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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HOLLYWOOD FOREIGN PRESS
ASSOCIATION

Plaintiff,

v.

RED ZONE CAPITAL PARTNERS
II, etc., et al.

CASE NO. CV 10-8833 AHM (FMOx)

**COURT'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

INTRODUCTION

Resolution of the dispute that is at the core of this case should not have required a trial. It is a contract dispute over who has the right to license the Golden Globes Award Show for television broadcast. The parties could have settled their differences even before the complaint was filed. Certainly by the autumn of 2011, after discovery had been completed and the main legal issues fully briefed, they were in a position to promote and protect their respective interests by entering into a reasonable compromise. Indeed, they had preliminarily explored some key concepts that could serve their main objectives. (See Findings of Fact ¶¶ 134-146.)

1 Yet sometimes it does take a trial to enable litigants to reach a
2 compromise, and presiding over the trial was a pleasure for this Court: excellent
3 lawyers on both sides, some colorful witnesses and numerous issues of law.

4 The Court concludes that the defendants, who will be referred to as “dcp”
5 (dick clark productions), are entitled to a declaration that their interpretation of
6 the parties’ agreement is correct. dcp has the right to license the Golden Globes
7 Award Show to NBC (but not to others) so long as NBC commits to broadcast
8 that show, and dcp may do so even without the approval of the Hollywood
9 Foreign Press Association (“HFPA”).

10 What led to this conclusion? The Court specifies the most important
11 factors and principles in the detailed findings of fact and conclusions of law that
12 follow. What the Court is compelled to note here is that there is an overriding
13 feature of the lengthy relationship between dcp and HFPA that helps explain
14 how it came to pass that HFPA granted such sweeping rights to dcp. That
15 feature is simply this: HFPA suffered from the absence of sound, business-like
16 practices. See, *e.g.*, ¶¶ 83, 91 and 156-170. It also lacked consistent leadership.
17 It elected a new President every year for a one year term, with a maximum of
18 two consecutive terms. Some elections triggered bitter feelings. HFPA
19 members have always been dedicated to the success of the Golden Globes
20 Award Show. But often they succumbed to bouts of pronounced turmoil and
21 personal feuds. (See, *e.g.*, Findings of Fact ¶ 356 and fn. 2) In contrast, dcp
22 acted in a consistently business-like fashion, and for almost all of the 27 year
23 relationship it had with HFPA before this suit was filed dcp was represented by
24 one experienced executive who was adept at dealing fairly and effectively with
25 the often amateurish conduct of HFPA.

26 Because HFPA functioned in such an unusual fashion, the emphasis
27 devoted at trial to expert testimony about industry custom and practice proved to
28 be of little, if any, value to the Court. Given that the legal principles applied in

1 this ruling are well-established, it would be surprising if the outcome of this
2 ruling is viewed as a legal precedent. For the story that follows is *sui generis*.

3 4 **FINDINGS OF FACT**

5 **I. BACKGROUND**

6 1. Plaintiff Hollywood Foreign Press Association (“HFPA”) is a
7 registered not-for-profit association in California that comprises approximately
8 80 foreign journalists who cover the entertainment industry. Intellectual
9 property and contractual rights associated with the Golden Globes awards for
10 excellence in film and television are the principal assets of HFPA. The
11 presentation of the Golden Globes Award has generated millions of dollars in
12 annual revenues for the HFPA since the mid-1990s, which are used to fund its
13 operations and charitable giving. (Ex. 789) (Soria Decl. ¶¶ 5-9.) The HFPA and
14 its members expend substantial time and resources to make the Golden Globes
15 Awards Shows successful. (*Id.*, ¶¶ 19-22.)

16 2. Defendant dick clark productions, inc. (“dcp”) is an independent
17 producer of television programming. It produces shows such as the “American
18 Music Awards,” “So You Think You Can Dance,” and the “Golden Globe
19 Awards.” In that role, dcp produces an event or a program to be broadcast on
20 television and secures a contract with a network or other outlet to broadcast the
21 event or program to viewers. In February 2002, dcp was sold to Mosaic Media
22 Group. In June 2007 the Red Zone defendants purchased dcp from Mosaic
23 Media Group. (In these findings and conclusion, the defendants collectively
24 shall be referred to as “dcp” or “Defendants.”)

25 3. The Golden Globe Awards show aired on the National
26 Broadcasting Company (“NBC”) in the 1960s, but NBC declined to renew its
27 license. The show aired again on NBC in 1977 and 1978, and again NBC
28 declined to renew its license. The show aired on CBS in 1981 and 1982; CBS

1 declined, however, to renew its license following the 1982 broadcast, and the
2 Golden Globe Awards show was in peril of not being televised in 1983.

3 4. dcp agreed to become the producer of the Golden Globe Award
4 show after CBS declined to renew its license for the show in 1982. Shortly
5 thereafter, dcp was able to secure a syndication deal for the Golden Globe
6 Awards and the show was televised on local stations throughout the country in
7 1983. Under agreements with HFPA, dcp has produced and distributed the
8 Golden Globe Awards show and licensed that production for television ever
9 since. The parties split the net profits 50-50. (Soria Decl., Ex. 789, ¶¶ 30, 32;
10 RT 29:14-30:6 (La Maina 1/24/12).) Since 1996, the Golden Globe Awards
11 show has aired on NBC under a long-term license agreement that dcp and NBC
12 entered into in 1993, which dcp and NBC extended in 2001 and 2010.

13 5. dcp is responsible for the television-production aspects of the
14 show, including writing the script, providing a television director, and managing
15 the technical aspects of the production such as the stage, cameras, lighting, and
16 sound. dcp and HFPA have mutual control in connection with creative matters,
17 but HFPA has final script approval and creative control over the Awards live
18 presentation. (Ex. 789 (Soria Decl. ¶ 23); RT 77:8-79:23 (La Maina 1/24/12);
19 RT 1661:24-1662:917 (Takla-O'Reilly 2/7/12); Ex. 1; Ex. 5.)

20 6. HFPA's bylaws require that all material contracts be approved by
21 the Board of Directors and General Membership. (Ex. 333.0040; Ex. 415:0038;
22 RT 1538:12-21, 1540:16-1541:7 (Van Blaricom 2/3/12).)

23 7. The principal terms of every production agreement between HFPA
24 and dcp prior to 1993 were discussed and approved by the HFPA Board and/or
25 Membership. (RT 34:16-38:16 (La Maina 1/24/12); RT 485:22-25; 489:8-
26 490:21; 492:1-11 (La Maina 1/26/12); 1983 Agreement: Ex. 100; Ex. 254; 1987
27 Agreement: Ex. 560.0006; Ex. 328; Ex. 326; Ex. 496.0002; Ex. 322; Ex. 448;
28 Ex. 321; Ex. 319; Ex. 318; Ex. 104.0001, 0003; Ex. 311; Ex. 103; 1989

1 Agreement: Ex. 154; Ex. 153.)

2 8. In August 2001, in connection with what became the first
3 extension of the dcp-NBC license, dcp executed an exercise of options, directed
4 to HFPA, to produce and distribute the Golden Globe Awards through 2011.
5 Ex. 4. In October 2010, dcp again executed another exercise of options directed
6 to HFPA, which was identical but for the date to the 2001 document, to produce
7 and distribute the Golden Globe Awards through 2018. (Ex. 20.)

8 9. HFPA claims that dcp had no right to enter into a broadcast
9 license agreement with NBC for any year after 2011 and that the 2010 exercise
10 of options by dcp to extend its agreement with HFPA is invalid. Defendants
11 disagree. They contend that the parties' agreement, as amended in 1993,
12 permitted both the 2010 extension of the dcp-NBC license and the 2010 exercise
13 of options, just as it permitted the 2001 extension and exercise of options.

14 10. The crux of the parties' dispute is whether the 1993 Amendment
15 should be interpreted: (a) to permit dcp to exercise options beyond the eight
16 options specified for the years 1998-2005 upon any "extensions, renewals,
17 substitutions or modifications" of the dcp-NBC license agreement only if HFPA
18 approves of any such "extensions, renewals, substitutions or modifications," as
19 HFPA contends; (b) to permit dcp to exercise only the eight options specified for
20 the period 1998-2005 during that time or thereafter only in the event of a *force*
21 *majeure* event, as HFPA alternatively contends; (c) to permit HFPA to revoke
22 any options granted in the 1993 Amendment, as HFPA alternatively contends; or
23 instead (d) to permit dcp to exercise options beyond the eight specified for the
24 years 1998-2005 upon any "extensions, renewals, substitutions or modifications"
25 of the dcp-NBC license agreement even without HFPA's approval, as
26 Defendants contend.

27
28 11. This action was commenced by HFPA on November 17, 2010

1 (Dkt. No. 1), and an amended complaint was filed on March 9, 2011 (Dkt. No.
2 50). Defendant dcp filed counterclaims for declaratory relief on March 28,
3 2011. (Dkt. No. 53.)

4 12. Pursuant to Court order (Dkt. No. 38), the case was bifurcated on
5 February 21, 2011. Phase I is limited to: “[i]nterpretation of and declaratory
6 relief or equitable relief (*e.g.*, reformation) as to who has the rights and/or
7 options under the parties’ 1987 ‘Golden Globe Awards’ Agreement, as
8 amended, to produce and license the television broadcast of the Golden Globe
9 Awards Show after 2011.”

10 13. Both parties filed motions for summary judgment. On August 8,
11 2011, Judge Fairbank granted Defendants’ motion with respect to HFPA’s
12 reformation claim, ruling that the claim is barred by the statute of limitations.
13 (*See* Dkt. No. 182 at 1-2, 5.)

