personal request for the network to match a competing offer to the Program's
3 Washington, D.C. booking coordinator, permitting him to leave for MSNBC instead. Under the
4 leadership of Hyatt and Bohrman, Current appeared to put all of its limited resources into hiring on-
5 air talent, clueless as to which talent to hire or what resources to provide to the talent.

6 32. Olbermann attempted to help Hyatt identify other progressive journalists who
7 Olbermann believed were qualified to host their own programs. Olbermann even offered to reduce
8 his own salary to help pay for two journalists with whom Olbermann had previously worked, who
9 would have been immediately recognizable and had credibility with the "Countdown" audience.
10 Despite Olbermann's generous offer and his proven track record of identifying star progressive
11 voices, Hyatt ignored Olbermann's advice, arrogantly believing in his own unproven eye for talent.

12 33. For example, prior to launching "The Young Turks," Hyatt and Bohrman asked
13 Olbermann about the possibility of hiring Cenk Uygur. Olbermann told them that he did not believe
14 Uygur would be a good choice. Olbermann opined to Bohrman that Uygur had difficulty separating
15 facts from things he wanted to be true. As Current's Chief News Officer, the credibility of the
16 content shown on Current was directly associated with Olbermann. Additionally, Olbermann told
17 Hyatt and Bohrman that when Uygur appeared on "Countdown," the day after Uygur's much
18 publicized departure from MSNBC (at the height of his perceived popularity), the ratings on the
19 Program had actually gone down during Uygur's segment. Of course, Current ignored the advice of
20 Olbermann and hired Uygur to host a program that aired immediately before Olbermann's Program.

21 34. Current completely and utterly failed to run a professional news enterprise and give
22 Olbermann the resources necessary to broadcast a first class program. Olbermann deeply regrets his
23 decision to put his trust in Hyatt and Gore. They violated the covenant of good faith and fair
24 dealing by repeatedly failing to heed the advice of experienced industry professionals for the
25 purpose of increasing their short-term profits and satisfying Hyatt's out of control ego. Current had
26 neither the desire nor the ability to produce a first rate news commentary show. Olbermann did not
27 join Current to ruin his hard-won reputation and appear on a show that was an embarrassment.

28

V. Current's Efforts To "Punish" Olbermann By Breaching the Agreement

35. In response to Olbermann's repeated requests for Current to address the myriad technical and other problems with the Program, Current embarked upon a misdirected effort to "punish" Olbermann for his unwillingness to tolerate the incompetence and bad faith tactics by Hyatt and the other management at Current. As described below, this misconduct included: (1) broadcasting advertisements containing Olbermann's likeness without his consent; (2) using guest hosts for Olbermann's Program without obtaining Olbermann's approval; (3) refusing to allow Olbermann to exercise his contractually granted editorial control over special election coverage; (4) disclosing the confidential terms of the Agreement; (5) linking Olbermann's name and goodwill with corporate endorsements without his consent; (6) ignoring Olbermann's consultation rights; (7) disparaging Olbermann publically; and (8) refusing Olbermann's request – and contractual right – to stream segments of the Program over the Program Website.

A. Current Failed To Obtain Olbermann's Approval For Advertisements
Containing His Likeness

36. Section 2(a)(ii) of the Agreement explicitly provides that "Artist [i.e., Olbermann] shall have the right of prior approval over artwork and advertising for the Program Properties that includes Artist's likeness." Notwithstanding this language, Current repeatedly broadcasted advertisements for the Program using Olbermann's likeness, without obtaining his consent. In fact, despite written notice by Olbermann of the clear contractual language stated above, Current refused to cure such breaches and – remarkably – ignored the terms of the Agreement altogether by arguing that Olbermann's consent was not required at all.

37. On multiple occasions in September 2011, Olbermann notified Current of unapproved advertisements containing Olbermann's likeness. Olbermann reminded Current of its obligation under the Agreement to obtain Olbermann's consent before running such advertisements.

38. Current, however, did not cure these breaches, but instead continued to run unapproved advertisements using Olbermann's likeness. In January 2012 and continuing up until the week of Current's termination of Olbermann in March 2012, Current broadcasted additional unapproved advertisements. In response to these unapproved advertisements, Olbermann repeatedly

1 sent specific written notices of such material breaches to Current. For example, Current unilaterally
2 used Olbermann's likeness without approval for advertisements for "The Young Turks" and "The
3 War Room," despite Olbermann's repeated prior objections to the use of his likeness to promote
4 "The Young Turks" and "The War Room," because Olbermann believed they were low quality
5 programs. Olbermann provided Current with multiple notices of these material breaches. Current
6 did not stop using the unapproved advertisements until three days before Current terminated the
7 Agreement. Notably, in its termination letter, Current complains that Olbermann never approved
8 the use of his likeness in association with "The War Room" or "The Young Turks." Yet, Current
9 ran these advertisements.

10 39. Instead of complying with its contractual obligations to secure Olbermann's authority
11 before using his likeness for such advertisements, Current argued that Olbermann breached the
12 Agreement by not approving these advertisements, despite Current rarely seeking (by that time) his
13 approval altogether. In defending Current's material breach of the Agreement, Current's General
14 Counsel, David Harleston ("Harleston"), wrote "[a]s we have already pointed out, Paragraph 2(a)(ii)
15 of the Agreement grants Current the right to 'determine all business decisions relating to the
16 Program Properties including without limitation . . . advertising [and] promotion.'" Apparently,
17 Harleston had never read the notice of breach letters sent to him by Olbermann and stopped reading
18 the Agreement he himself had drafted mid-paragraph, because the very next sentence states,
19 "[n]otwithstanding the foregoing, [Olbermann] shall have the right of prior approval over artwork
20 and advertising for the Program Properties that includes [Olbermann's] likeness," which had been
21 cited in several notices of breach to Harleston on this issue. This is only one example of Current's
22 many bad faith efforts to ignore the explicit terms of the Agreement.

23 40. The advertisements described above are ones that Olbermann or his representatives
24 stumbled upon by happenstance while watching the network. Doubtless there are other unapproved
25 advertisements that discovery will reveal. This continuous and flagrant violation of the Agreement,
26 in the face of constant specific notices from Olbermann and his representatives that broadcasting
27 advertisements containing Olbermann's likeness without his consent was in violation of the
28 Agreement, constituted material breaches of the Agreement.

1 **B. Current Used An Unapproved Guest Host On "Countdown"**

2 41. Paragraph 4 of the Agreement gives Olbermann the right to approve his guest hosts
3 on the Program. Despite Olbermann's contractual right, however, Current materially breached its
4 Agreement on January 26, 27, 30 and 31, 2012, by unilaterally replacing David Shuster ("Shuster"),
5 Olbermann's approved guest host of the Program, with Bill Press ("Press"), without securing Mr.
6 Olbermann's approval.

