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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

18 OLBERMANN BROADCASTING EMPIRE,
INC. and KEITH OLBERMANN,

19 Plaintiffs,

20 v.

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

22 Defendants.

23 CURRENT TV, LLC,

24 Cross-Complainant,

25 v.

26 OLBERMANN BROADCASTING EMPIRE,
INC. and KEITH OLBERMANN,

27 Cross-Defendants.
28

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 6 - 2012

John A. Clarke, Executive Officer/Clerk

BY  Deputy
Mary Flores

Case No. BC482335

CROSS-COMPLAINT BY
DEFENDANT CURRENT TV, LLC

Judge: Hon. Holly Kendig
Dept.: 42

Action Filed: April 5, 2012

1 Cross-Complainant Current TV, LLC (“Current” or the “Company”), by its attorneys, for
2 its complaint against Cross-Defendants Keith Olbermann and Olbermann Broadcasting Empire,
3 Inc. (“OBE,” and, together with Keith Olbermann, “Mr. Olbermann”) alleges as follows:

4 **NATURE OF THE ACTION**

5 1. On April 3, Keith Olbermann told David Letterman and a national television
6 audience that his termination by Current TV was “my fault” and that “I screwed up.” Two days
7 later, he apparently forgot what he said, filing a frivolous Complaint riddled with falsehoods and
8 distortions in which he refused to take any responsibility whatsoever for that termination. The
9 Complaint levels a series of *ad hominem* attacks on the principals of Current who, in fact, have
10 done nothing wrong. Current had every right to terminate Mr. Olbermann’s services, rather than
11 continuing to pay a princely sum while receiving a pauper’s performance in return.

12 2. This is an action for breach of contract and a declaratory judgment. As we set forth
13 below and will prove at trial, the facts—as opposed to the fiction contained in Mr. Olbermann’s
14 Complaint—show that Current acted within its contractual rights when it terminated Mr.
15 Olbermann by letter dated March 29, 2012 (the “Termination Letter”) (a copy of which is attached
16 as Exhibit 1 hereto). Mr. Olbermann did, in fact, “screw up” and did so willfully; and he failed to
17 fulfill his obligations to such a material extent that Current is entitled to a declaration by this Court
18 that it is free from any ongoing obligations to him. In particular, Current seeks a determination
19 that it is no longer obligated to pay a dime to Mr. Olbermann who, having already been paid
20 handsomely for showing up sporadically and utterly failing to keep his end of the bargain, now
21 seeks to be paid tens of millions more for not working at all.

22 3. Just over one year ago, Current and Keith Olbermann reached an agreement that
23 promised to remake the landscape of cable television: Mr. Olbermann—a staple of MSNBC’s
24 primetime lineup since 2003 and host of its popular show “Countdown With Keith Olbermann”—
25 agreed to join Current and be the centerpiece of Current’s strategy to become the premiere,
26 progressive cable television network in the United States.

1 4. The contract, signed by the parties on January 22, 2011 (the "Agreement"),¹ was a
2 lucrative one for Mr. Olbermann. Mr. Olbermann was also given, by his own description, the
3 biggest and best staff he has ever worked with. He was also named Chief News Officer of Current
4 and offered various rights to consult with Current over the network's other programming. In
5 return, however, Mr. Olbermann was obligated to do far more than simply host "Countdown." His
6 obligations to Current were commensurate with his remuneration. Current wasn't simply buying a
7 news personality or an anchor for a single television show. By entering into this deal, Current was
8 making a long-term investment in Mr. Olbermann to build and strengthen its brand for years to
9 come. To accomplish this objective—the key objective for Current—the Agreement negotiated
10 and signed by the parties was replete with provisions requiring Mr. Olbermann to "meaningfully
11 consult [with Current] with respect to . . . business decisions," "participate with [Current] in the
12 creation of marketing and promotional materials," "collaborate with [Current] on opportunities to
13 build the brand name of Current TV and Current Media," "participate in [Current's] promotional
14 activities," and "collaborate with [Current] in connection with opportunities to appear on talk
15 shows, magazine shows, news and political events shows," among other things.

16 5. These provisions requiring Mr. Olbermann to cooperate and collaborate with
17 Current to promote and grow the network were the essence of the deal. They also reflected
18 Current's core values of collaboration, respect for colleagues, and integrity. In order to meet these
19 obligations, Mr. Olbermann made a personal commitment to work with Current's management to
20 make "Countdown" the best cable news show on television and to make Current and its other
21 programming the destination network for progressive audiences. Although these were ambitious
22 goals, in many respects they required very simple things from Mr. Olbermann. Among other
23 things, they required Mr. Olbermann to show up for work faithfully, communicate with Current's
24 management, be accessible to them for consultation and collaboration, be transparent with the
25

26 ¹ For the avoidance of doubt, as used herein, the "Agreement" includes the
27 inducement letter signed by Mr. Olbermann as of January 22, 2011, annexed to the Agreement as
28 Exhibit 1, and made reference to in paragraph 1 of the Agreement (the "Inducement Letter").

1 network about his work on Countdown and his promotional activities outside the network, and
2 work cooperatively and in good faith to accomplish the Agreement's objectives.

3 6. Mr. Olbermann has failed to deliver on his contractual promises. Instead, he has
4 waged a campaign to breach, undermine, frustrate, and ultimately strip Current completely of the
5 benefit of its bargain. Instead of delivering on the open, collaborative relationship called for by
6 his contract, Mr. Olbermann instead completely shut himself off from the rest of the network.
7 During his time at Current, Mr. Olbermann has repeatedly rebuffed every effort by Current to
8 engage him in a cooperative manner to collaborate on programming and promotional
9 opportunities, and attempted to push off his personal, non-delegable contractual obligations onto
10 his agents and managers, none of whom have any contractual relationship with Current. To cite
11 but a few examples, among many:

- 12 • Almost immediately after signing his contract, Mr. Olbermann intentionally leaked
13 the financial terms of his Agreement to the media, in clear breach of the
14 confidentiality provisions of his contract, and in direct defiance of Current's CEO,
15 who expressly denied Mr. Olbermann's request to disclose his compensation,
16 insisting that Mr. Olbermann abide by the terms of the Agreement which required
17 that he keep his compensation private.
- 18 • Mr. Olbermann failed to work with Current to promote the network, despite a
19 contractual obligation to do so. He refused outright to speak with Current's
20 Executive Vice President of Communications, and instructed his staff to do the
21 same. And he categorically refused to participate in any promotion of the network
22 that involved either the lead in or lead out shows to "Countdown." Indeed, since
23 October 2011, Mr. Olbermann has rejected *every* opportunity presented to him to
24 promote the network.
- 25 • Mr. Olbermann repeatedly absented himself from the show by taking unauthorized
26 days off in violation of the Agreement. In January and February 2012 alone, he
27 was absent 19 of 41 working days.
- 28 • Mr. Olbermann refused to participate in Current's 2012 caucus and primary
election coverage specials despite being asked to do so, and then abruptly and
without warning changed his mind on the eve of the Iowa Caucuses. When Current
decided to move forward with its planned special election coverage and preempt
"Countdown," Mr. Olbermann failed to inform his staff that the show would not
air, forcing Current's senior management to notify Mr. Olbermann's staff of the
schedule change after they had all reported to work. Mr. Olbermann then publicly
leaked reports of this incident to the media, in a manner that cast Current in a
negative light, and disparaged the network.