14 14. Based on these findings of fact and conclusions of law, HFPA’s
15 claim for declaratory relief is denied, and Defendants’ claim for declaratory
16 relief is granted. The Court finds that, pursuant to the 1993 Amendment of the
17 1987 Agreement, (a) dcp has the rights to produce and distribute the Golden
18 Globe Awards show through the current term of the dcp-NBC Agreement (2018)
19 and (b) dcp also has irrevocable options granted by HFPA to do so for any
20 further “extensions, renewals, substitutions or modifications of the NBC
21 Agreement,” with or without HFPA’s approval. (*See* Exs. 3, 576.)
22

23 **II. THE SURROUNDING CIRCUMSTANCES AND THE PARTIES’**
24 **COURSE OF DEALING PRIOR TO EXECUTION OF THE**
25 **1993 AMENDMENT**

26 **A. The 1983 Agreement Between dcp And HFPA**

27 15. At the commencement of the HFPA/dcp relationship, the parties
28 shared the objective of getting the Golden Globe Awards show back onto, and
maintaining it on, a national broadcast network. (RT 367:13-368:23, 382:14-23,

1 (La Maina 1/25/12); RT 1188:1-8 (Berk 2/1/12); RT 1078:20-25 (Orlin 2/1/12);
2 RT 1568:10-15, 1618:2-1619:6, 1631:13-1632:1 (Van Blaricom 2/3/12).)

3 16. In January and February 1983, HFPA and dcp entered into and
4 documented an agreement in which HFPA granted dcp the right to produce and
5 distribute the January 1983 Golden Globe Awards show and four (4)
6 consecutive, exclusive, and irrevocable options to produce and distribute the
7 1984, 1985, 1986, and 1987 Awards shows. The agreement is dated “as of”
8 January 7, 1983, revised January 19, 1983, January 27, 1983, and February 28,
9 1983 (the “1983 Agreement”). (Exs. 5 (agreement), 203; RT 361:12-364:2 (La
10 Maina 1/25/12).) dcp did not receive what the parties referred to as “end-of-the-
11 deal protection,” such as rights of first negotiation and first refusal. (RT 357:21-
12 360:6 (La Maina 1/25/12).) (These terms are defined or described below, in ¶
13 18.)

14 **B. The 1987 Agreement Between dcp And HFPA**

15 17. On July 20, 1987, HFPA and dcp entered into an agreement by
16 which HFPA granted dcp five (5) consecutive, exclusive, and irrevocable
17 options to produce and distribute the Golden Globe Awards show for the years
18 1988 through 1992. The agreement is dated “as of” March 13, 1987, revised
19 July 15, 1987 (the “1987 Agreement”). (Ex. 1 (agreement); RT 370:15-372:4
20 (La Maina 1/25/12).)

21 18. In the 1987 Agreement, dcp sought and obtained end-of-the-deal
22 protection in the form of rights of first negotiation and first refusal.
23 Specifically, Paragraph 1(a) of the 1987 Agreement provides that, if dcp has
24 exercised all of its options under the agreement, dcp and HFPA must enter a 30-
25 day exclusive Negotiating Period 30 days “after the date of first broadcast of the
26 1992 Awards Presentation.” (Ex. 1.) This is the “right of first negotiation.”
27 Paragraph 1(b) of the 1987 Agreement provides that if the parties do not reach
28 an agreement during the Negotiating Period HFPA could offer rights to the show

1 to another party, but not on terms less favorable than dcp's last offer, and only
2 after it gives dcp a right to accept those terms. This is referred to as dcp's right
3 of first refusal and it was to be "applicable until such time as HFPA shall have
4 entered into an agreement with a third party pursuant to all of the foregoing
5 provisions or July 15, 1992, whichever first occurs." (Ex. 1.) These two
6 provisions were the subject of negotiations between dcp and HFPA prior to the
7 execution of the 1987 Agreement. (Exs. 81, 103, 316; RT 372:6-13 (La Maina
8 1/25/12).)

9 19. Paragraph 6 of the 1987 Agreement addresses "creative control"
10 over the show and provides that HFPA shall have creative control unless dcp
11 licenses the show for national television network broadcast, in which case "dcp
12 and HFPA shall have mutual creative control" (Ex. 1; RT 372:14-18 (La
13 Maina 1/25/12).)

14 20. (a) Paragraph 7 of the 1987 Agreement—which relates to
15 "television production aspects" of the Golden Globe Awards and identifies dcp's
16 rights with respect to distribution and exploitation of its "television
17 production(s)"—provides that dcp alone shall "have control over all matters
18 relating to the distribution and exploitation of the rights granted to it pursuant to
19 this agreement." (Ex. 1; RT 372:19-373:7 (La Maina 1/25/12).)

20 (b) Paragraph 9 of the 1987 Agreement provides that dcp will
21 "provide copies of all contracts relating to the exercise of its rights pursuant to
22 this agreement to a designated representative of HFPA for informational
23 purposes" (Ex. 1; RT 373:8-374:3 (La Maina 1/25/12).)

24 21. The 1987 Agreement expressly provides HFPA a right of "prior
25 approval" in Paragraph 10, but that approval right is limited to dcp's issuance of
26 publicity relating to the show. (Ex. 1; RT 374:4-11 (La Maina 1/25/12).)

27
28 22. Paragraph 19 of the 1987 Agreement states: "This agreement

1 contains the entire agreement of the parties, supersedes all prior negotiations
2 and/or agreements, and may only be or amended or modified by written
3 instrument signed by the party to be charged. Neither party has entered into this
4 agreement in reliance upon any promise or representation not contained in this
5 agreement.” (Ex. 1.)

6 23. In 1988, dcp secured an agreement with the national cable network
7 TBS for a significantly higher license fee than had been available during the
8 years of syndication. In that agreement, dcp granted TBS rights to televise the
9 Golden Globes Award Show for two additional years (1991 and 1992). The
10 agreement is dated June 17, 1988. (Ex. 150.)

11 24. In a letter to the HFPA Board dated August 30, 1988, Philip
12 Berk, a longtime and key member of HFPA, wrote, in relevant part: “Of course
13 we are indebted to Dick Clark for rescuing the Golden Globe Show in its darkest
14 hours, but by the same token we shouldn’t allow ourselves to be taken advantage
15 of. Perhaps we acted too hastily in giving Dick Clark a blanket endorsement of
16 the Turner agreement. We might have asked for tentative approval and
17 additional time to study the deal before we gave them carte blanche. I trust that
18 our unanimous vote is not legal and binding.” (Ex. 641.) Although there is no
19 evidence that Berk or the HFPA actually took further steps to repudiate HFPA’s
20 consent to the TBS-dcp agreement, this communication is an early example of
21 the unorthodox manner in which some of HFPA’s key representatives
22 sometimes acted in their dealings with dcp.

23 **C. The 1989 Agreement Between dcp And HFPA**

24 25. In November 1989 dcp and TBS arranged to enter into another
25 agreement. The 1989 dcp-TBS Agreement provided TBS with rights to televise
26 the show through 1995. Under the 1987 Agreement, however, dcp had options
27 to produce and distribute the Golden Globe Awards only through 1992. To
28 allow dcp to enter into and execute the 1989 TBS Agreement, HFPA and dcp

1 entered into an amendment to the 1987 Agreement, dated November 13, 1989,
2 by which HFPA granted dcp five (5) additional options to produce and distribute
3 the Golden Globe Awards show for the years 1993 through 1997. The
4 amendment is dated November 13, 1989 (the “1989 Amendment”). (Ex. 2
5 (agreement); RT 380:21-382:23 (La Maina 1/25/12).)

6 26. On November 6, 1989, a meeting of the HFPA Membership was
7 held. dcp representatives were present, and HFPA’s agreement with dcp was
8 discussed. (Ex. 154.) At that meeting, HFPA’s President stated that “[t]he
9 [1989] agreement would essentially be the same terms as the last contract,” and a
10 vote was then taken by the Membership without the Membership having
11 reviewed the written agreement. (Exs. 154, 789 (Soria Decl. ¶ 35 (“The
12 members were not shown a copy of the 1989 amendment.”).) The members
13 approved the agreement.

14 27. Consistent with HFPA’s usual practice, the membership approval
15 of the 1989 Amendment took place outside the presence of dcp. (Ex. 154; RT
16 1261:13-1262:10 (Berk 2/2/12).)

17 28. In the 1989 Amendment, as in 1987, dcp secured end-of-the-deal
18 protections. They provided that dcp would continue to have rights of first
19 negotiation and first refusal. The 1989 Amendment modified the 1987
20 Agreement (and the rights of first negotiation and first refusal granted there) as
21 follows: “This will also confirm that the reference in Paragraph 1(a) to ‘1992’
22 shall be changed to ‘1997’ and the reference to July 15, 1992 in Paragraph 1(b)
23 of the Agreement shall be changed to ‘July 15, 1997.’” (Ex. 2.) In addition, the
24 1989 Amendment provided dcp with options sufficient to cover dcp’s grant of
25 rights to TBS under the 1989 TBS Agreement and two additional options for the
26 years 1996 and 1997. (Ex. 2; RT 70:19-73:5 (La Maina 1/24/12); RT 380:21-
27 382:23 (La Maina 1/25/12).) The 1989 Amendment provides: “Except as stated
28 above, all of the terms of the [1987] Agreement shall remain in full force and

1 effect.” (Ex. 2.)
2

3 **III. THE 1993 AMENDMENT AND THE EXTENSIONS CLAUSE**

4 **A. dcp Secures An Agreement For The Golden Globe Awards To**
5 **Air On NBC**

6 29. In 1993, with four years still remaining on its contract with HFPA,
7 dcp informed HFPA of an opportunity to secure a network broadcast license for
8 the Golden Globe Awards show. (Ex. 157; RT 72:18-73:23, 76:15-77:7 (La
9 Maina 1/24/12).)