7 42. On January 26th, Shuster was preparing to serve as the guest host of "Countdown"
8 when Bohrman abruptly informed him that he would not be serving as the guest host and would be
9 replaced by Press. Olbermann had never been approached about using Press as his guest host and
10 had never approved him. On January 26th, after learning about Bohrman's intended breach of the
11 Agreement from "Countdown" Executive Producer, David Sarosi, Price e-mailed Bohrman to
12 inform him that Current had not sought Olbermann's approval for Press to host "Countdown" and
13 that this was a breach of the Agreement. At that time, Shuster was at the 33rd Street studio and
14 could have hosted the Program. Instead, Bohrman ignored Price's e-mail and willfully breached the
15 Agreement, even after Price gave him an opportunity to cure the breach by either: (a) obtaining
16 Olbermann's approval for Press to host the Program, or (b) permitting Shuster to host the Program.
17 On January 28th, Olbermann provided Current with a formal notice of breach concerning the
18 continuous unapproved use of Press as the guest host of "Countdown."

19 43. Current's response to Olbermann's notice of breach was jaw dropping. Initially, in a
20 letter dated January 30, 2012, Current claimed Current had "the *explicit* right under the Agreement
21 to use a temporary guest host in Mr. Olbermann's absence without seeking his prior approval."
22 [emphasis added.] This is pure fantasy. The Agreement makes no references to a separate category
23 "temporary guest hosts," explicitly or otherwise. The Agreement clearly provides that Olbermann
24 has the right to approve any guest hosts and whether or not one person would be designated the
25 "regular guest host," as Shuster had been designated. Current further accused Olbermann of
26 breaching the Agreement by asking Shuster to serve as the guest host during his prior vacation days.

27 44. Olbermann quickly pointed out to Current that Shuster had been mutually designated
28 as the "regular guest host" of the Program and that even if one could create a hypothetical situation

1 which Olbermann's absence occurred at the last minute, the regular guest host was unavailable, and
2 Olbermann was unavailable to approve a previously untested guest host, this was not that situation
3 because Shuster, the regular guest host, was preparing to serve as the guest host on the day in
4 question and Olbermann was available to respond to requests for approval.

5 45. Subsequently, in a letter dated February 3, 2012, Current made the bizarre claim that
6 "Current has never approved Mr. Shuster as a regular guest host" of the Program. As explained by
7 Olbermann's written response, however, Current's own website – that same day, February 3, 2012 –
8 still carried a press release issued by Current on June 17, 2011 stating: "Countdown With Keith
9 Olbermann'... announced today that veteran television anchor David Shuster will serve as the
10 primary guest host for occasions when Keith Olbermann is unable to be in-studio." Current's online
11 bio of Shuster contained the same information. (A true and correct copy of the February 19, 2012
12 letter from Olbermann's attorney to Current's counsel in this regard is attached hereto as Exhibit
13 "A").

14 46. Apparently, Current "forgot" that it had, in fact, approved Shuster as the "regular
15 guest host" of "Countdown" and had not formally removed him from that role. Current's breach,
16 subsequent defense, and claims against Olbermann for using his regular guest host were just another
17 result of the absolute state of confusion and disarray Current regularly operated in under the
18 leadership of Gore and Hyatt.

19 47. When presented with the press release on Current's own letterhead announcing
20 Shuster as the "regular guest host" of the Program, Current was unable to muster any explanation
21 and simply responded that it "[stood] by what [it had] said in [its] prior letters, including [its] letter
22 of February 3." Current seems to be as stubborn as it is deceitful. Under the leadership of Gore and
23 Hyatt, Current disingenuously makes bizarre and demonstrably false statements and then steadfastly
24 refuses to acknowledge the irrefutable truths presented.

25 C. **Current Failed to Provide Olbermann Editorial Control of Current's Election**
26 **Coverage**

27 48. Current also materially breached the Agreement by denying Olbermann editorial
28 control over Current's special coverage of the Iowa caucuses and New Hampshire primary.

Paragraph 2(a)(i) of the Agreement grants Olbermann “full editorial control over all Program Properties.” Paragraph 2(a) of the Agreement defines Program Properties to include Program Specials. Olbermann clearly, therefore, was entitled to full editorial control over all Program Specials.

49. Despite this clear contractual language, Current played games with Olbermann over his role in Current’s election coverage for over a week. First, Current falsely claimed that Olbermann could only exercise editorial control over the Program Specials if he also agreed to be the sole host of the Program Specials. The Agreement specified several qualifiers to Olbermann’s editorial control, none of which included his obligation to serve as the sole host of the Program Specials in order to exert such editorial control. In Olbermann’s letters dated January 4, 2012 and January 6, 2012, notifying Current of its breach of the Agreement, Olbermann pointed out that his right to editorial control of the Program Specials, as set forth in the Agreement, was part of his authority as the Chief News Officer. In response, Current contended that the title of Chief News Officer was merely “honorific” and subsequently proceeded with its material breach of the Agreement.

50. Current’s argument that Olbermann’s position within Current was intended to be that of a powerless figurehead was undermined by Current’s own efforts to disparage Olbermann in the press. Two days after Current privately argued that Olbermann’s title was “honorific,” The New York Times cited executives at Current as pointing out that Olbermann was partially responsible for Current’s technical failings because of his role as Current’s Chief News Officer.

51. Current was wrong on both fronts. Olbermann’s position as Chief News Officer was intended to grant him substantial authority over the on-air content of Current’s political coverage, while Current was responsible for providing the technological capability to produce live television. Current’s ever changing positions and arguments during the fight over control of the Program Specials were emblematic of an organization in disarray, allowing unqualified executives to make rash decisions based upon ego and emotion.

52. In response to the notices of breach referenced above demanding that Current permit Olbermann to exercise his editorial control over the Program Specials to “decide the nature of his

1 on-air role during such Program Specials, as well as the on-air roles other Current hosts and analysts
2 will play,” on the Friday prior to the New Hampshire primaries, Current informed Olbermann that it
3 would permit him to exercise full editorial control over Current’s New Hampshire Primary Program
4 Special. Within an hour of receiving notification from Current that it would cease breaching the
5 Agreement, Olbermann’s manager wrote to Current to let them know that they “would be in contact
6 concerning the details,” including the roles of the various on-air personalities and the guests for the
7 three hour Program Special. Current immediately reversed course and insisted that Olbermann
8 could only use his editorial control if he also agreed to serve as the sole host of three hour Program
9 Special. Apparently, Bohrman could not accept that full editorial control actually meant that
10 Olbermann was free to make decisions. As a result of Bohrman’s angry and emotional reaction to a
11 perfunctory e-mail from Olbermann’s manager, Current materially breached the Agreement, as it
12 had during its Iowa Caucuses Program Special, by denying Olbermann editorial control over the
13 New Hampshire Primary Program Special. After having placed the future of the network in
14 Olbermann’s able hands, Current refused to allow its only star to participate in one of its biggest
15 nights of news coverage because Olbermann refused to cede his contractually-provided editorial
16 rights to Current’s senior executives.

17 **D. Current Disclosed Confidential Terms of Olbermann’s Agreement to the Press.**

18 53. Section 16(a)(i) of the Agreement states in relevant part that “[t]he terms of this
19 Agreement shall be confidential and the parties shall mutually agree on the wording of any press
20 releases or public announcements concerning the fact that this Agreement has been reached by the
21 parties, provided that the economic terms of this Agreement shall not be disclosed to any third party
22 except the parties’ legal and financial advisers or as may be required by applicable law or
23 regulation.” To emphasize the importance of maintaining the confidentiality of the economic terms
24 of the Agreement, Section 16(a)(i) further provides that “any disclosure by such adviser (other than
25 a disclosure required by law or regulation) shall be deemed a material breach of this agreement.”
26 However, notwithstanding this requirement, Current has intentionally disclosed such economic
27 terms to the press to harass and harm Olbermann and refused to cure such breaches upon proper
28 notice.