7. In contrast to Mr. Olbermann, Current has not only complied with the Agreement at
all times, even in the face of Mr. Olbermann's persistent material breaches, but offered to grant

1 Mr. Olbermann rights beyond those in his contract simply to keep the peace. Nothing has worked,
2 leaving Current with no choice but to terminate the Agreement and to end its one-sided
3 relationship with Mr. Olbermann. That Current did when it delivered the Termination Letter.

4 PARTIES

5 8. Cross-Complainant Current is a Delaware limited liability company whose
6 principal place of business is in San Francisco, California. Current is a cable broadcast company
7 that develops, produces and markets entertainment and news programs.

8 9. Cross-Defendant OBE is a New York corporation whose principal place of
9 business is in New York, New York. On information and belief, OBE is a "loan out" company
10 whose primary asset is the artistic services of Keith Olbermann.

11 10. Cross-Defendant Keith Olbermann is a natural person who is a citizen of
12 New York, New York. Keith Olbermann is the third party beneficiary to the Agreement between
13 Current and OBE and is also a signatory to the Agreement. He is also a signatory to the
14 Inducement Letter, incorporated by reference into the Agreement, pursuant to which he is made
15 personally liable for any breaches of the Agreement committed by himself or OBE.

16 JURISDICTION AND VENUE

17 11. Jurisdiction is proper in this Court because this Court has plenary jurisdiction over
18 actions for breach of contract. *See* Cal. Code Civ. Proc. 410.10.

19 12. California has personal jurisdiction over the Parties pursuant to paragraph 16(e) of
20 the Agreement, which states that the Parties "irrevocably submit to the exclusive jurisdiction of
21 any California State or Federal court sitting in Los Angeles, California."

22 13. Venue is proper in Los Angeles County pursuant to paragraph 16(e) of the
23 Agreement.

24 GENERAL ALLEGATIONS

25 14. In late 2010, Current spoke with Mr. Olbermann to discuss his availability and
26 interest in joining the network. At the time, Current had been looking for an established news
27 anchor and journalist around which it could establish and build a presence as a progressive, cable
28 television network. Mr. Olbermann appeared to be an ideal candidate. For nearly eight years,

1 from March 2003 until December 2010, Mr. Olbermann had hosted the highly rated show
2 "Countdown With Keith Olbermann" on MSNBC. Despite the success of his show and Mr.
3 Olbermann's popularity, his relationship with MSNBC had soured. Mr. Olbermann needed a
4 change of scenery, and Current needed a star. As a result, the parties negotiated and finalized a
5 deal in less than four weeks.

6 15. Current had two objectives in reaching a deal with Mr. Olbermann: First, Current
7 wanted a major primetime news and commentary figure to anchor and launch a programming
8 lineup. Keith Olbermann promised to be a perfect fit, as an established star host, who would
9 instantly enhance the network's credibility as a serious contender for cable news viewers night-in
10 and night-out. Second, and equally crucial, Current needed a highly visible TV journalist like Mr.
11 Olbermann to promote the network and build Current's brand. Mr. Olbermann was in a unique
12 position to bring attention and exposure not only to his show, but to provide exposure and
13 visibility to the network in general.

14 16. In order to ensure that Mr. Olbermann would work to market and promote
15 Current's overall brand and presence (and not just "Countdown"), Current negotiated for several
16 provisions that required just that. For example, the Agreement provides that:

- 17 • Mr. Olbermann "shall . . . participate with [Current] in the creation of marketing
18 and promotional materials to be used on and off the network to promote the
19 Program [(i.e., "Countdown")] and Program Specials [(defined in the Agreement to
include certain television specials which Mr. Olbermann would host and produce)]
. . . ." (Paragraph 2(c)(i));
- 20 • Mr. Olbermann "shall also collaborate with [Current] on opportunities to build the
21 brand name of Current TV and Current Media. In connection therewith, from time
22 to time, OBE shall cause [Mr. Olbermann] to participate in [Current's] promotional
23 activities . . . , and to attend . . . live events at [Current's] request, including without
24 limitation, events for [Current's] sponsors, advertisers and/or distributors and
participation in press events" (Paragraph 2(c)(ii));
- 25 • Mr. Olbermann "shall give first priority to all such [promotional services] and
26 Other Promotional Activities" (Paragraph 2(c)(iii));
- 27 • Subject to Mr. Olbermann's approval "not to be unreasonably withheld, OBE may
28 cause [Mr. Olbermann] to appear from time to time on other programs produced
and/or presented by [Current]" (Paragraph 2(d)(i)); and
- "OBE shall also cause [Mr. Olbermann] to collaborate with [Current] in connection
with opportunities to appear on talk shows, magazine shows, news and political
events shows presented by other networks and/or organizations, as a guest, guest

1 host (on a one-off basis) or commentator in any and all media (these appearances,
2 the "Other Appearances") In connection with any such Other Appearances,
3 OBE and/or [Mr. Olbermann] shall use reasonable commercial efforts to arrange
4 that [Mr. Olbermann] be credited for all Other Appearances as 'Keith Olbermann,
5 Current TV'" (Paragraph 2(d)(ii)).

6 17. Further, in order to protect Current's brand, the Agreement also prohibits Mr.
7 Olbermann from disparaging Current (Paragraph 16(a)(i)), and prevents Mr. Olbermann or his
8 representatives from disclosing certain categories of confidential information (including the terms
9 of the Agreement and proprietary information concerning Current or its other programs). Current
10 further had the right to prior approval over any publicity activities by Mr. Olbermann (id.), the
11 "right to meaningfully consult on ["Countdown's"] content" (Paragraph 2(a)(i)), and the right to
12 "determine all business decisions" relating to "Countdown" and Program Specials (Paragraph
13 2(a)(ii)).