10 30. In April 1993, dcp asked HFPA’s Board to grant it five additional
11 annual options so it could pursue that opportunity. The HFPA declined to grant
12 additional options up front (Ex. 160) but HFPA did authorize dcp to “go ahead
13 with negotiations for the purpose of obtaining a multi-year contract for the
14 Golden Globe Awards Show with a television network” and stated that, “if such
15 a contract is achieved through [dcp’s] efforts, [dcp’s] contract with the
16 Hollywood Foreign Press Association will be renewed to cover the number of
17 years with the network.” (Exs. 105, 179.)

18 31. On May 3, 1993, in a letter to active HFPA members, HFPA’s
19 President asked those members to indicate their approval of the Board’s decision
20 authorizing dcp to “research the possibilities of a more favorable deal for our
21 Golden Globe Awards—and, if such a deal is made with a network, to extend the
22 contract with the said production company [*i.e.*, dcp] to cover the network
23 contract.” (Ex. 6.)

24 32. From April to September 1993, dcp and NBC negotiated the terms
25 of a proposed broadcast license agreement whereby NBC would agree to license
26 the rights to broadcast three Golden Globe Awards shows for the years 1996
27 through 1998, with an option in favor of NBC to broadcast three additional
28 shows for the years 1999 through 2001, and, if that option were exercised, an

1 additional option in favor of NBC to broadcast four additional shows for the
2 years 2002 through 2005 (the “dcp-NBC Agreement”). (Exs. 158, 177.) If NBC
3 exercised both options, it would have a right of first negotiation and first refusal
4 to seek to obtain continued broadcast rights to the Golden Globe Awards show
5 beyond 2005. (Exs. 38, 575.) The proposed 3-3-4 broadcast license could be
6 accelerated two years if TBS relinquished its rights to televise the 1994 and 1995
7 Shows. (RT 146:16-147:4 (La Maina 1/24/12); Ex. 177.0004.) Thus, the
8 proposed broadcast license was subject to many permutations. It could begin in
9 1994 or 1996. It could run three years if NBC exercised no option, six years if
10 NBC exercised only its first option, and 10 years if NBC exercised both of its
11 options. (Exs. 110.0004-05, 177; RT 107:8-108:23 (La Maina 1/24/12).)
12 Accordingly, NBC’s commitment to televise the show could expire as early as
13 1996 (if the contract was accelerated to 1994 and NBC did not exercise any
14 options) and as late as 2005 (if the contract commenced in 1996 and NBC
15 exercised both of its options). (Exs. 110.0004-05, 177; RT 146:16-147:4 (La
16 Maina 1/24/12).)

17 33. On September 2, 1993, meetings of the HFPA Membership and
18 Board were held. The status of the dcp-NBC negotiations regarding a proposed
19 agreement was discussed. (Exs. 7 (“She [Mirjana Van Blaricom, who was
20 HFPA’s President at the time] said NBC network is in negotiations with Dick
21 Clark Productions... Dick Clark and the board of directors will discuss the
22 details and it will be brought to the membership” and reflecting that “[q]uite a
23 number of members participated in the discussion of the NBC Golden Globe
24 Award subject.”), 107 (“She said in the very near future there will be a meeting
25 of the General Membership with Dick Clark Production to discuss the NBC
26 network ---- Golden Globe Award deal.”); RT 1554:15-1555:8, 1619:7-1621:12
27 ///

28 (Van Blaricom 2/3/12).) The future meeting Van Blaricom referred to was held

1 on September 22, 1993.

2 **B. The September 22, 1993 Meeting**

3 34. A most unusual feature of this contract dispute is that there is an
4 undisputed verbatim transcript of the September 22, 1993 HFPA Members
5 meeting that La Maina attended. (Ex. 110.) Understandably, the parties attach
6 critical importance to what was said – and not said – at that meeting, and they
7 referred to the transcript in their extensive questioning of the several trial
8 witnesses who were there: La Maina, Berk, Orlin, Soria and Van Blaricom.
9 Both sides agree that what the transcript reflects is relevant to understanding the
10 very language of the 1993 Amendment, the parties’ respective communicated
11 intent, and the object and nature of the 1993 Amendment.

12 35. Certain aspects of the September 22, 1993 meeting bear on the
13 degree to which it supports or refutes each side’s contentions.

14 (a) First, Dick Clark was present and he spoke enthusiastically (and with
15 no small amount of pride) about the breakthrough dcp had achieved in the
16 proposed NBC deal. Ex. 110, p.9.¹ It is highly likely that for many of the
17 HFPA attendees, whose professional lives revolved around the personalities and
18 lives of celebrities, Clark’s very presence induced or fueled a sense of euphoria.
19 The potential deal with NBC - - a multi-year network commitment for the
20 Golden Globes Award Show, after so many years of second-tier broadcasts –
21 was extremely important and exciting to HFPA.

22 (b) Second, both before and after the statements that the Court has
23 summarized below were made, many of the HFPA members spent inordinate
24 amounts of time focusing on trivial matters. They fussed about the start time for
25 the broadcasts; the length of the show (2 v. 3 hours); the format (how much
26 entertainment? dinner setting v. theatre?); what day of the week the show would
27 _____

28 ¹ References to the pages are not to the Bates stamp, but to the original transcript.

1 be broadcast; and whether to serve soup or caviar (p. 19), etc. Moreover, they
2 bickered about whether members were hogging the floor (p. 16). This
3 unbusiness-like display of misplaced priorities was characteristic of how HFPA
4 often functioned throughout the years,² and it is consistent with the inference –
5 which this Court draws – that on September 22, 1993 most of the HFPA
6 members were far less interested in the terms of the dcp-HFPA contract that La
7 Maina left behind for them to review than they were with the heady prospect of
8 being on NBC. This is confirmed persuasively by the testimony of Van
9 Blaricom, who stressed that - - referring to the fact that HFPA’s previous deal
10 with CBS had been cancelled - - the members’ biggest concern was “not to be
11 cancelled; that we behave.” (RT 1626:6 (Van Blaricom 2/3/12).)

12 (c) Third, La Maina indicated that he understood that the HFPA members
13 looked to him to provide full and accurate information. (RT 173:2-11; 183:22-
14 184:11 (La Maina 1/24/12).) Although La Maina described the principal terms
15 of the “NBC Agreement” he did not provide HFPA with a copy of the dcp-NBC
16 agreement. (As is shown below, however, he did leave copies of the amendment
17 _____

18 ² The conduct of HFPA members at many of the meetings for which there are tapes,
19 transcripts or minutes is astounding. As Van Blaricom acknowledged, “We had
20 arguments on everything . . . [such as] furniture” (RT 1631 (Van Blaricom
21 2/3/12).) For example, at a general membership meeting held on October 7, 1995,
22 “Judy Solomon moved that the Minutes be dispensed with. There was a loud roar
23 of Nos from the floor.” (Ex. 263-1.) There then ensued such disagreement that the
24 president called a recess and “then stormed out of the room. [Then] members began
25 shouting from the floor that the Minutes be read.” (*Id.*) A few weeks previously,
26 a number of members had noted in writing that the president had “belittled and
27 attacked” another member at a meeting. (Ex. 629-2.) Even when there were no
28 outbreaks of hostility and acrimony, HFPA members would get side-tracked by
minutiae. For example, an attendee at one of the 2009 discussions with dcp about
the parties’ relationship noted, “To my surprise the discussion moved to the 6 or 12
tickets they [dcp] are entitled to. That was a diversion uncalled for and the cost just
a drop in the bucket.” (Ex. 257.)

1 to the dcp-HFPA Agreement that dcp sought.)

2 (d) Fourth, although there are references to the 1993 Amendment in the
3 transcript of the September 22, 1993 meeting, nowhere does any witness actually
4 recite any of the language in that agreement. At trial, counsel sought to have the
5 witnesses who were present on September 22, 1993 give testimony supportive of
6 their respective side's position on the meaning of the extensions clause. While
7 that questioning was entirely appropriate, the September 22, 1993 meeting
8 occurred more than 18 years ago. To the extent that witnesses were, in essence,
9 being asked to go beyond the transcript and recount from their memories what
10 they believed was "really going on," the Court finds that such testimony is of
11 limited value, especially the testimony of the HFPA witnesses (as opposed to La
12 Maina throughout his stint on the stand, who was the most consistently credible
13 witness).

14 36. In any event, the Court finds that in the transcript (Ex. 110) each
15 side can point to statements that support its contentions about the 1993
16 Amendment. Here is a summary.

17

Item	Speaker	Statement	Original Transcript Page
18 19 20 21	La Maina	NBC contract not firm for 10 years. 3 + 3 + 4. "A ten year term if they [NBC] exercise all their options."	11
22 23 24	"Avik"	You [dcp] negotiate [with NBC] and you tell us and we more or less deal with you.	15
25 26	La Maina	And always subject to your approval.	15

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4	La Maina	I'm asking that the contract be extended for the period of time necessary to fulfill the NBC agreement.	18
	Jean	It sounds fair.	18
5	Orlin	The integrity of the show and the financial terms both sound very advantageous to us, but . . . "How long are we associated with Dick Clark Productions?"	20
6	Orlin	". . . how is our tie-in with Dick Clark working?"	20
7	La Maina	". . . we're asking you to extend our contract for as long as necessary to satisfy the NBC term and not longer than that . . . I hope it's ten years."	20

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8	La Maina	“Our deal with NBC is finished. This is as a result of six months negotiation guaranteed so long as you say it’s a deal.”	21
	Berk	“I’m 100% for it.”	21
	Van Blaricom	“What you should understand. Dick Clark is us. We do share everything with them so whatever they sign; whatever they get we get half of it so it’s in their interest to achieve the best deal so you should understand it’s the same like (Inaudible). Their signing is like our signing.”	21
	La Maina	“Yes.”	
9	La Maina	“The sequence of events that everyone understands is you execute an amendment with us that says we extend Dick Clark for as long as necessary to fulfill the NBC deal. The minute that’s signed, I sign an NBC contract and we’re finished.”	23

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10	Van Blaricom	“Let’s - - who approves of their presentation can raise their hands so these guys can go ahead and - - with the presentation. Who approves and that they go ahead and they have to sign. Approve the contract.”	26
11	La Maina	“We need a - - all right. Let me do it again. We need a - - we need a verbal approval right now to close our deal with NBC.”	26
12	La Maina	“So we - - we now have a favorable approval to close our deal with NBC. The second thing we have - - unanimous. The second thing we need is a formal extension of our contract. The minute that’s signed, I sign the NBC deal and we’re finished so you now have the papers to discuss with your attorneys or whoever you’d like to discuss them with.”	26

13	“Yani” Van Blaricom	“To make it for the record, could we have a signed . . . instead of a verbal?” “Everybody can just put a yes on a sign-in sheet by their name. Everybody put yes. Okay?”	27
14		The sign-in sheet (Ex. 111) contained 31 outright “yes” votes and two “yes” votes with not entirely legible qualifications. No one voted “no.”	