54. For example, on January 8, 2012, an article published in The New York Times by David Carr cites “Executives at Current TV” and states: “Mr. Olbermann’s contractual rights at Current TV are significant—he has control over the content of his show...” This is clearly a breach of the confidentiality provision of the Agreement and the article leaves no doubt that Current committed the breach. On January 10, 2012, Olbermann provided Current with written notice of this breach but Current failed to cure it.

55. Current’s disclosure of confidential information continues to take place as recently as a few days ago. On Friday, March 30, 2012, an article published in The New York Times cited Current as disclosing financial terms of the Agreement. In the article Brian Stelter reported, “Current said on Friday afternoon that it had fired Mr. Olbermann — one of the nation’s most prominent progressive speakers — just a year into his five-year, \$50 million contract.” The disclosure of the information in the article is a material breach of the Agreement. The article clearly cites the information authoritatively as having come from Current.

56. On March 30, 2012, the Wall Street Journal also reported the economic terms of the Agreement. It specified that “Current was paying Mr. Olbermann \$9 million for his first year of a five-year deal that totaled \$50 million, the Journal reported last year.” The Wall Street Journal was citing to an article it published last year as its source material. Notably, it was Hyatt who leaked that financial information to the Journal the previous year. Current’s breach of the Agreement’s confidentiality provision had come full circle.

E. Current Used Olbermann’s Name To Endorse Third Party Services

57. Paragraph 5(c) of the Agreement prohibits Current’s use of Olbermann’s name in connection with the endorsement of any products or services other than the Program, Program Website, or Program Specials. In or about late August 2011, Current approached Olbermann about a “behind the scenes” segment entitled “Countdown to Countdown with Keith Olbermann” that would run immediately prior to the Program and would be sponsored by AT&T. Olbermann informed Current that he did not approve the spot associated with the Program because he believed it created an endorsement of AT&T by Olbermann and compromised his integrity as the Chief News Officer of Current and a news commentator. Because AT&T was then engaged in a regulatory

1 approval process, such endorsements gave the appearance of impropriety when reporting on stories
2 dealing with the telecommunications industry. As a result of Current's disregard of Olbermann's
3 stated wishes, and the express terms of the Agreement, Olbermann would have been forced to
4 disclose this association every time he needed to report on such stories, disclosures that should be
5 unthinkable at an "independent" network.

6 58. Insofar as the segment was positioned directly prior to the Program and featured the
7 name of the Program next to the AT&T logo, it is either an advertisement for AT&T or a lead-in to
8 the Program. In either event, Current's use of Olbermann's name in the spot materially breached the
9 Agreement. If the spot was in fact the opening to the Program, Current had violated Olbermann's
10 editorial control over the Program by including a segment not approved for broadcast by
11 Olbermann. On the other hand, if the spot was an advertisement, Current violated the provision of
12 the Agreement that requires Olbermann's written consent to use his name "in connection with the
13 endorsement of any products or services other than the Program Properties." AT&T did not pay
14 Current to run the spot as an act of charity to attract more viewers to the Program. AT&T paid
15 Current to run the spot for the purpose of advertising its services and profiting from the goodwill
16 associated with Olbermann among people tuning in to watch his Program.

17 59. The language of the Agreement is clear. The Agreement does not state that Current
18 has the right to use Olbermann's name so long as the Program Properties are also involved. It states
19 that Olbermann's name "shall not be used [by Current] in connection with the endorsement of any
20 products or services other than the Program Properties." Therefore, the use of Olbermann's name
21 in a joint purpose Program promo/third party advertisement was prohibited under the clear language
22 of the Agreement. Olbermann sent Current a notice of breach on September 7, 2011, but Current
23 did not cure the breach.

24 60. In a "Keystone Kops" move that was emblematic of the standard operating procedure
25 at Current, Olbermann was asked to "approve" the AT&T spot shortly before it aired. When he
26 again reiterated his objection to the spot in principle, Current informed him that his approval was
27 not required. Of course, in this case, Current was right the first time; Olbermann's approval was
28 required and Current materially breached the Agreement by airing the endorsement over his

1 objections. Being independent of corporate influence was Gore's stated goal for Current. At first
2 opportunity, Current made Olbermann endorse a telecommunications giant against his wishes.
3 Olbermann provided Current with written notice of this material breach, which was not cured in a
4 timely manner by Current.

5 **F. Current Failed To Meaningfully Consult With Olbermann Concerning The**
6 **"Lead Out" To The Program**

7 61. Section 2(a)(ii) of the Agreement provides that "Artist shall further have a right of
8 meaningful consultation on so-called "lead-in" and "lead-out" programs broadcast before and after
9 the Program." This consultation right is important because the 7:00-10:00 p.m. weekday block sets
10 the tone for the network. As the Chief News Officer and the individual whose name and reputation
11 was most closely associated with Current, Olbermann needed to ensure that the network would
12 project an image and tone consistent with the expectations of his loyal audience and that of the
13 "Countdown" brand.

14 62. On or about October 12, 2011, Current announced that Jennifer Granholm would
15 host a show which would be broadcast weekdays at 9:00 p.m. This is the "lead-out" timeslot for the
16 Program. Olbermann was not consulted, meaningfully or otherwise, about a show to be hosted
17 solely by Granholm. Olbermann first found out about this show when Bohrman informed him that
18 Current had hired Granholm. The month prior, Bohrman had asked Olbermann's opinion about a
19 prospective show to be co-hosted by Granholm and Van Jones. Olbermann advised against it.

20 63. Assuming that asking for forgiveness was better than asking for permission, Current
21 did not bother to consult with Olbermann before granting Granholm the 9:00 p.m. "lead-out" slot
22 after the Program. Current's failure to consult Olbermann is a material breach of the Agreement.
23 On October 13, 2011, Olbermann provided Current with written notice of this material breach,
24 which was never cured by Current.

25 **G. Current Repeatedly Disparaged Olbermann in Violation of the Non-**
26 **Disparagement Provisions of the Agreement.**

27 64. Section 16(a)(i) further provides that "OBE and Artist and Company shall make no
28 derogatory or disparaging statements about or concerning one another, the Company's affiliates, the

1 Artist's representatives, the Program Properties or the Company Materials." In direct breach of this
2 provision, however, Current has engaged in a smear campaign against Olbermann, OBE and their
3 representatives and failed to cure such breaches upon notice.

4 65. By way of example only, on or about January 3, 2012, Bohrman sent an e-mail to the
5 entire Countdown staff disparaging Olbermann. Current then exacerbated the problem by posting
6 that same defamatory statement on its election live chat, and ultimately Current leaked to the press
7 Mr. Bohrman's e-mail to the Countdown staff, which included the following:

8 "I wanted to clarify tonight's programming, as I gather there may
9 be some misunderstanding about what is on when. As we assumed
10 Keith had communicated to you, Keith was asked to be the sole
11 anchor and executive producer of our primary and caucus
coverage. He declined... For those of you at work who might be
preparing a program, I apologize your managers did not
communicate this to you."