14 18. These provisions, individually and collectively, are material terms of the
15 Agreement; they form a critical component of the consideration Mr. Olbermann promised to
16 Current under the contract. Without them, Current would never have entered into this deal. In
17 exchange, Mr. Olbermann would be highly compensated. His salary would, if he performed as
18 promised, be the richest of his long career, and—consistent with his responsibilities to the
19 network's overall performance—he was given option rights to purchase an ownership stake, and
20 the title of Chief News Officer of Current. Moreover, both to incentivize Mr. Olbermann to join
21 Current and to avoid the problems with management that had been a hallmark of Mr. Olbermann's
22 career, Current offered Mr. Olbermann the unique ability to control the content of his program
23 without undue corporate interference: although Current had an absolute right to consult with Mr.
24 Olbermann about "Countdown," and had final say with respect to all "business decisions," Mr.
25 Olbermann was given "full editorial control" over the program (Paragraph 2(a)(i)).

26 19. In the fourteen months since signing the Agreement, Mr. Olbermann's tenure at
27 Current has been marked by an utter disregard for his contractual responsibilities, in particular of
28 those requiring him to promote and advance the network. Rather, since signing the contract, Mr.
Olbermann worked only on "Countdown" to the exclusion of all his other contractual

1 responsibilities, and devoted all of his remaining energy to cataloguing and complaining about his
2 dissatisfaction with production problems at Current, and various other business decisions by the
3 network in which contractually he has no say. None of the issues about which Mr. Olbermann
4 complained constitute breaches of the Agreement by Current. For example, he arrogantly and
5 falsely calls "cheap" the company that has paid him the highest compensation he had ever
6 received in his career, provided him the largest staff of any program he had ever anchored, given
7 him the largest studio and custom-designed set on which he had ever worked, and paid over
8 \$50,000 in an eight month period to eight different limousine companies because none of the
9 previous seven were able to meet his Patrician standards for how to drive him around New York
10 City. Current has at all times complied with the contract. By contrast, Mr. Olbermann, in the span
11 of just over one year, breached virtually every material provision of his contract, as more fully set
12 forth below.

13 20. But that is not all. Mr. Olbermann is the most highly compensated person at
14 Current. Indeed, he is one of the most highly compensated political analysts on television, period.
15 Rather than meeting his obligations and performing in good faith the commitments for which he
16 was so highly paid, and behaving in the collaborative fashion that was the guiding principle of his
17 contract, Mr. Olbermann did just the opposite. To cite a few examples of the behavior which has
18 typified Mr. Olbermann's relationship with Current and its employees:

- 19 • In response to an email from a Current employee about complications related to
20 Michael Moore's appearance on "Countdown," Mr. Olbermann wrote to Joel Hyatt: "Give me a name so I know which of them to kill with my bare hands."
- 21 • In response to learning that a photograph of "Countdown's" original set was
22 disclosed to the press by the set designer, Mr. Olbermann wrote to Mr. Hyatt of the person who leaked the picture: "Can you assassinate him please?"
- 23 • When asked by Current's President David Bohrman about the purchase of a \$5,300
24 desk for "Countdown," which was not discussed with or approved by anyone at the network, Mr. Olbermann replied: "When you are prepared to act like an adult you are welcome to contact us again."
- 25 • Upon learning that Current would not match a salary offer from another television
26 network to someone in "Countdown's" booking department, Mr. Olbermann wrote to Mr. Bohrman: "We can only conclude here that you have now moved from
27 unjustifiable egotism and unparalleled incompetence, to outright sabotage of this program."
- 28

- In response to an email seeking consultation with Mr. Olbermann about issues relating to "Countdown's" set: "I am unavailable until further notice."
- On November 22, 2011, Current received a complaint from Countdown's studio landlord that: "Keith created a potentially dangerous situation last night when he threw with full force a glass mug at the set hitting a solid part of it that caused the mug to shatter . . . I don't know if Keith has been spoken to about such acts and I certainly understand how difficult such a conversation can be with him. However, throwing things in the studio is not acceptable as it creates a potentially dangerous situation for anyone in the studio at that time."

21. If anyone else associated with Current consistently engaged in such behavior, he or she would be in need of a new job. Mr. Olbermann, it seems, believes his considerable salary and celebrity entitles him to ignore the basic constraints of acceptable workplace conduct, much less the more substantial obligations imposed by his contract.

A. Mr. Olbermann Repeatedly Has Breached His Agreement with Current

i. Mr. Olbermann Improperly Disclosed the Terms of His Contract

22. Paragraph 16(a)(i) of the Agreement makes clear that the financial terms of the Agreement were confidential. Specifically, the Agreement requires that "the economic terms of this Agreement shall not be disclosed to any third party except the parties' legal and financial advisers or as may be required by applicable law or regulation." The provision also makes clear that "disclosure [of the economic terms of the Agreement] by such adviser (other than a disclosure required by law or regulation) shall be deemed a material breach of this agreement."

23. Mr. Olbermann deliberately breached this provision almost immediately upon joining the network by intentionally causing the disclosure of the financial terms of his contract with Current to the press. Moreover, he did so knowing that Current's CEO Joel Hyatt would not waive the confidentiality provision of the agreement. On or about May 13, 2011, Mr. Olbermann asked Mr. Hyatt for permission to disclose the financial terms of his employment because he felt it would silence critics who questioned his decision to join Current. The request was denied. Nonetheless, Mr. Olbermann authorized his representatives to disclose his salary to *The Wall Street Journal* and *The Hollywood Reporter*.

24. When confronted with his breach by Mr. Hyatt, Mr. Olbermann admitted that his representatives had provided the press with the financial terms of his deal. Mr. Olbermann offered

1 no justification, let alone an explanation sufficient to excuse his willful breach of the Agreement
2 and disobedience to the CEO's explicit request.

3 **ii. Mr. Olbermann Refused to "Meaningfully Consult" with Current**
4 **about "Countdown"**

5 25. Paragraph 2(a)(i) of the Agreement states that Mr. Olbermann "shall have full
6 editorial control of ["Countdown"], subject to . . . (C) [Current's] right to meaningfully consult on
7 Program content." Mr. Olbermann has materially breached his duties under this provision because
8 he has refused to consult with Current in any way whatsoever. Time and again, Current has tried
9 to meet with Mr. Olbermann to exercise its consultation rights and Mr. Olbermann has steadfastly
10 refused, either making himself unavailable or purporting to assign his consultation obligations to
11 agents and other hired hands of his who do not work for Current and have no contractual privity
12 with Current.

13 26. Although Mr. Olbermann's breaches of his duty to consult go back almost to the
14 first day of "Countdown's" launch, the situation has become particularly aggravated in the past six
15 months as he has refused to have any meaningful contact whatsoever with any of Current's senior
16 executives. To pick one example among many, Mr. Olbermann has refused to use the \$250,000
17 set for his show that was designed by a leading set designer with his input and approval because of
18 a technical glitch during a broadcast in which the lights turned off briefly. Since that date, Mr.
19 Olbermann has opted to do the show against a completely black background despite Current's
20 continued directive that he use his custom-designed set. Mr. Olbermann has not even permitted
21 guest hosts to use the set on the frequent days on which he has been absent from the show.