37. Items 1 and 7 of the foregoing summary support Plaintiff’s contention that the separately-executed 1993 Amendment must be interpreted to have had a maximum ten year duration. In addition, items 4 and 9 could be viewed as consistent with that construction, given La Maina’s statements in items 1 and 7. Moreover, item 3 supports Plaintiff’s contention that HFPA did not give up its right of approval over any deal with NBC (or any entity, for that matter) that dcp may have negotiated.

38. On the other hand, items 2, 4 and 9 support dcp’s view that so long as there was or would be an NBC deal, dcp could not and would not be put out of or kept out of the picture. Moreover, items 5 and 8 reflect just how pleased HFPA was with the deal that dcp had secured from NBC, and items 10 and 13 show that the huge benefits of that deal were far more important to almost all of the members than were the precise terms or duration of the “papers” that La

1 Maina was leaving for them to discuss with their attorneys (item 12). In
2 addition, that La Maina understood and accepted that the membership had to
3 approve those papers, and that he was perfectly receptive to having the
4 membership discuss those papers in his absence and with their own attorneys,
5 utterly refutes the notion that he or dcp were intent on deceiving HFPA or taking
6 advantage of it. Finally, La Maina's comments in items 11 and 12 indicate that
7 the deal with NBC was approved orally before he left the meeting.

8 39. HFPA's then-president Van Blaricom testified that on September
9 22, 1993 the HFPA members continued to meet after La Maina left, that the
10 1993 Amendment was read and explained to members, (it is not clear whether it
11 was read "by" or read "to" them), and that a half-hour discussion ensued. (RT
12 1601:11-17; 1602:13-15 (Van Blaricom 2/13/12).) Van Blaricom further
13 testified that while the specific scenario of dcp extending the NBC deal without
14 HFPA's knowledge or consent was not then discussed, what *was* said did reflect
15 an understanding by the members that as long as dcp kept the show on NBC, dcp
16 had the rights to the show. ("It was like till death do us part. Nobody is – we're
17 all happy that we had a deal. We had nothing at that point.") (RT 1605:17-
18 1606:3 (Van Blaricom 2/3/12).)

19 40. Van Blaricom has a long history of animus towards and bias
20 against HFPA stemming from her separation from HFPA in the mid-1990s. In
21 1994, the HFPA determined that Van Blaricom had violated HFPA rules and
22 standards by taking HFPA funds without approval and by secretly invoicing and
23 accepting payment from dcp without approval. (Exs. 346, 497, 629, 702; 789
24 (Soria Decl. ¶ 51).) Van Blaricom was later expelled from the HFPA,
25 unsuccessfully sued for reinstatement, established a rival international press
26 organization, and threatened publicly to embarrass HFPA. (Exs. 348, 349, 350,
27 351, 626, 789 (Soria Decl. ¶ 52).) (See ¶¶ 158-160.)
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1 41. Van Blaricom's grievances concerning HFPA were evident in her
2 trial testimony, and her testimony about this membership discussion on
3 September 22, 1993 was not corroborated by any other HFPA member who was
4 present nor by any documentation. Nevertheless, her demeanor, the post-
5 September 22, 1993 circumstances described below and the behavior of the
6 HFPA members reflected in Exhibit 110 and discussed above make this portion
7 of her testimony plausible.

8 42. Prior to or during the September 22, 1993 meeting, dcp
9 provided HFPA three copies of the 1993 amendment to the 1987 Agreement
10 that it had drafted. All were signed by La Maina on behalf of dcp and given to
11 Van Blaricom. (Exs. 3, 110, 111, 506, 577; RT 395:24-396:5; 396:21-397:20
12 (La Maina 1/25/12); RT 1573:9-12; 1574:14-1575:24 (Van Blaricom 2/3/12).)
13 As noted above, La Maina told the Membership at the September 22, 1993
14 meeting: "so you now have the papers to discuss with your attorneys or whoever
15 you'd like to discuss them with." (Ex. 110 at 26.)

16 43. There is no evidence that at the September 22, 1993 discussion
17 following La Maina's departure that Van Blaricom testified about, she
18 distributed copies of the 1993 Amendment that La Maina left behind at the
19 meeting, either to the HFPA Board or to the Membership. But even if the
20 document was not distributed at that time, it was viewed soon thereafter by some
21 HFPA members and accessible to all of them, as the following findings
22 demonstrate.

23 **C. 1993 Events Post-September 22**

24 44. On September 24, 1993, La Maina and Van Blaricom spoke, and, at
25 Van Blaricom's request, La Maina recommended three experienced
26 entertainment attorneys to Van Blaricom. (Ex. 344.)

27 45. On September 24, 1993, Van Blaricom, as President of HFPA,
28 placed and dated her signature on the 1993 Amendment, "9•24•1993." (Exs. 3

1 (agreement), 577, 648; RT 1589:18-20 (Van Blaricom 2/3/12.) Van Blaricom
2 returned the countersigned 1993 Amendment to dcp five days later, on
3 September 29, 1993. (RT 1590:1-11, 1593:6-1601:10 (Van Blaricom 2/3/12);
4 RT 400:2-16 (La Maina 1/25/12).)

5 46. Van Blaricom signed and dated two of the three copies of the 1993
6 Amendment. She returned one copy to dcp (Ex. 577) and kept one copy in
7 HFPA's files (Ex. 3).

8 47. Before Van Blaricom returned an executed copy of the 1993
9 Amendment to dcp, she consulted with Eric Weissmann (who was not one of
10 the lawyers recommended by La Maina) of the law firm of Weissmann, Wolff,
11 Bergman, Coleman & Silverman. (Ex. 794 (4/26/11 Van Blaricom Decl., Dkt.
12 No. 270-1, ¶ 6); RT 1590:1-11, 1592:2-14, 1593:6-1601:17, 1622:25-1624:15
13 (Van Blaricom 2/3/12).) On September 27, 1993, Van Blaricom left a message
14 with a secretary of attorney Weissmann. (Ex. 502.) Then, on September 29,
15 1993, Weissmann and Van Blaricom met for approximately 30 minutes. (Ex.
16 503.)

17 48. Weissmann was a highly respected, sophisticated entertainment
18 attorney. (RT 400:17-401:7 (La Maina 1/25/12); RT 1582:9-1583:6, 1622:25-
19 1623:9 (Van Blaricom 2/3/12).)

20 49. At or before the September 29, 1993 meeting with Weissmann,
21 Van Blaricom gave him the third copy of the 1993 Amendment, which was
22 executed by dcp, but not HFPA. (Ex. 506 (copy of 1993 Amendment produced
23 from files of Weissmann Wolff); RT 1598:19-1600:4, 1623:12-1624:15 (Van
24 Blaricom 2/3/12).)

25 50. After meeting with Weissman, Van Blaricom returned the
26 countersigned 1993 Amendment to dcp's President (La Maina). (Ex. 180; RT
27 400:2-16 (La Maina 1/25/12); RT 1593:18-25, 1601:4-10 (Van Blaricom
28 2/3/12).) However, Weissman did not testify at trial, and other than Van

1 Blaricom’s testimony that she did not return the contract to La Maina until
2 “when I got okay from Eric Weissman”, (RT 1593:10-20), (Van Blaricom
3 2/3/12), there is no evidence that he reviewed the 1993 Amendment with Van
4 Blaricom before she returned it, with her signature affixed, to La Maina.

5 51. Prior to trial, La Maina had never seen HFPA’s bylaws. (RT
6 479:5-9 (La Maina 1/26/12).) Nevertheless, La Maina was aware that Board or
7 Membership approval of contracts was required, but not how it was given. (RT
8 192:10-12 (La Maina 1/24/12).)

9 52. When La Maina received the countersigned 1993 Amendment (Ex.
10 180), he reasonably believed that all necessary conditions for Van Blaricom’s
11 execution of the document had been satisfied and that she had authority to
12 execute the document. RT 222:24-223:16 (La Maina 1/24/12); (La Maina
13 1/25/12); RT 492:25-494:13 (La Maina 1/26/12).) Indeed, Van Blaricom’s
14 actions in this instance (*i.e.*, signing the agreement in her capacity as President
15 of HFPA) were consistent with La Maina’s prior dealings with HFPA, where he
16 relied on the signature of the designated HFPA representative as confirmation
17 that all necessary internal steps had been taken by HFPA to permit it to enter
18 into an agreement with dcp. (RT 35:19-39:3, 154:22-155:16 (La Maina 1/24/12);
19 RT 442:3-443:3 (La Maina 1/26/12).) At the time he received the countersigned
20 1993 Amendment from HFPA, La Maina also had reason to believe that Van
21 Blaricom had consulted with counsel, given his recommendation that she do so.
22 (Ex. 344; RT 396:15-401:13 (La Maina 1/25/12).) In any event, La Maina did
23 not consider the 1993 Amendment “approved” until he received the signed copy
24 of the amendment from Van Blaricom. (RT 492:25-495:5 (La Maina 1/26/12).)