12 66. By leaking this e-mail to The New York Times, Current broadcast to the world its
13 opinion that Olbermann misled his staff. This e-mail painted (incorrectly) Olbermann as an abusive
14 boss and a liar. On January 6, 2012, Olbermann notified in writing Current of this material breach
15 of the Agreement, but Current failed to cure such misconduct.

16 67. Another example is Hyatt's statements to the press, including The Wrap and The
17 Daily Beast, disparaging Olbermann and referring to him as "replaceable." On January 5, 2012, The
18 Daily Beast confirmed these disparaging comments from Hyatt, stating: "Current TV CEO said that
19 while he'd like to have Olbermann with the network in the future, 'everybody is replaceable.'" For
20 Current's CEO to suggest that Olbermann, the face of its network—and one of the most respected
21 progressive commentators on television—was "replaceable," (see Exhibit "A" attached hereto) is as
22 disparaging a statement as Current could make. In essence, Hyatt was suggesting that Olbermann
23 was a fungible commodity. On January 6, 2012, Olbermann sent a noticed of this material breach of
24 the Agreement to Current – including a copy of the January 5, 2012 article confirming Mr. Hyatt's
25 disparaging remarks – but Current failed to cure the breach.

26 68. Additionally, Current engaged in press "leaks" to disparage Olbermann, OBE, and
27 their representatives regarding Current's coverage of the New Hampshire primary. On January 8,
28 2012, an article published in The New York Times by David Carr ("Carr") quoted Bohrman stating

1 that Olbermann's participation in the New Hampshire primary coverage is "up to him," a false and
2 disparaging statement in light of Current's repeated refusals to permit Olbermann to host such
3 coverage under acceptable circumstances. The same article also cites "Executives at Current TV"
4 and states: "Mr. Olbermann's contractual rights at Current TV are significant—he has control over
5 the content of his show..." This is clearly a breach of the confidentiality provision of the
6 Agreement and the article leaves no doubt that Current committed the breach.

7 69. Carr also wrote:

8 "Executives at Current TV told me that they contacted Mr.
9 Olbermann two months before the Iowa caucuses about being the
10 anchor and executive producer of their coverage, and he
11 declined... Executives at the channel say that the embarrassing
public fight has more to do with his unwillingness to play, let alone
play well, with others."

12 70. Carr's article also stated that Olbermann pulled a "pretty callous stunt" by bringing in
13 his staff of the day of the Iowa caucuses "as if his show were going to appear, when clearly he knew
14 that no such thing was going to happen." This article expressly confirmed that all of this
15 information was provided by Current and was an intentional disparagement of Olbermann by
16 Current. On January 10, 2012, Olbermann provided Current with written notice of this material
17 breach of the Agreement, but Current failed to cure this breach.

18 71. Subsequently, on February 6, 2012, the website for the Daily Beast published a story
19 by Rebecca Dana ("Dana") titled "Al Gore's Desperate Bid to Keep Keith Olbermann—and Save
20 Current TV." The article quotes Hyatt and Bohrman and cites sources at Current. The article paints
21 an unflattering picture of Olbermann based upon accounts of events that were only known to
22 Current and Olbermann. For example, the article states that "[Olbermann] ignored e-mails from the
23 network's West Coast executives... and [wouldn't] even take [Current's] calls." The article goes on
24 to state that Olbermann "failed to respond to e-mails from others at the network about plans to cover
25 the Iowa caucuses and the New Hampshire primary." This statement painted Olbermann as non-
26 communicative, unresponsive, and unprofessional. The article also painted Olbermann as petty and
27 spoiled, claiming that "he was also upset with his car service." The article claims that "by
28 November, network executives were exhausted by [Olbermann's] antics," with the "bickering,

1 bartering, and flattery [culminating] in early January with lawyers from Current meeting with
2 Olbermann to negotiate an uneasy peace.... Gore and Hyatt managed to placate Olbermann enough
3 in November to prevent him from leaving.” This description painted Olbermann as a difficult
4 employee who needed to be placated by the former Vice President, flattered, and bartered with in
5 order to end his “antics.” All of the information given to Dana by Current was false and intended to
6 disparage Olbermann by making him look difficult, unreasonable, and high-maintenance. On
7 February 19, 2012, Olbermann provided Current with written notice of this material breach of the
8 Agreement, but Current failed to cure this breach.

9 72. Each of the above examples were material breaches of the Agreement that caused,
10 and will continue to cause, harm to Olbermann and OBE, including their professional reputations.

11 **H. Current Refused To Stream Portions Of The Program On The Program**
12 **Website In Violation Of Olbermann’s Editorial Control**

13 73. Paragraph 2(a) of the Agreement provides Olbermann with editorial control of the
14 Program Website. During the course of negotiations of the Agreement, the concept of streaming the
15 entire Program over the Program Website was specifically discussed, and it was agreed that
16 streaming content decisions would fall within Olbermann’s editorial control.

17 74. During discussions among Hyatt, Gore, and Olbermann’s representatives, Hyatt and
18 Gore attempted to allay Olbermann’s concerns about the more limited number of homes in which
19 Current’s channel was available by emphasizing that Current would build a first-class website, the
20 content of which would be fully controlled by Olbermann. The Program would be available to any
21 member of Olbermann’s audience with an internet connection. The opportunity for Olbermann to
22 maintain the audience he had cultivated at MSNBC, while he waited for Current to expand the
23 carriage of its cable channel into more homes, was critical in order to induce Olbermann to leave
24 MSNBC.

25 75. After granting editorial control over the Program Website to Olbermann, Current
26 jumped at the first opportunity to make extra money, making a deal with a third party cable carrier
27 in which Current agreed to restrict the very rights it had given Olbermann. Current agreed to restrict
28 the content of the Program streamed over the Program Website as part of a scheme to increase

1 Current's fees in the agreements it negotiated with third party cable companies. In other words,
2 after having successfully induced Olbermann to enter the Agreement by promising editorial control
3 over the Program Website, Current sold the very same rights again to third parties, without even
4 consulting Olbermann. On August 30, 2011, Olbermann provided Current with written notice of
5 this material breach, which was never cured by Current.

6 76. By not streaming the Program, Current destroyed the bond between Olbermann and
7 his audience. Current's decision not to stream the Program was exasperating to viewers. In fact, the
8 internet was regularly filled with comments from members of Olbermann's audience pleading with
9 him to stream the content of his Program over the internet.

10 77. In entering into the Agreement, Current understood the control granted to Olbermann
11 may cause Current to lose certain business opportunities that conflict with the rights granted to
12 Olbermann. Hyatt and Gore seem to believe that their single-minded goal of enriching themselves
13 gave them carte blanche to limit access to the Program to those members of Olbermann's audience
14 with sufficient means and the access to subscribe to a cable carrier that broadcasts Current.

15 78. Olbermann is a person of unquestionable integrity who feels a genuine sense of duty
16 to his audience and believes in the causes for which he advocates on his Program. Regrettably, it
17 appears that Gore and Hyatt merely paid lip service to the idea of creating a free and independent
18 alternative to the existing corporate dominated media. Gore and Hyatt were far too willing to deny
19 Olbermann and his audience the open platform Olbermann was promised in order to marginally
20 increase their considerable personal wealth.