22 27. As Mr. Olbermann is aware, nowhere in his personal services contract with Current
23 is he permitted to assign his duty to consult with Current to his representatives. Current did not
24 enter into the Agreement—agreeing to pay Mr. Olbermann a substantial sum to make his program
25 the flagship of the network—with the expectation that it would be consulting with business
26 managers and agents about "Countdown's" content and other material issues concerning Current's
27 programming. Under the plain language of the contract, these obligations run to the "Artist,"
28 defined in the Agreement to mean "Keith Olbermann"—and not his representatives or agents.

1 Indeed, under his contract, Mr. Olbermann could no sooner assign his obligation to consult with
2 Current than he could his obligation to host "Countdown." It is Mr. Olbermann's personal
3 obligation to consult with Current, and he has indisputably refused to abide by this material
4 contractual provision.

5 **iii. Mr. Olbermann Refused to Market and Promote "Countdown" and Current**

6 28. Mr. Olbermann has failed to comply with his marketing and promotional
7 responsibilities by either refusing or ignoring requests to participate in press interviews and
8 marketing events concerning both his show and the network. He also outright refuses to work
9 cooperatively with the Current executives responsible for communications—people who are
10 clearly integral to the network's promotional efforts. To be sure, Mr. Olbermann is granted some
11 discretion in working with Current to further the goals of promoting the network. But discretion
12 must be exercised in good faith. Mr. Olbermann's breaches are not incidental disagreements about
13 how best to promote the network; rather, they are a wholesale refusal on the part of
14 Mr. Olbermann to comply with his obligations in this area. Mr. Olbermann's conduct has
15 substantially impaired the Company's ability to successfully market and sell "Countdown" and
16 promote the network as a whole.

17 29. Since October 2011, Mr. Olbermann has repeatedly declined print, radio and
18 television interview opportunities to promote both his show and the network. He refused to work
19 with the network's Executive Vice President of Communications, and instructed his staff similarly
20 to refrain. He has also refused to approve any advertising campaign that would feature his show
21 alongside the shows that both lead into and lead out of his: "The Young Turks with Cenk Uygur"
22 and "The War Room with Jennifer Granholm." Mr. Olbermann's refusal to assist in the
23 promotion of Current's other primetime shows is proof positive of his utter disregard for the
24 success of the network and constitutes a flagrant violation of paragraphs 2(c)(i), (ii) and (iii), and
25 paragraphs 2(d)(i) and (ii) of the Agreement.

26 30. Mr. Olbermann has attempted to justify his refusal to promote "The Young Turks"
27 and "The War Room" or to be associated with them in any way by alleging that Current did not
28 consult with him about hiring Mr. Uygur or Governor Granholm. This complaint by Mr.

1 Olbermann is utterly false. Extensive email correspondence and meetings between Current's
2 management and Mr. Olbermann demonstrates substantial consultation with him about both hires.
3 More recently, Mr. Olbermann has complained that he will not promote the shows because he
4 does not like them. But that pretextual excuse has no relevance to Mr. Olbermann's contractual
5 obligations, and cannot justify his nonperformance under the contract. Under the Agreement, Mr.
6 Olbermann has a right to be consulted about the "lead-in" and "lead-out" shows to "Countdown."
7 He does not have a right of approval.

8 31. Given that Current made clear from the onset that it was building the network
9 around Mr. Olbermann and "Countdown," Mr. Olbermann's participation in promoting the
10 program and the network is integral to his obligations under the contract. Mr. Olbermann's
11 responsibilities in this area were clearly delineated in the Agreement. By having continually
12 refused to engage in promotional activities, Mr. Olbermann has materially breached, on numerous
13 occasions, his clear contractual obligations.

14 iv. **Mr. Olbermann Disparaged Current and Engaged In Unauthorized**
15 **Publicity Activities**

16 32. In December 2011 and January 2012, Mr. Olbermann made a series of public
17 statements that disparaged and embarrassed Current in connection with a dispute over primary and
18 caucus night Program Specials. In November 2011, Current had requested that Mr. Olbermann
19 anchor election specials beginning with the January 3 Iowa Caucuses. Mr. Olbermann declined,
20 requiring Current to preempt "Countdown" and to air the specials without his participation.
21 Despite being fully informed of Current's programming plans and clearly understanding that he
22 would be preempted on January 3, Mr. Olbermann told *The New York Times* on December 29 that
23 "Countdown" would air at its regular time that day. Although Mr. Olbermann knew he would not
24 be on the air on January 3, he failed to inform the show's staff, each of whom reported for work on
25 January 3. Later that day, Mr. Olbermann commented on Twitter that he was "headed into the
26 office" to prepare an episode of "Countdown"—which he knew not to be true—and followed that
27 comment a short time later with a Twitter message that he was "informed Countdown will not be
28 on tonight," and that he would "defer on all questions to @JoelHyatt @AlGore and @Current."

1 33. Mr. Olbermann's gamesmanship garnered considerable press attention, all of it
2 negative for Current. After his conspicuous absence from Current's Iowa Caucus coverage, on
3 January 4, Mr. Olbermann told *The Hollywood Reporter*—by way of purported explanation for his
4 absence from Current's election coverage—that he had not been given a "legitimate opportunity"
5 to host the coverage under "acceptable conditions." This was simply not true and was intended to
6 disparage Current and create an impression that Current had behaved inappropriately in
7 connection with its primary and caucus coverage. These activities constituted material breaches of
8 his obligations under paragraph 16(a)(i) of the Agreement.

9 v. **Mr. Olbermann Routinely is Absent from his Show and Used Unauthorized**
10 **Guest Hosts in Violation of the Agreement**

11 34. Mr. Olbermann is entitled to take vacation time every year. However, in light of
12 his importance to Current's programming on a nightly basis, Mr. Olbermann is required under his
13 contract to schedule his vacation "at times mutually reasonably satisfactory" to him and to Current
14 (Paragraph 8). Rather than approach the subject of his vacation absences cooperatively with the
15 network, Mr. Olbermann instead unilaterally announces his vacation without consulting anyone,
16 and occasionally gives no more than 24 hours' notice of his intention to take vacation.

17 35. In December 2011, Mr. Olbermann informed Current that he and his staff would be
18 on vacation from December 26, 2011 through January 2, 2012. Mr. Olbermann never obtained
19 Current's permission to place his show on hiatus during that week, and his decision left Current
20 scrambling to secure substitute programming. At the time of that dispute, Mr. Olbermann's
21 manager advised Current that putting "Countdown" on hiatus later, in January, "made no sense"
22 because "the week of the Iowa Caucus, the week of the New Hampshire Primary, and the week
23 leading up to the South Carolina primary" were a "critical three weeks of political news
24 coverage."