25 53. After receiving the countersigned 1993 Amendment from Van
26 Blaricom on September 29, 1993, La Maina sent a letter to Van Blaricom
27 thanking her for sending the executed 1993 Amendment “as authorized by
28 [HFPA’s] membership” He informed Van Blaricom that “based on that

1 extension [i.e., the 1993 Amendment], we have executed the NBC agreement.”
2 In this letter he also mentioned that he understood Weissmann was functioning
3 as HFPA’s lawyer. (Ex. 180.)

4 54. There is no evidence that before 2002 - - more than eight years
5 later - - any representative of HFPA ever contacted dcp to correct or contradict
6 the statement in La Maina’s September 29, 1993 letter (Ex. 180) that the
7 executed 1993 Amendment was “authorized by [HFPA’s] membership.” (RT
8 421:12-18 (La Maina 1/25/12).)

9 55. Van Blaricom had kept the HFPA membership apprised of
10 developments regarding both the proposed dcp deal with NBC and the
11 HFPA/dcp relationship, including dcp’s desire to continue to produce and
12 distribute the Golden Globe Awards so long as it remained on NBC, both before
13 and after September 22, 1993. (RT 1554:2-1556:3, 1564:10-1565:15, 1566:9-
14 18, 1577:18-1578:9, 1596:24-1597:4, 1601:4-1608:21 (“... and members
15 understood it perfectly – as long as Dick Clark keep us on NBC, he have right to
16 show. It was like till death do us part”), 1617:14-1621:12, 1624:24-1626:6
17 (Van Blaricom 2/3/12).) The Membership’s primary concern at the time was to
18 remain on the network. (RT 1578:15-25, 1618:18-1619:6, 1625:24-1626:6 (Van
19 Blaricom 2/3/12).)

20 56. Van Blaricom reasonably believed she was authorized to execute
21 the 1993 Amendment based on the meetings on September 22, 1993 (RT
22 1569:20-1572:22, 1589:1-10, 1609:6-1610:13 (Van Blaricom 2/3/12)), and on
23 the communications she had with HFPA members that preceded September 22,
24 1993 (RT 1554:2-1556:3, 1564:10-1565:15, 1566:9-18, 1577:18-1578:9,
25 1596:24-1597:4 1601:4-1608:21, 1624:24-1626:6, 1617:14-1621:12 (Van
26 Blaricom 2/3/12)).

27
28 57. On October 1, 1993, NBC delivered to dcp an executed copy of the

1 dcp-NBC Agreement, which granted NBC rights to broadcast three Golden
2 Globe Awards shows for the years 1996 through 1998, an option to broadcast
3 three additional shows for the years 1999 through 2001, and, if that option were
4 exercised, an additional option to broadcast four additional shows for the years
5 2002 through 2005. The agreement provided that, if NBC exercised both
6 options (for a 10-year commitment), it would have rights of first negotiation and
7 first refusal for continued broadcast rights to the Golden Globe Awards beyond
8 2005. (Ex. 575.) The dcp-NBC Agreement is dated “as of” September 9, 1993,
9 as revised September 24, 1993. (Ex. 575.)

10 58. Unbeknownst to dcp, on October 5, 1993, HFPA member Ika
11 Panajotovic, who now is deceased, wrote to Van Blaricom, expressing concerns
12 about the 1993 Amendment and suggesting that “the entire membership should
13 be given a copy of the written proposal to evaluate, agree and/or not agree by
14 voting, or to improve on the deal by saying ‘yes’ or ‘no’ or by a legal fax” and
15 that “HFPA should not sign a one sided long term deal unless it is irrevocably
16 guaranteed for three years.” (Ex. 8.) Given that this document is the only piece
17 of written evidence from 1993 reflecting a concern by an HFPA member about
18 the terms of the 1993 Amendment, it is telling that what Panajotevic was
19 concerned about was not the duration of the agreement, but whether HFPA could
20 obtain an assurance that NBC would not pull out.

21 59. On October 5, 1993, HFPA’s attorney, Weissmann, met with
22 HFPA representatives. Panajotovic was unable to attend the meeting. (Exs. 8,
23 504; RT 1587:16-1589:10 (Van Blaricom 2/3/12).)

24 60. On October 7, 1993, a meeting of the HFPA Membership was held.
25 This time Panajotovic was there. The dcp-NBC Agreement and HFPA’s
26 agreement with dcp were discussed among other things, and “a detailed
27 explanation” of the relationship with dcp was given. No one from HFPA
28 questioned or disaffirmed the 1993 Amendment. (Ex. 263-2; RT 1624:16-

1 1626:6 (Van Blaricom 2/3/12).)

2 61. On October 12, 1993, dcp sent HFPA's attorney (Weissmann)
3 executed copies of the 1993 Amendment, the 1989 Amendment, the 1987
4 Agreement, the dcp-NBC Agreement, and the dcp-TBS agreements. (Ex. 676;
5 RT 421:19-422:21. (La Maina 1/25/12).)

6
7 **D. The Negotiation, Drafting And Execution Of The 1993**
8 **Amendment**

9 62. In conjunction with dcp's negotiations with NBC in 1993, dcp and
10 HFPA agreed on an amendment to the 1987 Agreement (as amended by the
11 1989 Amendment). The entire text of the 1993 Amendment (Ex. 3) is attached
12 to this document as Exhibit 2.

13 63. (a) The 1993 Amendment provides, in relevant part:

14 "This will confirm that the Agreement [between dcp and HFPA] is hereby
15 further amended to provide that HFPA grants to dcp eight (8) additional,
16 consecutive, exclusive, and irrevocable options to acquire the exclusive right to
17 produce a live television broadcast of and to produce on tape or film the Awards
18 for each of the years 1998 through and including 2005, and *for any extensions,*
19 *renewals, substitutions or modifications of the NBC Agreement,* and to exploit
20 such productions in all media throughout the world in perpetuity." The
21 emphasized language is referred to as the "extensions clause."

22 (b) The 1993 Amendment also modified Paragraph 1(a) of the
23 1987 Agreement, as amended by the 1989 Amendment, as follows: "This will
24 also confirm that the reference to '1997' in Paragraph 1(a) of the Agreement as
25 amended shall be changed to, '2005, or the date of the broadcast of the last
26 Awards under the NBC Agreement, whichever is later...'" (Exs. 3, 577.)
27 Paragraph 1(a) of the 1987 Agreement had originally provided that, if dcp has
28 exercised all of its options under the agreement, dcp and HFPA would enter a

1 30-day exclusive Negotiating Period 30 days “after the date of first broadcast of
2 the 1992 Awards Presentation.” (Ex. 1; RT 386:11-387:13 (La Maina 1/25/12).)

3 (c) The 1993 Amendment also modified Paragraph 1(b) of the
4 1987 Agreement, as amended by the 1989 Amendment, as follows: “This will
5 also confirm that the reference to ‘July 15, 1997’ in Paragraph 1(b) of the
6 Agreement as amended shall be changed to read: ‘July 15, 2005, or July 15 after
7 the last broadcast of the Awards under the NBC Agreement, whichever is later.’”
8 (Exs. 3, 577.) Paragraph 1(b) of the 1987 Agreement had originally provided
9 that, after the Negotiating Period, dcp’s right of first refusal “shall be applicable
10 until such time as HFPA shall have entered into an agreement with a third party
11 pursuant to all of the foregoing provisions or July 15, 1992, whichever first
12 occurs.” (Ex. 1; RT 386:11-387:13 (La Maina 1/25/12).)

13 (d) The 1993 Amendment provides that “[e]xcept as stated above,
14 all of the terms of the [1987 Agreement, as amended] shall remain in full force
15 and effect.” (Exs. 3, 577.)

16 64. Unlike in 1983, 1987 and 1989, although La Maina and Van
17 Blaricom discussed the 1993 amendment with each other (see below), the
18 parties did not exchange drafts or written communications about the specific
19 language of the 1993 Amendment. dcp drafted that document. (RT 134:1-
20 138:7) (La Maina 1/24/12).

21 65. La Maina told Van Blaricom (in his words): “Hey Mirjana,
22 you know, if we’re successful on NBC, we don’t -- we don’t -- we do not want
23 to be cut out of the deal. We want to be part of the future of the show.” (RT
24 122:4-24 (La Maina 1/24/12); *see also* RT 155:22-156:15 (La Maina 1/24/12).)
25 La Maina could not remember dates or provide other specific details concerning
26 what he said to Van Blaricom or what she said to him. When asked whether he
27 could remember anything more about their conversation beyond what he
28 described, La Maina indicated he did not recall anything else. La Maina

1 admitted that, whatever was said, he did not understand his conversation with
2 Van Blaricom to have resulted in a binding contract. (RT 122:4-123:2, 124:2-4
3 (La Maina 1/24/12).)

4 66. La Maina and Van Blaricom both testified that the extensions
5 clause was put in the 1993 Amendment to ensure that dcp would remain the
6 producer and distributor of the Golden Globe Awards show on the terms set
7 forth in the 1987 Agreement for as long as the show was broadcast on NBC.
8 (Ex. 794 (4/26/11 Van Blaricom Decl., Dkt. No. 270-1, ¶¶ 6-7); RT 122:4-
9 123:11, 123:21-25; 155:22-156:15 (La Maina 1/24/12); RT 1605:17-1606:3,
10 1607:18- 1608:2, 1616:22-1617:8 (Van Blaricom 2/3/12).)

11 67. La Maina also admitted he never discussed with Van
12 Blaricom the actual words of the so-called “extensions clause” in the 1993
13 Amendment, nor did he disclose that, under his view, dcp would have the
14 unilateral discretion to extend, renew, substitute, or modify the broadcast license
15 with NBC on whatever terms and for whatever duration it deemed appropriate,
16 without HFPA’s knowledge or participation, and even over HFPA’s strenuous
17 objection. (RT 135:5-22; 151:17-153:20; 156:16-157:3; 192:10-193:4
18 (La Maina 1/24/12).)