21 **VI. Current Improperly Terminated Olbermann's Agreement**

22 79. Realizing that it had repeatedly breached its Agreement with Olbermann, and
23 unwilling to operate under the terms to which it had agreed, Current decided to end the relationship
24 with Olbermann by making-up breaches that it alleged were committed by Olbermann. On
25 Thursday, March 29, 2012, Current sent a letter notifying Olbermann that it was terminating the
26 Agreement because Olbermann had committed Uncured Defaults under the Agreement
27 ("Termination Letter"). In the Termination Letter, Current alleges that Olbermann is in Uncured
28 Default for: (i) "failure to promote;" (ii) "disparagement and unauthorized publicity activities;" (iii)

1 “unauthorized absences;” (iv) “unauthorized selection of [a] guest host for [the Program;]” (v)
2 “refusal to meaningfully consult with Current about [the Program;]” and (vi) “disclosure of
3 compensation.” Current’s Uncured Default claims are factually inaccurate, self-contradictory (for
4 example, alleging both failure to promote and unauthorized publicity activities), and/or fail to meet
5 the rigorous requirements of an “Uncured Default” pursuant to the Agreement. As described below,
6 either no breach occurred or Current failed to provide Olbermann adequate notice and opportunity to
7 cure a minor and technical breach. Current’s allegations fail to meet the contractual requirements
8 necessary for Current to walk away from its obligations to Olbermann.

9 A. **Current Was Obligated To Notify Olbermann, In Writing, Of His Alleged**
10 **Defaults And Was Required To Give Him 5 Days To Cure**

11 80. Current claims to have terminated the Agreement due to an “Uncured Default.”
12 Current, however, ignores the meaning of both the terms Uncured and Default under the Agreement.
13 Pursuant to Paragraph 13(a) of the Agreement:

14 “In the event of Artist’s [Olbermann’s] Default, Artist shall have
15 five (5) business days following written notice from Company
16 containing details of such Default, to cure such default. If Artist
 fails to timely cure, such Default shall be an “Uncured Default.”

17 In other words, not only was Current contractually obligated to give Olbermann, in writing, a
18 detailed description of what they believed he was doing in violation of the Agreement, but they were
19 also contractually obligated to give him an opportunity to cure, or fix, the problem. As will become
20 evident from the discussions of the breaches below, Current failed on both of these fronts.

21 B. **Current Falsely Claims That Olbermann Failed To Promote and Make**
22 **Appearances**

23 81. Current claims that Olbermann committed an Uncured Default under the Agreement
24 because he “failed to promote.” Current gives six specific instances of this “failure to promote.”
25 Not only are Current’s six examples of “failure to promote” false but, as Current’s own letter
26 proves, Olbermann was never given notice that these events would be considered a breach of the
27 Agreement, and Olbermann was not given an opportunity to cure these purported breaches.
28

(1) Olbermann Did Not Promote Cenk Uygur's Show Because It Was
Demonstrably Substandard

82. Current alleges that Olbermann committed an Uncured Breach under the Agreement because "On November 21, 2011 Mr. Olbermann refused a request by Current to participate on the premier of "The Young Turks with Cenk Uygur." Current alleges this is an Uncured Breach. Not so. As an initial matter, Current alleges to have sent its "written notice of breach" on October 27, 2011, February 3 and March 2, 2012. Missing from that time frame is a letter dated between November 21, 2011 (the date when Current admits that it was notified Olbermann would not do the show) and December 5, 2011 (the date the show premiered.) Current had plenty of time between those two events to notify Olbermann of the breach, as required by the Agreement, and give him an opportunity to cure – yet never did.

83. Moreover, nothing in the Agreement requires Olbermann to participate in any specific show on Current. And, Olbermann withholding his consent from appearing on this show was wholly reasonable. Prior to Current's ill-advised decision to create "The Young Turks," Olbermann had told Bohrman not to hire Uygur because he opined that Uygur had a difficulty distinguishing between facts and things he wanted to be true. It was, therefore, reasonable for Olbermann to decline to be associated with a host with a questionable journalistic standard and a show that was not up to the standards expected by the "Countdown" audience.

(2) Olbermann Was Well Within His Rights Not To Approve Associating
Himself With Certain Shows

84. Current alleges a breach because Olbermann would not "approve the use of his likeness in conjunction with the promotion of "The Young Turks" and "The War Room." What Current fails to do, however, is specify where in the Agreement Olbermann was required to give that approval. Current had many rights pursuant to the Agreement, but it did not have the right to force Olbermann to associate his image with products or shows of which he did not approve. In fact, in section 2(a)(ii), the Agreement explicitly stated that "Artist shall have the right of prior approval over artwork and advertising for the Program Properties that includes Artist's likeness." Approval means the ability to say no. Olbermann did just that. Current cannot feign surprise concerning

1 Olbermann's position considering that it was told, repeatedly, by Olbermann that the two shows in
2 question were the type of low-quality programming upon which Current should not be focusing. As
3 the Chief News Officer and a stockholder whose compensation was tied into the success of the
4 company, Olbermann felt very strongly about putting forth a good product. Current felt differently.
5 The ratings for "The War Room" and "The Young Turks" proved Mr. Olbermann's assessment
6 correct.

7 (3) **Current's Allegation That Olbermann Refused To Appear At The TCA**
8 **And The Sirius/XM Radio Interviews Is False**

9 85. In the Termination Letter, Current also falsely claimed that Olbermann was in an
10 Uncured Breach due to his "refusal" to appear at the Television Critics Association ("TCA")
11 presentation and his declining to be interviewed by Sirius/XM radio. Both allegations are false for
12 the same reason. When first asked to do the TCA presentation, Olbermann agreed. Current later
13 alleged (incorrectly) that Olbermann breached the Agreement by answering press inquiries
14 concerning a dispute regarding election coverage. The TCA event included press inquiries. When
15 Olbermann was asked to further confirm his attendance at the TCA, Olbermann's manager
16 responded that while Olbermann would "like to participate at the TCAs, we are concerned that
17 Current has taken the position that when Keith responds to questions from reporters he is breaching
18 his Agreement." In response to this concern, Current wrote: "I understand that Keith will not be
19 participating at TCA. Thanks for your e-mail." Current did not respond to Olbermann's concerns,
20 nor did they indicate that not participating would be a breach of the Agreement. Olbermann's
21 manager raised the exact same concern with respect to the Sirius/XM radio interviews, adding, "[i]f
22 Current is willing to waive any claims it may allege against Keith for giving truthful answers, then
23 we can certainly discuss which of these interviews would be suitable." Current would provide no
24 such assurances.

25 (4) **Olbermann Refused a Newsweek Interview Because He Did Not Want To**
26 **Publicize And Sensationalize His Dispute With Current**

27 86. With respect to the Newsweek interview, Olbermann declined because he was
28 concerned that Newsweek was pursuing a sensational story about the problems at Current.