25 36. Just a few weeks later, without consulting Current or taking any steps to determine
26 whether yet another vacation would be reasonably satisfactory to Current as the Agreement
27 dictates, Mr. Olbermann informed Current on the evening of January 8, 2012 that he would be on
28

1 vacation for the week starting January 9, requiring Current to hastily make programming
2 accommodations during a major news week that straddled the New Hampshire Primary.

3 37. On February 27, 2012, after being absent 19 of the previous 39 working days, Mr.
4 Olbermann sought vacation on March 5 and April 5. Current responded by granting Mr.
5 Olbermann's request for vacation on April 5 but declined March 5 because it fell one day before
6 Super Tuesday, one of the most significant political days of the year. Mr. Olbermann's manager
7 Michael Price insisted that Mr. Olbermann would not work on March 5, telling Mr. Bohrman in an
8 email that "Keith has a personal commitment that day and needs to take it off." Mr. Bohrman
9 reiterated the importance of Mr. Olbermann's appearance on "Countdown" on March 5, to which
10 Mr. Price responded: "pointing to a calendar and saying that it is the night before an important
11 night is insufficient justification for Keith to change his plans. Keith will be taking March 5th as a
12 vacation day." Mr. Olbermann made good on his threat and absented himself on March 5 even
13 though he had been explicitly told that doing so would be a material breach of his contract. Mr.
14 Olbermann's subsequent re-writing of history that "due to persistent throat problems [Mr.
15 Olbermann] needed to take off March 5th to rest his voice and prepare for the [March 6] election
16 special" (Complaint, ¶ 8) is nothing more than an immature, after-the-fact attempt to justify
17 playing hooky and is plainly false. That as well as many of his other absences from the program
18 constituted a material breach of paragraph 8 of the Agreement.

19 38. Mr. Olbermann compounded the harm caused by his frequent unauthorized
20 absences by unilaterally and without approval selecting an unauthorized guest host for his show.
21 On fully half of Mr. Olbermann's 22 absences from "Countdown" in 2012, he unilaterally and
22 without consultation selected David Shuster. Mr. Shuster is a valuable contributor to Current as
23 the network's Washington, D.C. correspondent, but Mr. Olbermann had been told in September
24 2011 that Mr. Shuster could no longer be used as a guest host due to his inability to retain most of
25 "Countdown's" audience—a problem Mr. Olbermann contributed to by prohibiting Mr. Shuster
26 from promoting his guest appearances, either on Mr. Shuster's radio show or on Twitter. Under
27 paragraph 4 of the Agreement, Current is permitted to select guest hosts for "Countdown" when
28 Mr. Olbermann is absent; Mr. Olbermann is granted a limited approval right (not a *selection* right)

1 over regular guest hosts. Mr. Olbermann's frequent, unauthorized selection of Mr. Shuster to
2 serve as guest host constituted a material breach of paragraph 4 of the Agreement.

3 **FIRST CAUSE OF ACTION**
4 **(Declaratory Relief)**

5 39. Current hereby realleges and incorporates by reference paragraphs 1 through 38
6 hereof as if fully set forth herein.

7 40. Mr. Olbermann has materially breached his contractual obligations to Current in
8 the following ways, among others:

- 9 (a) in violation of paragraph 16(a)(i) of the Agreement, he disclosed the economic terms of
10 his contract to media publications;
- 11 (b) in violation of paragraph 2(a) of the Agreement, he refused to "meaningfully consult"
12 with Current regarding the content of "Countdown,"
- 13 (c) in violation of paragraph 2(a) of the Agreement, he refused to "meaningfully consult"
14 with Current regarding business decisions related to "Countdown," and unilaterally
15 made business decisions he had no right to make;
- 16 (d) in violation of paragraphs 2(c) and 2(d) of the Agreement, he refused or ignored
17 Current's request to participate in press interview and marketing events related to
18 "Countdown" and the other primetime programming on Current;
- 19 (e) in violation of paragraph 4 of the Agreement, he unilaterally and repeatedly selected an
20 unauthorized guest host for his show without consultation with or approval by Current;
- 21 (f) in violation of paragraph 16(a)(i) of the Agreement, he made false and misleading
22 statements to the press and public about Current and its programming, and he and his
23 agents spoke with the press without obtaining prior authorization from Current;
- 24 (g) in violation of paragraph 8 of the Agreement, he did not obtain Current's approval to
25 take vacation time.

26 41. Each of these incidents constitutes a separate and independent breach of a material
27 provision of the Agreement, and a failure or refusal to perform material obligations under the
28 Agreement. Each also constitutes a breach of Mr. Olbermann's representations and warranties
under paragraph 11(a)(ii)(E). Collectively, these actions have materially breached the Agreement
as a whole and deprived Current of its contractual rights and the consideration it was entitled to
receive. As a result, Current acted properly when it delivered the Termination Letter to Mr.
Olbermann and is under no continuing obligations to Mr. Olbermann, including any obligations
under paragraph 6 (setting forth Mr. Olbermann's compensation). Cross- Defendants, who have

1 initiated this action, dispute that and contend that Current remains obligated to pay Mr. Olbermann
2 tens of millions of dollars despite his breaches. As a result, Current seeks and is entitled to a
3 judicial declaration that pursuant to paragraph 13(e)(vi), Current is under no continuing
4 obligations to Mr. Olbermann, including any obligations relating to compensation.

5
6 **SECOND CAUSE OF ACTION**
(Breach of Contract)

7 42. Current hereby realleges and incorporates by reference paragraphs 1 through 41
8 hereof as if fully set forth herein.

9 43. Each of the incidents specified in paragraph 38, among others, constitutes a
10 separate and independent material breach of the Agreement. Collectively, these actions have
11 materially breached the Agreement as a whole and deprived Current of its contractual rights and
12 the consideration it was entitled to receive. As a result of Mr. Olbermann's breaches, Current has
13 suffered substantial direct and consequential damages, will continue to suffer damages in the
14 future, and has been deprived of the benefit of its Agreement with Mr. Olbermann.

15
16 **THIRD CAUSE OF ACTION**
(Breach of the Covenant of Good Faith and Fair Dealing)

17 44. Current hereby realleges and incorporates by reference paragraphs 1 through 43
18 hereof as if fully set forth herein.