19 68. The 1993 Amendment was drafted “in-house “ by dcp, with the
20 assistance of its outside counsel, Joel Behr, who was the source for the
21 “extensions clause.” (Ex. 790 (Behr Decl. ¶ 7); RT 138:21-140:10, 143:4-23 (La
22 Maina 1/24/12); RT 1770:4-1774:3 (Behr 2/7/12).) Behr was familiar with
23 extensions clauses, as he had seen them in contracts between “talent” (*e.g.*,
24 actors, musicians, producers) and talent agents or talent agencies (*e.g.*, William
25 Morris, Creative Artists Agency, International Creative Management). The
26 language Behr supplied for use in the 1993 Amendment (*i.e.*, the extensions
27 clause) was taken from a talent agency contract that was located in the office of
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1 the law firm at which he was employed in 1993. (Ex. 790 (Behr Decl. ¶ 7).)

2 69. Behr's understanding at the time he supplied the wording of the
3 extensions clause for the 1993 Amendment and at all times thereafter was as
4 follows: A talent agency contract enables a talent agency to negotiate and
5 procure employment on behalf of the agency's client. In return, the talent agency
6 receives a commission on the employment contracts it secures on behalf of its
7 client during the term of the talent agency contract. If there is an extensions
8 clause in the talent agency contract, the talent agency receives a commission on
9 monies earned under any extension, renewal, substitution, or modification of
10 those employment contracts secured by the agency during the term of the talent
11 agency contract, whether such extensions, renewals, substitutions, or
12 modifications were entered into during or after the term of the talent agency
13 contract. (Ex. 790 (Behr Decl. ¶ 8).) An extensions clause protects the talent
14 agency and ensures that it enjoys the full benefit of the relationship that it
15 generated for the client. Behr's understanding was consistent with industry
16 custom and practice with respect to the use of extensions clauses in talent agency
17 contracts, as outlined below. (Ex. 790 (Behr Decl. ¶ 8); Ex. 792 (Brooks Decl.
18 ¶¶ 11-13); RT 1851:12-1857:13, 1863:14-1865:7 (Brooks 2/7/12).)

19 70. Language substantially similar to the phrase "for any
20 extensions, renewals, substitutions, or modifications" has been used in the
21 entertainment industry in the context of agency agreements, including agency
22 agreements to which dcp had been a party prior to 1993. (Exs. 550, 696, 697,
23 792 (Brooks Decl. ¶¶ 11-13); RT 138:9-140:10, 143:4-23 (La Maina 1/24/12);
24 RT 402:13-406:21 (La Maina 1/25/12); RT 1851:12-1857:13, 1863:14-1865:7
25 (Brooks 2/7/12).) In those agreements, the phrase was used to ensure that an
26 agent receives commissions not only for any deal secured by the agency during
27 the term of the agency relationship, but also for any extensions, renewals,
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1 substitutions, or modifications of those deals that are obtained after the
2 termination of the agency relationship. (Ex. 792 (Brooks Decl. ¶¶ 11-13); RT
3 1407:16-20 (Tenzer 2/2/12); RT 1851:12-1857:13 (Brooks 2/7/12).)

4 71. A producer that brokers (or “sources”) a deal with an exhibitor of a
5 show, such as dcp did here when it secured a deal with NBC to broadcast the
6 Golden Globe Awards, is acting in a manner somewhat similar to a talent agency
7 that obtains a deal on behalf of a client. (RT 1863:14-1865:7 (Brooks 2/7/12).)
8 There are, however, differences. Such a provision typically would not prevent
9 the client from terminating the agent, nor grant the agency the ability to extend,
10 renew, substitute or modify the client’s contracts without the client’s specific
11 agreement. (Ex. 778 (Tenzer Decl. ¶ 17); RT 1449:13-16 (Tenzer 2/2/12); RT
12 1486:17-1487:11 (Tenzer 2/3/12); RT 142:13-143:3 (La Maina 1/24/12).) Both
13 sides’ experts testified that they have never seen the extensions clause, or
14 language like it, used in a television contract or other contract for the purpose of
15 granting additional, potentially perpetual, options or rights to produce a
16 television program. (Ex. 778 (Tenzer Decl. ¶ 18); RT 1447:7-13 (Tenzer
17 2/7/12); RT 1799:9-1800:10, 1817:13-19 (Brooks 2/7/12).) Because of the
18 limitations of the talent agent analogy, and because the language of the
19 extensions clause is not typical in television rights agreements, the Court places
20 minimal weight on the expert testimony.

21 72. In the entertainment industry, ensuring that a party is not cut out of
22 a deal after having devoted its resources to developing and securing
23 opportunities for another party is not unique to talent agencies. Defendants
24 introduced evidence that producers and exhibitors that devote substantial
25 resources to the development, promotion and exploitation of a property (*e.g.*, a
26 film or television show) also desire contractual protection against being cut out
27 of the deal at a later point in time, when the property may have increased in
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1 value. This may take various forms, including rights of first negotiation and first
2 or last refusal, perpetual options or a grant of rights in perpetuity. (Ex. 792
3 (Brooks Decl. ¶¶ 15, 16); RT 740:13-742:17 (Graboff 1/27/12); RT 1846:10-
4 1849:9 (Brooks 2/7/12).) Thus, absent the extension clause and assuming
5 compliance with the then-existing - - *i.e.*, as of autumn 1993 - - rights of first
6 negotiation/refusal, HFPA could have jettisoned dcp after the end of the last
7 option and entered into a new contract directly with NBC.

8 73. Cognizant of this risk,, dcp also sought to protect its
9 investment in other properties it developed and produced, including other
10 recurring events programs such as the Academy of Country Music Awards and
11 Family Friendly Programming, for so long as it continued to exploit those
12 properties. (Exs. 753, 754; RT 431:17-432:2 (LaMaina 1/26/12).) dcp's
13 agreement with the Academy of Country Music grants dcp the right to produce
14 and distribute the Awards show for so long as the show is presented by the
15 Academy of Country Music. (Ex. 753.)

16 74. Of all the recurring event programming known to HFPA's expert
17 David Tenzer, the Academy of Country Music Awards and the Golden Globe
18 Awards are the only two instances in which a rights holder has licensed its
19 distribution rights to a production company such as dcp rather than broadcast
20 rights directly to a network. (RT 1388:8-1389:8, 1422:11-1423:19 (Tenzer
21 2/2/12); 1488:10-1492:25 (Tenzer 2/3/12).)

22 75. There is no evidence of any industry custom or practice that the
23 phrase "and for any extensions, renewals, substitutions or modifications," or
24 variants thereof, is limited to circumstances of *force majeure*. (See, e.g., Ex. 792
25 (Brooks Decl. ¶ 20); RT 423:4-10 (La Maina 1/25/12); RT 1407:16-20 (Tenzer
26 2/2/12).)

1 **IV. THE PARTIES' COURSE OF PERFORMANCE SUBSEQUENT**
2 **TO 1993**

3 **A. HFPA Representatives Review The 1993 Amendment And**
4 **Operate Under It Without Objection Until 2002**

5 76. The Golden Globe Awards show was televised on NBC from 1996
6 through 2011 under the dcp-NBC Agreement, as extended in 2001, and the 1987
7 Agreement between dcp and HFPA, as amended in 1989 and 1993.

8 77. HFPA's contracts, including the 1987 Agreement and the 1993
9 Amendment, have been kept in HFPA's offices and were available for review by
10 HFPA members at any time. (*See, e.g.*, Exs. 3 (1993 Amendment produced from
11 HFPA's files), 116 (1995 letter from La Maina forwarding copy of 1993
12 Amendment to HFPA President Takla-O'Reilly), 576 (1993 Amendment
13 produced from HFPA's files); 648 (redacted January 1997 letter from
14 Weissmann forwarding copy of 1993 Amendment to HFPA President Berk, with
15 extensions clause underlined).³

16 78. On February 16, 1995, acting on behalf of dcp and in response to
17 a request by HFPA's then- (and current) President Aida Takla-O'Reilly, La
18 Maina provided to HFPA additional executed copies of the 1987 Agreement and
19 all Amendments. His letter states that "originals and/or copies had been sent to
20 the Hollywood Foreign Press Association and to the various attorneys for the
21 Hollywood Foreign Press on a number of occasions previously." (Exs. 116
22

23 ³ Phillip Berk is the current Chairman of HFPA's Board; he was previously a
24 member of HFPA's Board, President of HFPA from 1990-1992, 1996-1998, 2005-
25 2007, and 2009-2011, Vice-President of HFPA from 1986-1988, and Treasurer of
26 HFPA from 2000-2002 and 2003-2005. Berk was President of HFPA during dcp's
27 and HFPA's 2010 negotiations at the time dcp executed the 2010 dcp-NBC
28 extension and the 2010 Exercise of Options and when HFPA filed this lawsuit. (Ex.
777 (Berk Decl. ¶ 2).)

1 (1995 letter from La Maina forwarding copy of 1993 Amendment to HFPA
2 President Takla-O'Reilly), 755; RT 434:11-435:13 (La Maina 1/26/12); RT
3 1658:1-24 (Takla-O'Reilly 2/7/12).)