1 Olbermann preferred to keep his disagreements with Current private and declined to participate.
2 Current participated. The article was very negative. Current cannot blame Olbermann for Current's
3 own bad judgments about which interviews to grant. Refusing to participate in any particular
4 interview is not a breach. Nothing in the Agreement requires Olbermann to agree to every media
5 request. In fact, Olbermann did more than his fair share of media appearances. After joining
6 Current, Olbermann promoted "Countdown" and Current by appearing on the likes of "The Late
7 Show with David Letterman" (four times), "The Colbert Report," "Late Night with Jimmy Fallon,"
8 "Real Time with Bill Maher," and "The Late Late Show with Craig Ferguson." Olbermann also
9 gave print interviews to Rolling Stone, the Associated Press, The New York Times Magazine, The
10 Hollywood Reporter, and USA Today, among others. Olbermann was also interviewed on NPR's
11 "Fresh Air with Terry Gross" and appeared at the PaidContent Conference with Hyatt.

12 **(5) Olbermann Actively Promoted Countdown On Twitter**

13 87. The Termination Letter also falsely claimed that Olbermann instructed the
14 "Countdown" staff not to promote the show and forbade the staff to promote the show via social
15 media outlets. No notice of this alleged breach was ever given. Olbermann promoted "Countdown"
16 through his own Twitter account on a daily basis—numerous times a day. The only group
17 Olbermann instructed to stop discussing "Countdown" on social media was Current's "social
18 media" team after they repeatedly put out releases promoting segments and guests that were not
19 going to be on the Program. Olbermann asked them to stop confusing and angering his audience by
20 promoting the wrong segments and guests and instead took it upon himself to tweet about
21 "Countdown" continually. Olbermann's request was a reasonable and appropriate response to
22 Current's continual incompetence. Current's claims that Olbermann would sabotage his own ratings
23 are projections of the childish attitude of Current's own senior executives. Olbermann tirelessly
24 promoted his own show, even going so far as to pay for his trip to appear on "Real Time with Bill
25 Maher" and "The Late Late Show with Craig Ferguson" in Los Angeles.

26 **C. Olbermann Did Not Disparage Current**

27 88. After its allegation of breach because Olbermann allegedly did not promote
28 "Countdown" and the network in the mainstream press and on social media, Current turns right

1 around and argues that Olbermann's statements about Current in the mainstream press and on social
2 media disparaged Current and its management. This "disparagement" concerns the election
3 coverage issues discussed above in this complaint. None of the comments allegedly attributed to
4 Olbermann were disparaging.

5 **D. Current Falsely Claims That Olbermann Took Unauthorized Absences**

6 89. The Termination Letter also falsely claims that Olbermann took unauthorized
7 absences. This is simply not true. All of Olbermann's absences were approved by Current in
8 advance, with the exception of those absences taken for medical reasons due to a vocal cord
9 infection. The Agreement provides Olbermann the right to take absences for medical reasons
10 without Current's prior approval. Current points to only two occasions of unapproved absences—
11 January 9 through January 13, and March 5. Both these claimed "unapproved absences" are made-
12 up falsehoods.

13 90. On January 8, 2012, Bohrman was informed by Countdown's producer that, "Keith
14 will be on vacation this week. Shuster will guest host Countdown." That same day Bohrman
15 replied, "Shuster was going to be in NH. Hmmm. Fascinating. Remember u have no show on
16 Tuesday." That was the correspondence regarding this vacation from the President of Current.
17 There was no disapproval. There was no follow-up. Nothing. In its Termination Letter Current
18 even admits, "By letter of January 30, Current advised Mr. Olbermann that his unauthorized absence
19 in January was a material breach..." Current admits that more than two weeks after Olbermann
20 took the vacation, it informed Olbermann that it disapproved of his vacation.

21 91. The second example is equally egregious. In the Termination Letter, Current claims
22 Olbermann took an unauthorized vacation on March 5, 2012. On March 2, 2012, in response to a
23 notice of breach from Olbermann, Current notified Olbermann that he was not authorized to take a
24 vacation on March 5th, the day before the Super Tuesday Republican primaries. Olbermann
25 reiterated to Current that he needed to take the day for personal reasons; due to his recent health
26 issues, he needed to take March 5th off in order to rest his voice and prepare for the three-hour
27 election coverage Program Special he volunteered to host on March 6th. On March 3rd, Bohrman
28 informed Price that the rest of the "Countdown" staff should also spend March 5th preparing for the

1 Program Special the next day, rather than producing a live program. Now, Current's attorneys
2 claim this was an unexcused absence. These types of miscommunications plagued Current
3 throughout its relationship with Olbermann. Whether it was tweeting the wrong segments on the
4 Program or permitting an absence and then later claiming it was a breach, Current is never able to
5 get its stories straight.

6 E. Although Touting Shuster On Its Website As Countdown's Regular Guest Host,
7 Current Now Claims Shuster Was An Unauthorized Guest Host

8 92. The Termination Letter also falsely claims that Olbermann materially breached the
9 Agreement by scheduling Shuster as the guest host of "Countdown" without Current's consent.
10 This is false. Paragraph 4 of the Agreement, titled "Approvals," states that "[Olbermann] shall
11 have approval over whether there shall be a regular guest host of the Program (it being understood
12 that [Current] shall have the right to use a guest host during [Olbermann's] vacations or when
13 [Olbermann] is otherwise unable to host the Program) and approval of the guest host." The
14 Agreement unambiguously grants Olbermann the right to approve all guest hosts of "Countdown,"
15 with the understanding that Olbermann cannot refuse to permit Current to use a guest host, in order
16 to ensure live programming in his absence.

17 93. In September 2011, Current indicated to Olbermann that it would like to test
18 alternative guest hosts during Olbermann's future absences. Current, however, never sought
19 approval for alternative guest hosts from Olbermann, as it was Current's responsibility to seek
20 alternative guest hosts. Current did not inform Shuster that he would no longer be the regular guest
21 host of "Countdown," and, most tellingly, Current did not remove the description of Shuster as the
22 "primary" guest host of "Countdown" from Shuster's bio on Current's own website.

23 94. In fact, in each instance Shuster was scheduled as the guest host, Current assented to
24 his role. Nevertheless, Current now claims that it was a breach of the Agreement for Olbermann to
25 inform Shuster that he was needed to serve as guest host in his absence because Current at one time
26 indicated that it would prefer a different guest host and then failed to present Olbermann with any
27 alternatives for his approval. This ridiculous argument is yet another example of Current's
28

1 amateurish and unprofessional behavior. Clearly, the mutually agreed-upon scheduling of Shuster
2 as the guest host of "Countdown" was not a material breach of the Agreement.

3 **F. Current Falsely Claims That Olbermann Failed To Meaningfully**

4 **Consult With It**

5 95. The Termination Letter falsely claims Olbermann refused to meaningfully consult
6 with Current. Current gives two examples: Olbermann's decision to change the set due to a
7 technical failing by Current and Olbermann's decision to follow the communications protocol
8 agreed to between the parties.

9 96. First, Current incorrectly claims that the decision to change the background of the
10 "Countdown" set was a business decision, not an editorial decision. This is incorrect, as the
11 backdrop appeared on-air, thereby qualifying it as an editorial choice. Second, Current was made
12 well aware the reason for the dark backdrop was the result of an electrical issue that contributed to
13 the lights going out during a live broadcast. As Olbermann informed Current employee and
14 "Countdown" executive producer, David Sarosi, Olbermann deemed it necessary to minimize the
15 draw of electrical power on the set, thus limiting the risk of issues such as a repeat of the on-air
16 black-out. Third, the new camera position actually reduced the distance between it and
17 Olbermann's host position, thus "improving" the standard-definition picture.