19 45. A covenant of good faith and fair dealing is implied in every contract. Mr.
20 Olbermann has engaged in a deliberate course of conduct to breach, undermine, and frustrate the
21 Agreement. This conduct evidences Mr. Olbermann's bad faith and breach the covenant of good
22 faith and fair dealing. As a result of these breaches, Current has suffered substantial direct and
23 consequential damages, will continue to suffer damages, and has been deprived of the benefit of
24 its Agreement with Mr. Olbermann.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Cross-Complainants pray for the following relief:
27
28

1 1. A declaration that Current acted within its contractual rights when it terminated the
2 Agreement, and is relieved of any continuing obligations to Mr. Olbermann, including those set
3 forth in paragraph 6 of the Agreement;

4 2. Damages caused by Mr. Olbermann's repeated and continuing material breaches, in
5 an amount to be proved at trial;

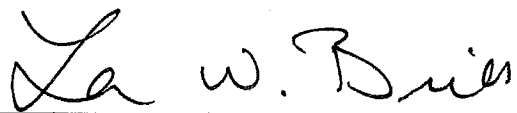
6 3. Costs and expenses incurred in connection with this action to the extent permitted
7 by law; and

8 4. Any such other relief as the Court may deem just and proper.
9

10 Dated: April 6, 2012

Respectfully submitted,

11 KENDALL BRILL & KLIEGER LLP
12

13 By: 
14 Laura W. Brill
15 Attorneys for Current TV, LLC
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EXHIBIT

1

current™

Joel Hyatt
Chief Executive Officer

March 29, 2012

Via Email

Mr. Nick Khan
ICM
10250 Constellation Blvd.
Los Angeles, California 90067

Current TV/Keith Olbermann: Notice of Termination

Dear Mr. Khan:

I write to inform you that, pursuant to Paragraph 13(d) of the agreement dated January 22, 2011 between Current TV, LLC ("Current"), Olbermann Broadcasting Empire, Inc. ("OBE"), and Keith Olbermann (the "Agreement"),¹ Current is terminating the Agreement effective immediately. Yesterday's broadcast of "Countdown" will be Mr. Olbermann's last on Current.

Mr. Olbermann's unyielding campaign to breach, frustrate, and undermine the Agreement with Current ends now. He has breached numerous material provisions of the Agreement. Those breaches—both individually and cumulatively—have deprived Current of the fundamental benefit of its bargain.

Current entered into the Agreement with the understanding that it was forming a contractual relationship with Mr. Olbermann with the common goals of building Current's brand as a leading cable network, and making "Countdown" the best political commentary show on television. Mr. Olbermann's contract was carefully negotiated to reflect Current's core company values based on openness, collaboration, and respect for colleagues. The events of the past year have proven that Mr. Olbermann does not, in fact, share those goals or values. To the contrary, Mr. Olbermann—who has already earned in excess of [REDACTED]—has not even come close to meeting the obligations spelled out in the Agreement to Current. Current will no longer permit this to continue.

¹ Throughout this letter, Keith Olbermann and OBE are referred to interchangeably as "Mr. Olbermann."

118 King Street
San Francisco, CA 94107
t 415.995.8282
www.current.com

EXHIBIT 1

We have described Mr. Olbermann's serial, material breaches in our prior correspondence and incorporate that prior correspondence by reference herein. Nonetheless, because Current does not exercise its termination right lightly, we set forth here the principal conduct by Mr. Olbermann that necessitates termination of the Agreement.

A. Failure to Promote

A central obligation that Mr. Olbermann took on when he executed the Agreement was to put forth substantial efforts to promote the network and its programming. And yet, since at least September 2011, Mr. Olbermann has consistently refused to fulfill these obligations. He has rejected opportunity after opportunity to promote the network, and he has done so without any contractual or legally cognizable basis. Such conduct is unacceptable for anyone associated with Current, much less its most visible star, who has been paid [REDACTED] predicated, in material part, upon his obligation to promote the channel.

Several contractual provisions address Mr. Olbermann's promotional responsibilities.

- Paragraph 2(c)(i) requires him to "participate with Company in the creation of marketing and promotional materials to be used on and off the network to promote the Program"
- Paragraph 2(c)(ii) requires that Mr. Olbermann "also collaborate with Company on opportunities to build the brand name of Current TV and Current Media," and "[i]n connection therewith . . . to participate in Company's promotional activities . . . , and to attend at Company's sole cost and expense live events at Company's request"
- Paragraph 2(d)(i) requires that Mr. Olbermann "may . . . appear from time to time on other programs produced and/or presented by Company," and that approval of such appearances cannot be "unreasonably withheld."
- Paragraph 2(d)(ii) requires that Mr. Olbermann promote Current through appearances "on talk shows, magazine shows, news and political events shows presented by other networks and/or organizations, as a guest, guest host, . . . or commentator in any and all media"

Mr. Olbermann has breached all of them.

Current first provided Mr. Olbermann with written notice of his breach of these provisions on October 27, 2011, after Mr. Olbermann declined several print, radio and television interview opportunities in the preceding month. Mr. Olbermann failed to cure, and he received additional notices of breach on February 3 and March 2, 2012. None of these notices has prompted Mr. Olbermann to live up to his contractual obligations. For example:

- On November 21, 2011, Mr. Olbermann refused a request by Current to participate on the premiere of "The Young Turks with Cenk Uygur," the "lead-in" show to "Countdown."
- On January 10, 2012, Mr. Olbermann precipitously withdrew from a Television Critics Association event on January 13, 2012.
- On January 17, 2012, and on many other dates, Mr. Olbermann refused to approve an advertising campaign or promotional spots featuring "Countdown" alongside "The War Room with Jennifer Granholm" and "The Young Turks with Cenk Uygur." As his manager, Michael Price, stated in an email to David Bohrmann on March 16, 2012, "you have been informed on numerous occasions that Keith will not approve the use of his likeness in conjunction with the promotion of The Young Turks or The War Room."
- On January 24, 2012, Mr. Olbermann refused to be interviewed for a *Newsweek* article about Current.
- On February 21, 2012, Mr. Olbermann declined an invitation by Sirius/XM Radio to be interviewed on any or all of four different radio talk shows.
- For at least the last six months, and most recently on March 19, 2012, Mr. Olbermann has instructed the "Countdown" staff not to promote the show, and has forbidden them from promoting "Countdown" via Twitter, Facebook or other media outlets.

Mr. Olbermann has attempted to justify his refusal to promote Current's other primetime shows or to be associated with them in any way by alleging that Current did not consult with him about hiring Mr. Uygur or Governor Granholm. This complaint by Mr. Olbermann is belied by the extensive email correspondence and meetings between Current's management and Mr. Olbermann about both hires. Moreover, the fact that Mr. Olbermann now claims not to like the shows, or even that he expressed reservations about the shows initially, does not excuse his performance under the contract. Under the

Agreement, Mr. Olbermann has a right to be *consulted* about the “lead-in” and “lead-out” shows to “Countdown.” He does not have a right of approval.