4 79. In or around 1997, HFPA's outside counsel, Robert Yoshitomi
5 reviewed the 1993 Amendment. (Exs. 10, 134 (1993 Agreement produced from
6 the files of Yoshitomi's law firm); 790 (Behr Decl. ¶ 9); RT 1151:19-1152:21
7 (Yoshitomi 2/1/12).)⁴

8 80. On May 20, 1997, dcp and HFPA entered into a further amendment
9 of the 1987 Agreement. The amendment is dated May 20, 1997 (the "1997
10 Amendment"). The 1997 Amendment provides that "[e]xcept for these
11 amendments, all other terms of the Agreement remain in full force and effect."
12 (Exs. 10 (agreement), 134 (1993 Amendment produced from the files of
13 Yoshitomi's law firm); 790 (Behr Decl. ¶ 9); RT 435:16-436:16 (La Maina
14 1/26/12).)

15 81. The 1997 Amendment expressly refers to the 1993 Amendment,
16 was drafted by Yoshitomi (with input from dcp) and was executed by Yoshitomi
17 on behalf of HFPA. (Ex. 10; RT 1149:19-1151:8 (Yoshitomi 2/1/12).)

18 ///

19 ///

20
21 82. On March 3, 1998, NBC exercised its first option under the dcp-
22 NBC Agreement, committing to broadcast the Golden Globe Awards from 1999
23 to 2001. (Ex. 498.)

24 _____
25 ⁴Yoshitomi was outside counsel for HFPA from 1997 to the early 2000s when the
26 1997 Amendment, the 1999 Pre-Show Agreement, the 2001 dcp-NBC Agreement,
27 and the 2001 Exercise of Options all were executed. (Exs. 725-727, 752; RT 809:22-
28 811:25 (Dinnage 1/31/12); RT 1262:19-21 (Berk 2/2/12).)

1 83. On October 12, 1999, Helmut Voss, then-President of HFPA, wrote
2 three HFPA representatives (including then-Secretary Dagmar Dunlevy and
3 Managing Director Chantal Dinnage) and asked that they “please try very hard
4 to find the following Board and General Membership minutes in the office until
5 Friday: July 1993, August 1993 and September 1993. If you cannot find them I
6 want to be reasonably certain that they—like so many others—have been lost.”
7 (Ex. 11; RT 818:21-820:24 (Dinnage 1/31/12).)

8 84. In response to Voss’s request, a partial transcript of the September
9 22, 1993 Extraordinary General Membership Meeting at which the 1993
10 Amendment was discussed was faxed to Voss on October 13, 1999. (Exs. 111,
11 725.0022; RT 853:19-854:16 (Dinnage 1/31/12).)

12 **B. The 2001 Extension Of The NBC License**

13 85. On May 18, 2001, NBC exercised its second option under the 1993
14 dcp-NBC Agreement, committing to broadcast the Golden Globe Awards from
15 2002 through 2005. (Exs. 186, 187.)

16 86. In 2001, dcp saw an opportunity to extend the dcp-NBC Agreement
17 and to secure an even higher license fee for the Golden Globe Awards from
18 NBC. (RT 248:3-249:9 (La Maina 1/25/12).)

19 87. From April to July 2001, dcp and NBC negotiated the terms of a
20 midterm amendment to and extension of the dcp-NBC Agreement, pursuant to
21 which NBC would broadcast the Golden Globe Awards through 2011 in
22 exchange for substantially higher license fees. (Exs. 186, 194, 294; RT 248:3-
23 249:9, 253:20-25 (La Maina 1/25/12).)

24 ///

25 88. On June 11, 2001, after the principal terms of an agreement for
26 NBC to broadcast the Awards show after 2005 had been settled
27 between NBC and dcp (RT 450:9-20 (La Maina 1/26/12); RT 739:11-740:12
28

1 (Graboff 1/27/12), a meeting of the HFPA Board was held. Representatives of
2 dcp were present. La Maina was there, and according to Berk and Soria, so was
3 Dick Clark. La Maina's "talking points" internal memorandum prepared for the
4 June 11, 2001 meeting reflect that he was planning to announce the NBC
5 extension to HFPA's Board and congratulate HFPA on the achievement. (Exs.
6 698, 699.) Nothing in La Maina's notes suggests he was planning to seek
7 approval, which is consistent with his testimony that he did not think approval
8 was necessary. (Exs. 698, 699.) La Maina did not bring copies of any contracts
9 or other legal documents and there was no discussion about any of the contract
10 provisions related to dcp and HFPA nor of any term beyond 2011. (RT 253:4-7,
11 267:7-14 (La Maina 1/25/12).)

12 89. At the June 11, 2001 meeting, dcp made an "informal
13 presentation" to the HFPA Board regarding the amendment and extension of the
14 dcp-NBC Agreement. (RT 250:12-251:3 (La Maina (1/25/12); RT 449:21-
15 450:14 (La Maina 1/26/12).) At the time, dcp already had annual options to
16 produce the Golden Globes through 2005. Therefore, dcp needed six additional
17 options—through 2011—to ensure it could completely fulfill the proposed
18 extended broadcast license with NBC. (Ex. 3.) Nevertheless, dcp did not ask
19 for, and HFPA did not explicitly provide, approval of the amendment to and
20 extension of the dcp-NBC Agreement. (Exs. 513, 562, 698, 699; RT 267:15-
21 269:6, 287:3-288:25 (La Maina (1/25/12); RT 453:24-454:22 (La Maina
22 1/26/12); RT 1700:3-1704:9, 1705:20-1706:13, 1744:8-1746:17 (Dunlevy
23 2/7/12).)

24 ///

25 90. La Maina presented the term of the NBC agreement, what NBC
26 was paying and the need for confidentiality. (RT 267:2-6 (La Maina 1/25/12).)
27 He warned the Board that the proposed 10-year extension with NBC was not
28

1 executed and could be at risk if it was made public. (RT 264:9-266:12 (La
2 Maina 1/25/12); Exs. 79-11, 194-9, 195, 329.) The Board members were
3 extremely enthusiastic and supportive of the news. (RT 252:25-253:3 (La Maina
4 1/25/12).) Berk, Soria and Orlin testified that the Board members voiced their
5 approval. (Exs. 777 (Berk Decl. ¶ 21); 789 (Soria Decl. ¶¶ 55-60); 776 (Orlin
6 Decl. ¶¶ 12-16.)

7 91. HFPA has not found or produced any transcript or minutes of this
8 June 11, 2001 Board meeting.

9 92. In June and July 2001, other documented meetings of the HFPA
10 Board (June 12, June 21, June 28, July 9, July 11) and Membership (July 11)
11 were held. (Exs. 204, 513, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570,
12 571, 644.)

13 93. The Minutes of the June 12, 2001 meeting of HFPA's Board
14 reflect that "the new dick clark productions contract informally introduced to the
15 Board on June 11, 2001 was discussed. In addition, the Board agreed to ask its
16 outside counsel, Robert Yoshitomi, to "review all current and new contracts
17 between the Hollywood Foreign Press Association, dick clark productions and
18 NBC" and "to get back to us and advise." (Exs. 204, 561, 562, 644; RT
19 1699:17-23 (Dunlevy 2/7/12).)

20 94. Soria testified that the new NBC deal was discussed repeatedly at
21 other HFPA Board meetings. (Ex. 789 (Soria Decl. ¶ 62).) There are minutes
22 and agendas for the Board meetings on June 12, (Ex. 562), June 21 (Ex. 563),
23 June 28 (Ex. 565), July 9 (Ex. 567), July 11 (Ex. 569) and for a general
24 membership meeting on July 11 (Ex. 571). Although the agendas for the June
25 28 and July 9 meetings refer to the proposed NBC deal, there are no notations or
26 references to the NBC deal in any of the minutes.

27 95. On June 21, 2001, dcp sent a fax to NBC acknowledging receipt of
28

1 NBC's "proposed draft of the new NBC/dick clark productions, inc. Golden
2 Globes Agreement." (Ex. 193.)

3 96. On July 9, 2001, HFPA's outside counsel, Yoshitomi, sent an email
4 to dcp's outside counsel, Behr, asking about the status of the dcp-NBC
5 negotiations. (Exs. 136, 790 (Behr Decl. ¶ 13).)

6 97. On July 13, 2001, dcp and NBC executed an amendment and
7 extension of the dcp-NBC Agreement, dated "as of" June 11, 2001. (Ex. 79
8 (agreement).) It was the custom and practice at NBC for the "as of" date on an
9 agreement to reflect the date that principal deal terms were reached, even if the
10 agreement were documented or executed on a subsequent date. (RT 739:16-
11 740:12 (Graboff 1/22/12).) The 2001 NBC Extension granted NBC broadcast
12 rights for six years (*i.e.*, for years 2006 through 2011) beyond the existing dcp-
13 NBC agreement. Those years were not covered by the eight specified options
14 (*i.e.*, for years 1998 through 2005) granted to dcp in the 1993 Amendment. (Ex.
15 79.) The source of dcp's options for the six additional years through 2011 was
16 the extensions clause of the 1993 Amendment. (Exs. 3, 4.)

17 98. On July 16, 2001, Behr sent Yoshitomi a fully executed copy of
18 the 2001 NBC Extension. (Exs. 23, 79, 790 (Behr Decl. ¶ 13); RT 1158:23-
19 1159:25 (Yoshitomi 2/1/12).)

20 99. On July 19, 2001, HFPA's President Dagmar Dunlevy sent a
21 letter to the HFPA Membership stating: "We have just been informed by dick
22 clark productions that NBC has firmly committed to telecasting the Golden
23 Globe Awards for the next ten years. In this uncertain show biz climate, this is
24 ///
25 certainly considered extremely good news." (Ex. 21; RT 1705:16-1706:13
26 (Dunlevy 2/7/12).)