18 97. Current's "consultation" claim is similarly without merit. Current does not point, nor
19 can it, to situations where it wanted to discuss a particular editorial decision and Olbermann refused.
20 Additionally, Olbermann regularly consulted with the producers hired by Current to produce
21 "Countdown." Not until March 2, 2012, long after Current had entered negotiations with Eliot
22 Spitzer – and in retrospect, had begun to look for opportunities to claim Olbermann had breached
23 the Agreement – did Current demand that Olbermann begin consulting with other Current
24 executives. No major strategic decisions were made during this period by Olbermann that altered
25 "Countdown," and Olbermann did not refuse any requests by Current to discuss specific editorial
26 decisions. Notably, Current did not make any requests to discuss any editorial decisions.

27 98. Current's claim that "Keith would not talk to us" is similarly belied by the facts.
28 After explaining that Olbermann did not want to communicate with Hyatt because of Hyatt's

1 previous behaviors and “misinterpretation” of things Olbermann said; on August 9, 2011,
2 Olbermann’s manager e-mailed Hyatt to inform him that Olbermann would be happy to
3 communicate directly with Bohrman and/or Gore and that Olbermann’s manager would handle all
4 communications with Hyatt. Current never notified Olbermann of any objection to this
5 arrangement.

6 **G. Hyatt, Not Olbermann, Disclosed The Financial Terms Of The Agreement**

7 99. The Termination Letter also falsely claims that Olbermann or his representatives
8 disclosed confidential economic terms of the Agreement to The Hollywood Reporter and The Wall
9 Street Journal. This issue is discussed above, and it is Olbermann’s belief that Current leaked the
10 information. Also, Current never provided Olbermann with a notice of this alleged breach, never
11 asked him to cure this alleged breach, and explicitly waived the alleged breach in a letter dated July
12 15, 2011, in which Current wrote: “Current wants to move beyond these issues and get back to the
13 much more important business of promoting ‘Countdown with Keith Olbermann’... So to facilitate
14 that, we suggest that both sides cease requesting acknowledgements regarding prior behavior.”
15 Once again, Olbermann did not materially breach the Agreement.

16 100. Current’s Termination Letter does not contain a single example of an Uncured
17 Default which would give Current even an arguable right to terminate the Agreement. Current’s
18 false and disingenuous allegations say more about the disorganized and unprofessional manner in
19 which Current is managed than anything else. All of Current’s purported notices of breach against
20 Olbermann were made in response to detailed notices of breach sent by Olbermann to Current.

21 101. It is now clear that since at least November 2011, when Current began negotiating
22 with Eliot Spitzer to replace Olbermann, Current has been looking for ways to get out of its
23 contractual obligations to Olbermann. Notably, Current’s breaches of the Agreement became more
24 brazen after Current had commenced negotiations with Olbermann’s replacement. Current may
25 have been breaching the Agreement and undermining Olbermann’s ratings in order to drive him to
26 resign.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against All Defendants)

102. Olbermann realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 101 as though fully set forth herein.

103. The Agreement is a valid and enforceable contract entered into between Olbermann and Current.

104. As described in detail above, Current has repeatedly breached its obligations under terms of the Agreement. Among other things, Current breached the Agreement when it:

- a. terminated Olbermann without basis;
- b. disparaged Olbermann in the press on numerous occasions;
- c. publicly disclosed confidential terms of the Agreement;
- d. repeatedly used Olbermann's likeness in unapproved promos;
- e. used Olbermann's name and goodwill with corporate endorsements without his consent;
- f. refused to grant Olbermann editorial control over Current's election Program Specials;
- g. refused to permit Olbermann to stream the Program on the Program Website, despite Olbermann's editorial control over the Program Website;
- h. used an unapproved guest host on "Countdown" without seeking Olbermann's approval, and then later over his objections; and
- i. failed to meaningfully consult with Olbermann regarding the "lead out" to the Program despite Olbermann's consultation rights under the Agreement.

105. Olbermann gave Current notice of its breaches and an opportunity to cure. Current did not cure its breaches.

106. Olbermann has performed each and all of the conditions, covenants, and obligations imposed upon him under the terms of the Agreement, except as excused, waived, or prevented by the acts of Current.

(Breach of Implied Covenant of Good Faith and Fair Dealing)

108. Olbermann realleges and incorporates by reference each of the allegations contained
in Paragraphs 1 through 107 as though fully set forth herein.

9 109. In every contract, there is an implied covenant of good faith and fair dealing that
10 prohibits a party to a contract from taking any action that deprives the other party of its benefits and
11 rights under the contract or prevents the other party's performance of its obligations under the
12 contract.

110. Current was bound by the implied covenant of good faith and fair dealing in performing its contractual obligations to Plaintiffs under the Agreement.

15 111. Current breached the implied covenant of good faith and fair dealing in the parties’
16 contractual relationship by, among other things, refusing to commit the appropriate funds and
17 resources necessary to produce a high quality news show, as described above.

18 112. Olbermann has performed each and every act, condition, and covenant incumbent
19 upon him in accordance with the terms of the Agreement, except as excused, waived, or prevented
20 by the acts of Current.

113. As a direct result of the foregoing material breaches by Current, and each of them, Olbermann has suffered monetary damages, with interest, in an amount to be established at trial, but which exceeds the jurisdictional minimum for this Court.

THIRD CAUSE OF ACTION

**(Declaratory Relief re: Alleged Uncured Default Under the Agreement For
Alleged Failure to Promote – Against All Defendants)**

114. Olbermann realleges and incorporates by reference each of the allegations contained
in Paragraphs 1 through 113 as though fully set forth herein.

1 115. As described in detail above, an actual controversy has arisen and now exists
2 between Olbermann and Current concerning their respective rights and duties under the terms of the
3 Agreement. Current claims that Olbermann committed an Uncured Default under the Agreement
4 because he failed to promote Current as required under the Agreement. As described above,
5 Olbermann did not commit a material breach of the Agreement regarding his contractual obligations
6 with respect to promotions and appearances.

7 116. Olbermann desires a judicial determination of the parties' rights and duties regarding
8 the above issues, and a declaration that Olbermann's promotional activities failed to meet the
9 requirements of an Uncured Default under the Agreement.

10 117. A judicial declaration is necessary and appropriate at this time so that Olbermann
11 may ascertain his rights and duties as against Defendants.

12 **FOURTH CAUSE OF ACTION**

13 **(Declaratory Relief re: Uncured Default Under the Agreement for**
14 **Alleged Disparagement – Against All Defendants)**

15 118. Olbermann realleges and incorporates by reference each of the allegations contained
16 in Paragraphs 1 through 117 as though fully set forth herein.

17 119. As described in detail above, an actual controversy has arisen and now exists
18 between Olbermann and Current concerning their respective rights and duties under the terms of the
19 Agreement. Current claims that Olbermann engaged in disparagement and unauthorized publicity
20 activities which constituted an Uncured Default under the Agreement. As described above,
21 Olbermann did not disparage Current or engage in unauthorized publicity activities.