Mr. Olbermann’s persistent failure to promote Current constitutes material Uncured Defaults under paragraphs 12(c) and 13(a) of the Agreement, and, by itself, entitles Current with ample grounds to terminate the contract. But as set forth below, Mr. Olbermann’s flouting of his obligation to promote the network is far from the only material breach of the Agreement that he has committed.

B. Disparagement and Unauthorized Publicity Activities

Mr. Olbermann has compounded the harm caused by his failure to promote Current by simultaneously disparaging Current and its management through unauthorized comments to the press and on Twitter.

Specifically, in December 2011 and January 2012, Mr. Olbermann made a series of public statements designed to disparage and embarrass Current in connection with a dispute over primary and caucus night Program Specials. In November 2011, Current had requested that Mr. Olbermann anchor election specials beginning with the January 3 Iowa Caucuses. Mr. Olbermann declined, requiring Current to preempt “Countdown” and to air the specials without his participation. Despite being fully informed of Current’s programming plans and clearly understanding that he would be preempted on January 3, Mr. Olbermann told *The New York Times* on December 29 that “Countdown” would air at its regular time that day. Although Mr. Olbermann knew he would not be on the air on January 3, he failed to inform the show’s staff, each of whom reported for work on January 3. Later that day, Mr. Olbermann commented on Twitter that he was “headed into the office” to prepare an episode of “Countdown”—which he knew not to be true—and followed that comment a short time later with a Twitter message that he was “informed Countdown will not be on tonight,” and that he would “defer on all questions to @JoelHyatt @AlGore and @Current.”

Mr. Olbermann’s gamesmanship garnered considerable press attention, all of it negative for Current. Following the Iowa Caucuses, on January 4, Mr. Olbermann told *The Hollywood Reporter*—by way of purported explanation for his absence from Current’s election coverage—that he had not been given a “legitimate opportunity” to host the coverage under “acceptable conditions.” This was simply not true and was intended to disparage Current and create an impression that Current had behaved inappropriately in connection with its primary and caucus coverage.

By letter dated January 5, Current put Mr. Olbermann on notice that his misleading pronouncements to the public and the press breached paragraph 16(a)(i) of the Agreement, prohibiting him from disparaging Current or engaging in unauthorized “publicity activities.” This notice was ignored. On January 6, Mr. Olbermann (or his

representatives), disclosed to *Deadline/Hollywood* that Current told Mr. Olbermann earlier that day that he would have “carte blanche” over election night coverage, only to “do[] a complete 180.” That unauthorized and unwanted publicity also was not true and, by letters dated January 6 and January 7, Current provided Mr. Olbermann with notice of this further breach.

C. Unauthorized Absences

Mr. Olbermann has also repeatedly absented himself from “Countdown” by taking unauthorized days off. In January and February alone, Mr. Olbermann was absent 19 out of 41 working days.

As Current has repeatedly reminded Mr. Olbermann, paragraph 8 of the Agreement requires that vacation be “taken at times mutually reasonably satisfactory to Company and Artist.” This provision is highly material in light of Mr. Olbermann’s unique importance to Current’s primetime schedule and Current’s overall ratings. He has repeatedly breached this provision.

In December 2011, Current learned from “Countdown’s” executive producer that Mr. Olbermann intended to take vacation for the week between Christmas and New Year’s Day, and had instructed the entire staff to do so as well. Current was not consulted on either decision and his unilateral decision to release the staff left Current with a gaping hole in its primetime programming schedule, leaving Current no choice but to re-run dated Countdown episodes. Mr. Olbermann’s conduct, in addition to violating paragraph 8, also infringed upon Current’s right under paragraph 2(a)(ii) to make all scheduling decisions relating to the program.

On January 8—immediately after his dispute with Current over election specials—Mr. Olbermann told Current that he would be taking a weeklong vacation from January 9 through January 13. By letter of January 30, Current advised Mr. Olbermann that his unauthorized absence in January was a material breach because it was without proper and reasonable notice to Current and without consultation or approval.

On February 27, after being absent 19 days in the previous two months, Mr. Olbermann sought approval for vacation on March 5 and April 5. Current approved the vacation request for April 5, but did not agree that a vacation day could be used on March 5. Current denied the request because March 5 fell one day before Super Tuesday, and was therefore a particularly significant political news day on which its star anchor would be expected by “Countdown’s” viewers to show up for work.

By letter of March 2, 2012, Mr. Olbermann was given formal notice that March 5 was not approved as a vacation day, and that a decision to take vacation on

March 5 would be deemed a material breach of the Agreement. Mr. Olbermann ignored this directive, and opted instead to once again breach the Agreement.

D. Unauthorized Selection of Guest Host for "Countdown"

On fully half of Mr. Olbermann's 22 absences from "Countdown" in 2012, he unilaterally and without approval selected David Shuster as his guest host. The use of Mr. Shuster as guest host on these occasions was a material breach of the Agreement. Mr. Shuster is an able correspondent and has been engaged by Current to fill that role. In that position, Mr. Shuster has made valuable contributions to the network. But Mr. Olbermann had been told in September 2011 that Mr. Shuster could no longer be used as a substitute host, due to his inability to retain most of "Countdown's" audience.

Mr. Olbermann completely ignored Current's request to use a different guest host, and he persisted in selecting Mr. Shuster without the prior approval of, or consultation with, Current. On most of these occasions, Mr. Olbermann notified Current only a few hours before "Countdown" aired that he would be unavailable, and that Mr. Shuster was his designated substitute. Consequently, the network had no practical ability to locate other potential guest hosts in place of Mr. Shuster.

Not only did Mr. Olbermann's selection of Mr. Shuster breach the Agreement, but Mr. Olbermann even took steps to undermine the success of the show on those nights he was absent by instructing Mr. Shuster not to promote his appearances on "Countdown" by telling his radio audience that he would be guest hosting "Countdown," or by "tweeting" to his own 40,000 Twitter followers that he would be the guest host. This instruction from Mr. Olbermann to Mr. Shuster not to promote the program undoubtedly contributed to its low ratings whenever Mr. Shuster was the guest host.

Moreover, nothing in the Agreement grants Mr. Olbermann the right to *select* a guest host when he is absent from the show. Rather, Mr. Olbermann has a right under paragraph 4 to approve "whether there shall be a *regular* guest host . . . and approval of the guest host." But it is Current, not Mr. Olbermann, who determines whether "to use a guest host during Artist's vacations or when Artist is otherwise unable to host the Program." Put simply, Current has a right to use a guest host whenever Mr. Olbermann is absent from the show, but he has a right to approve any guest hosts who will appear regularly. Mr. Olbermann's insistence that Mr. Shuster guest host turns the contract on its head. On January 30, and again on February 3, Current provided formal notice to Mr. Olbermann that his repeated designation of Mr. Shuster as guest host constituted a material breach of the Agreement. However, Mr. Olbermann failed to alter his practice, and continued to select Mr. Shuster as the guest host for 5 of Mr. Olbermann's 7 absences in the month of February alone.