22 120. Olbermann desires a judicial determination of the parties' rights and duties regarding
23 the above issues, and a declaration that the acts Current described as disparagement and
24 Unauthorized Publicity Activities failed to meet the requirements of an Uncured Default under the
25 Agreement.

26 121. A judicial declaration is necessary and appropriate at this time so that Olbermann
27 may ascertain his rights and duties as against Defendants.

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FIFTH CAUSE OF ACTION

**(Declaratory Relief re: Uncured Default Under the Agreement
for Alleged Unauthorized Absences – Against All Defendants)**

122. Olbermann realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 121 as though fully set forth herein.

123. As described in detail above, an actual controversy has arisen and now exists between Olbermann and Current concerning their respective rights and duties under the terms of the Agreement. Current claims that Olbermann took unauthorized absences in violation of the Agreement. As described above, all of Olbermann's absences were approved by Current in advance, with the exception of those absences taken for medical reasons, which under the Agreement are proper grounds for Olbermann's absence.

124. Olbermann desires a judicial determination of the parties' rights and duties regarding the above issues, and a declaration that Olbermann's absences failed to meet the requirements of an Uncured Default under the Agreement.

125. A judicial declaration is necessary and appropriate at this time so that Olbermann may ascertain his rights and duties as against Defendants.

SIXTH CAUSE OF ACTION

**(Declaratory Relief re: Uncured Default Under the Agreement
for Allegedly Unauthorized Selection of Guest Host – Against All Defendants)**

126. Olbermann realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 125 as though fully set forth herein.

127. As described in detail above, an actual controversy has arisen and now exists between Olbermann and Current concerning their respective rights and duties under the terms of the Agreement. Current claims that Olbermann engaged in an unauthorized selection of a guest host for "Countdown" in violation of the Agreement. As described above, Olbermann did not engage in any purportedly unauthorized selection of a guest host. The Agreement grants Olbermann the right to approve all guest hosts of "Countdown" with the understanding that Olbermann cannot refuse to permit Current to use a guest host to ensure live programming in his absence.

1 128. Olbermann desires a judicial determination of the parties' rights and duties regarding
2 the above issues, and a declaration that Olbermann's actions with respect to the guest host of the
3 Program failed to meet the requirements of an Uncured Default under the Agreement.

4 129. A judicial declaration is necessary and appropriate at this time so that Olbermann
5 may ascertain his rights and duties as against Defendants.

6 **SEVENTH CAUSE OF ACTION**

7 **(Declaratory Relief re: Uncured Default Under the Agreement**

8 **For Alleged Refusal to Meaningfully Consult – Against All Defendants)**

9 130. Olbermann realleges and incorporates by reference each of the allegations contained
10 in Paragraphs 1 through 129 as though fully set forth herein.

11 131. As described in detail above, an actual controversy has arisen and now exists
12 between Olbermann and Current concerning their respective rights and duties under the terms of the
13 Agreement. Current claims that Olbermann refused to meaningfully consult with Current regarding
14 the Program as set forth in the Agreement. As described above, Olbermann regularly consulted with
15 executive producers hired by Current to produce the Program notwithstanding the fact that
16 Olbermann held full editorial control of the Program under the terms of the Agreement, and Current
17 does not allege situations where it asked to consult but was refused.

18 132. Olbermann desires a judicial determination of the parties' rights and duties regarding
19 the above issues, and a declaration that Olbermann's actions with respect to consultation failed to
20 meet the requirements of an Uncured Default under the Agreement.

21 133. A judicial declaration is necessary and appropriate at this time so that Olbermann
22 may ascertain his rights and duties as against Defendants.

23 **EIGHTH CAUSE OF ACTION**

24 **(Declaratory Relief re: Uncured Default Under the Agreement**

25 **For Alleged Disclosure of Confidential Economic Terms – Against All Defendants)**

26 134. Olbermann realleges and incorporates by reference each of the allegations contained
27 in Paragraphs 1 through 133 as though fully set forth herein.

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1 135. As described in detail above, an actual controversy has arisen and now exists
2 between Olbermann and Current concerning their respective rights and duties under the terms of the
3 Agreement. Current claims that Olbermann disclosed the economic terms of his contract to the
4 press in violation of the Agreement. As described above, Olbermann did not disclose the economic
5 terms of his contract to the press. In fact, as set forth above, Hyatt leaked such information to the
6 press.

7 136. Olbermann desires a judicial determination of the parties' rights and duties regarding
8 the above issues, and a declaration that Olbermann's conversations with the press regarding
9 contractual economic terms, if any such conversations exist, failed to meet the requirements of an
10 Uncured Default under the Agreement.

11 137. A judicial declaration is necessary and appropriate at this time so that Olbermann
12 may ascertain his rights and duties as against Defendants.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

15 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

16 1. For a judgment awarding monetary damages in favor of Plaintiffs against Current,
17 including all monies owed under the Agreement, consequential damages, and interest thereon.

18 **SECOND CAUSE OF ACTION FOR BREACH OF IMPLIED COVENANT**

19 **OF GOOD FAITH AND FAIR DEALING**

20 2. For a judgment awarding monetary damages in favor of Plaintiffs against Current,
21 including all monies owed under the Agreement, consequential damages, and interest thereon.

22 **THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF**

23 3. For a judgment declaring the respective rights and duties of the parties, and a
24 declaration that Olbermann's promotional activities failed to meet the requirements of an Uncured
25 Default under the Agreement.

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FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF

4. For a judgment declaring the respective rights and duties of the parties, and a declaration that the acts Current described as disparagement and unauthorized publicity activities failed to meet the requirements of an Uncured Default under the Agreement.

FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF

5. For a judgment declaring the respective rights and duties of the parties, and a declaration that Olbermann's absences failed to meet the requirements of an Uncured Default under the Agreement.

SIXTH CAUSE OF ACTION FOR DECLARATORY RELIEF

6. For a judgment declaring the respective rights and duties of the parties, and a declaration that Olbermann's actions with respect to the selection of a guest host for the program failed to meet the requirements of an Uncured Default under the Agreement.

SEVENTH CAUSE OF ACTION FOR DECLARATORY RELIEF

7. For a judgment declaring the respective rights and duties of the parties, and a declaration that Olbermann's actions with respect to consultation with Current regarding the Program failed to meet the requirements of an Uncured Default under the Agreement.

EIGHTH CAUSE OF ACTION FOR DECLARATORY RELIEF

8. For a judgment declaring the respective rights and duties of the parties, and a declaration that Olbermann's discussions with the press, if any, of confidential economic terms of his contract failed to meet the requirements of an Uncured Default under the Agreement.

FOR ALL CAUSES OF ACTION

9. For costs and expenses incurred in connection with this action to the extent permitted by law; and

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1 10. For such other and further relief as the Court may deem just and proper.

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DATED: April 5, 2012

PATRICIA L. GLASER
G. JILL BASINGER

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: Jill Basinger
JILL BASINGER
Attorneys for Plaintiffs Olbermann Broadcasting
Empire, Inc. and Keith Olbermann

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury.

DATED: April 5, 2012

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