E. Refusal to Meaningfully Consult with Current About "Countdown"

Paragraph 2(a)(i) of Mr. Olbermann's contract requires him to "meaningfully consult" with Current about the content of "Countdown." Paragraph 2(a)(ii) requires that he "meaningfully consult" with Current about business decisions relating to "Countdown." Paragraphs 2(c)(i) and 2(c)(ii) require Mr. Olbermann to collaborate with Current about opportunities to build Current's brand and promote the network. All of these obligations are personal to Mr. Olbermann, and none can be delegated to his agents and representatives without Current's consent or approval.

For the last six months, Mr. Olbermann has refused to have any meaningful contact whatsoever with any of Current's senior executives. And he has not consulted Current on major decisions he has unilaterally taken concerning "Countdown." In making decision after decision with no consultation whatsoever with Current, Mr. Olbermann has shown total disregard for the success of Current. To cite one example among many:

- Prior to "Countdown's" launch, Current hired Jim Fenhagen of Jack Morton Production Design Group, one of the most prominent set designers in the television industry, to design and construct a custom, top-of-the-line set for Countdown, to be done in consultation with Mr. Olbermann and pursuant to his requests for the set. The set, which met with Mr. Olbermann's approval, cost the network \$250,000. Following a technical glitch during a broadcast of "Countdown" in which the lights turned off briefly, Mr. Olbermann opened his show the next night with a bizarre candle-lighting ceremony, and thereafter opted to do the show every night against a completely black background. Since that date, Mr. Olbermann does not use the custom designed set and has instructed his guest hosts and "Countdown" staff not to use it either. When Current's President, David Bohrmann, personally requested on March 19 that a guest host use the custom "Countdown" set in Mr. Olbermann's absence, the staff was instructed by Mr. Olbermann to disobey this directive. Nothing in the Agreement permits Mr. Olbermann to unilaterally make these decisions. Indeed, the use of the set is a business decision which Current—not Mr. Olbermann—has the right to make. And this behavior by Mr. Olbermann unfairly places "Countdown's" staff in the position of either ignoring the network's executives, or of disobeying Mr. Olbermann at the risk of being fired by him. A number of staff members have complained about the unacceptable work environment created by Mr. Olbermann's behavior.

Whenever Current attempts to consult with Mr. Olbermann, he refuses, instead assigning his personal obligations to consult with Current to his agents and representatives, none of whom is a party to the Agreement. Mr. Olbermann is not paid to delegate his contractual, personal responsibilities to others. Yet Mr. Olbermann has gone so far as to insist that any communication on any subject be had not with him but with others who he has selected and who do not work for Current. Mr. Olbermann has been told numerous times that the Agreement requires him to “meaningfully consult” with Current’s management over the content of “Countdown” and over business decisions relating to “Countdown,” and that the contract requires his personal input on these matters. In response, Current has been advised time and again that Mr. Olbermann will not communicate with Current’s senior executives, and that they instead should talk to people who do not work for Current and who are not parties to the Agreement.

Mr. Olbermann has been given notice, repeatedly, that his delegation of personal responsibilities under the contract is a material breach, including by letters dated July 12, 2011, October 27, 2011, and February 3, 2012. As with all of his other breaches, Mr. Olbermann has refused to cure.

F. Disclosure of Compensation

In May 2011, Mr. Olbermann approached Current CEO Joel Hyatt and asked for permission to disclose the economic terms of his contract to the press. Mr. Hyatt refused, reciting to Mr. Olbermann for the second time the rationale and importance to Current of keeping that information confidential, as explicitly required by the Agreement. Nonetheless, in June 2011, *The Hollywood Reporter* ran a cover story, and *The Wall Street Journal* ran a story, both describing Mr. Olbermann’s compensation in significant detail. When confronted in person by Mr. Hyatt one day after these publications appeared, Mr. Olbermann admitted that his representatives had leaked this information in violation of paragraph 16(a)(i)—a provision that unequivocally states such disclosure “shall be deemed a material breach of this agreement.”

* * *

The breaches described above provide more than ample grounds for termination of the Agreement. Mr. Olbermann has breached numerous material provisions of the Agreement, and he has flatly refused to perform several of his material obligations. Mr. Olbermann’s actions, individually and cumulatively, have also breached Mr. Olbermann’s representations and warranties under paragraph 11(a)(ii)(E). He has refused to cure, despite being given many opportunities to do so.

Rather than file a lawsuit seeking to recoup all that Current has already paid Mr. Olbermann plus losses and other damages, Current has decided to simply terminate Mr. Olbermann. Consistent with paragraph 13(e)(vi), Mr. Olbermann will

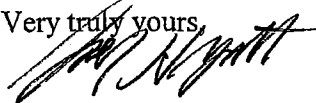
Mr. Nick Khan

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receive no further compensation, and Current will enforce all of its rights and remedies under the Agreement that result from his termination for the reasons set forth in this letter.

You should be aware that, in the event that Mr. Olbermann initiates litigation either as a retaliatory measure or to attempt to gain leverage to extract further payments from Current, Current will not only vigorously defend, it will assert counterclaims seeking to recover from Mr. Olbermann all direct and consequential damages he has caused. This letter is without waiver of, or prejudice to, any of Current's rights, remedies or claims against Mr. Olbermann, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joel Hyatt", written over the typed name.

Joel Hyatt

cc: Al Gore
David Harleston, Esq.
David Bohrman
Charles H. Googe, Jr., Esq.
Bruce Birenboim, Esq.
Jay Cohen, Esq.
Michael Price
Patricia Glaser, Esq.
Jill Basinger, Esq.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 10100 Santa
Monica Blvd., Suite 1725, Los Angeles, California 90067.

5 On April 6, 2012, I served true copies of the following documents described as:

6 **CROSS-COMPLAINT BY DEFENDANT CURRENT TV, LLC**

7 on the interested parties in this action as follows:

8 Patricia L. Glaser, Esq.
9 Jill Basinger, Esq.
10 Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
11 *Attorneys for Plaintiffs Olbermann Broadcasting Empire, Inc. and Keith
Olbermann*

12 **BY MAIL:** I enclosed the document in a sealed envelope addressed to each interested
13 party at the address indicated above or on the attached service list. I placed each such envelope
for collection and mailing, following our ordinary business practices. I am readily familiar with
14 Kendall Brill & Klieger LLP's practice for collecting and processing correspondence for mailing.
On the same day that the correspondence is placed for collection and mailing, it is deposited in the
15 ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on April 6, 2012, at Los Angeles, California.

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20 _____
Richard M. Simon
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