27 100. Notwithstanding the testimony of Soria, there is no documentary
28

1 evidence that any presentation was made to the HFPA Board or to HFPA's
2 Membership in June or July 2001 regarding the 2001 amendment and extension
3 of the dcp-NBC Agreement, other than the June 11, 2001 "informal
4 presentation" of La Maina discussed above. (See Exs. 562 (6/12/01 HFPA
5 Board meeting minutes), 563 (6/21/01 HFPA Board meeting minutes), 565
6 (6/28/01 HFPA Board meeting minutes), 567 (7/09/11 HFPA Board meeting
7 minutes), 569 (7/11/01 HFPA Board meeting minutes), 571 (7/11/01 HFPA
8 Membership meeting minutes); see also Exs. 698, 699; RT 267:15-269:6, 287:3-
9 288:25 (La Maina (1/25/12); RT 453:24-454:22 (La Maina 1/26/12); RT 845:11-
10 24, 846:12-847:20 (Dinnage 1/31/12); RT 958:8-14, 976:19-978:25, 985:9-
11 986:12 (Soria 1/31/12); RT 1003:10-1004:11 (Soria 2/1/12); RT 1125:4-16,
12 1126:20-1128:21, 1137:19-1144:2 (Orlin 2/1/12); RT 1700:3-1704:9; 1705:20-
13 1706:13; 1744:8-1746:17 (Dunlevy 2/7/12).) Nor is there written evidence
14 showing that either the HFPA Board or the HFPA Membership was asked to or
15 did approve the 2001 amendment and extension of the dcp-NBC Agreement.
16 (*Id.*)

17 101. The parties disagree vehemently whether HFPA approved the
18 2001 amendment and extension of the dcp-NBC Agreement. HFPA points to
19 the testimony of Berk, Soria and Orlin about what happened at the June 11, 2001
20 meeting to show that it did grant approval. dcp asserts that HFPA did not do so,
21 thereby demonstrating that HFPA understood that the 1993 Amendment granted
22 options to dcp to extend the NBC deal without HFPA's approval. dcp points to
23 the following evidence to support its view that HFPA never even took it upon
24 itself to approve the NBC-dcp deal:

25 (a) the minutes of the Board and Membership meetings for June and July
26 2001 do not reflect any discussions concerning the 2001 amendment and
27 extension of the dcp-NBC agreement except for the minutes of the June 12, 2001
28

1 Board meeting, (*see* Exs. 562, 563, 565, 567, 569, 571); (b) the minutes of the
2 Board and Membership meetings for June and July 2001 do not reflect a vote
3 taken regarding the 2001 amendment and extension of the dcp-NBC agreement
4 (*see* Exs. 562, 563, 565, 567, 569, 571); (c) HFPA’s President at the time,
5 Dagmar Dunlevy, testified that she did not direct the preparer of the minutes to
6 omit anything material from the minutes and, as President, she would not have
7 signed or otherwise approved the minutes if they had omitted anything material
8 (*see* RT 1700:3-1702:13, 1703:12-1704:9, 1745:23-1746:17 (Dunlevy 2/7/12));
9 (d) based on past practice, any concern about confidentiality of the amendment
10 and extension of the dcp-NBC agreement would not have resulted in material
11 omissions from the minutes, as shown by other HFPA minutes which reflect that
12 confidentiality concerns were often stressed to the Board and Membership and,
13 on occasion, were dealt with by a motion to enter into an “executive session,”
14 (*see* Ex. 639-1, RT 839:8-842:18 (Dinnage 1/31/12)); (e) Dunlevy’s July 19,
15 2001 letter, which is dated six days after the dcp-NBC amendment and extension
16 was executed and three days after Behr sent the executed dcp-NBC amendment
17 and extension to Yoshitomi (Ex. 79), states that “[w]e have just been informed
18 by dick clark productions that NBC has firmly committed to telecasting the
19 Golden Globes for the next ten years... this is certainly considered extremely
20 good news,” that “[t]he dcp company will be available to supply additional
21 details at the next general membership meeting,” and that “we will be sending
22 you NBC’s formal press release tomorrow.” (Ex. 21); and (f) there is no
23 evidence of any communication from HFPA to dcp stating that HFPA had, in
24 fact, approved the dcp-NBC amendment and extension. (RT 267:15-269:6,
25 287:3-288:25 (La Maina (1/25/12); RT 453:24-454:22 (La Maina 1/26/12).)

26 102. The Court finds that both sides have taken internally
27 inconsistent positions in certain respects. For example, HFPA argues that in
28

1 1993 it did not knowingly approve the extensions clause because, apart from
2 Van Blaricom’s testimony, there is no evidence – certainly no documentation –
3 that the Board of Directors and the general Membership were aware of and
4 approved such a material provision, as required by HFPA’s bylaws. Yet HFPA
5 also argues that it did approve the 2001 extension, notwithstanding the absence
6 of such documentation. For its part, dcp basically argues that by virtue of its
7 actual customs and practices, HFPA could and did approve the 1993
8 Amendment and extensions clause, notwithstanding any failure of HFPA to
9 adhere to its By-Laws, but that in 2001 the very failure of HFPA to follow its
10 bylaws in supposedly approving the 2001 extension of the dcp-NBC Agreement
11 proves that HFPA did not in fact approve it.

12 103. The Court finds that although HFPA did not formally approve
13 the 2001 extension, viewed realistically it clearly accepted it. The new 2001
14 NBC deal that La Maina described at the June 11, 2011 meeting was such a clear
15 “home run” for HFPA that its members proceeded as if there was no need to
16 adhere to HFPA’s own by-laws to effectuate approval for dcp to enter into that
17 agreement; what HFPA member would possibly object? On the other hand, this
18 finding of *de facto* approval by HFPA does not necessarily mean that HFPA
19 thought La Maina was seeking approval of the 2001-dcp NBC deal on June 11th
20 or that dcp was required to seek HFPA approval of any extensions under the
21 1993 Agreement.

22 ///

23 ///

24 **C. The 2001 Exercise Of Options**

25 104. Prior to the execution of the 2001 NBC Extension, dcp had—under
26 the 1987 Agreement, as amended by the 1993 Amendment—exercised its
27 options to produce and distribute the Golden Globe Awards on an annual basis.
28

1 (See, e.g., Ex. 790 (Behr Decl. ¶ 14); RT 28:15-29:13 (La Maina 1/24/12); RT
2 447:9-17 (La Maina 1/26/12).) After the execution of the 2001 NBC Extension,
3 dcp could have continued to exercise its options to produce and distribute the
4 Golden Globe Awards on an annual basis, as it had done before. (Ex. 1, ¶ 1.)
5 But in or about early August, 2001, HFPA's outside counsel (Yoshitomi) and
6 dcp's outside counsel (Behr) discussed what could happen if dcp exercised
7 all of its options for the full ten-year period covered by the 2001 NBC
8 Extension, but NBC then breached its agreement with dcp. (Ex. 790 (Behr Decl.
9 ¶ 15).) Behr testified that Yoshitomi explained that HFPA wanted its rights fully
10 vested for the duration of the NBC Agreement. (*Id.*)

11 105. Yoshitomi asked if dcp would exercise all of its options at once for
12 the full ten-year period covered by the 2001 NBC Extension (*i.e.*, through the
13 2011 broadcast). (Ex. 790 (Behr Decl. ¶ 15); RT 458:16-460:4 (La Maina
14 1/26/12); RT 1161:22-1163:15 (Yoshitomi 2/1/12).) Yoshitomi agreed to draft a
15 document for dcp to execute that would confirm the exercise by dcp of all those
16 options for the full-ten year period of the 2001 NBC Extension. (Exs. 790 (Behr
17 Decl. ¶ 15), 791 (Cline Decl. ¶¶ 5, 6, 7); RT 1149:3-8 (Yoshitomi 2/1/12).)

18 106. Behr suggested that the document Yoshitomi agreed to prepare
19 should include a recitation of the relevant history of the dcp-HFPA contractual
20 relationship that authorized dcp's exercise of options for the full ten-year period.
21 (Ex. 790 (Behr Decl. ¶ 15); RT 1781:5-25 (Behr 2/7/12).)

22 ///

23 107. Behr assigned an associate of his at the time, Dennis Cline, to
24 further interact with Yoshitomi regarding the exercise of options that HFPA was
25 requesting dcp to exercise. (Exs. 790 (Behr Decl. ¶ 15), 791 (Cline Decl. ¶ 5).)

26 108. On August 9, 2001, Cline spoke with Yoshitomi on the telephone
27 about Yoshitomi's request that dcp exercise all of its options for the full ten-year
28

1 period of the 2001 NBC Extension; *i.e.*, through the 2011 broadcast. (Exs. 636,
2 791 (Cline Decl. ¶ 6-7); RT 1161:24-1163:15 (Yoshitomi 2/1/12).) During that
3 conversation, Yoshitomi stated that in the event that NBC breached its
4 agreement with dcp, HFPA wanted to be a co-claimant with dcp in any suit
5 against NBC. He reiterated that he would draft an appropriate document
6 memorializing the exercise of options and send it to Cline for review. (*Id.*)

7 109. As agreed, Yoshitomi drafted the initial version of what became the
8 2001 Exercise of Options. He sent that draft to Cline on August 14, 2001 via
9 email, with a copy to HFPA's then-President (Dagmar Dunlevy) and HFPA's
10 former President and then-current board member (Helmut Voss). (Exs. 24, 791
11 (Cline Decl. ¶ 8); RT 1164:4-14, 1166:10-1168:7 (Yoshitomi 2/1/12); RT
12 1706:24-1708:23 (Dunlevy 2/7/12).)

13 110. On August 21, 2001, Yoshitomi emailed Behr a revised draft of the
14 2001 Exercise of Options and he sent a copy to Dunlevy. (Exs. 25, 790 (Behr
15 Decl. ¶ 18); RT 1708:24-1709:12 (Dunlevy 2/7/12).) Later that day, Yoshitomi
16 emailed Dunlevy, with a copy to Behr, another draft of the 2001 Exercise of
17 Options. (Exs. 26, 790 (Behr Decl. ¶ 18).) Each draft of the document,
18 including the initial draft, contemplated that it would be signed only by dcp, not
19 by HFPA. (Exs. 4, 24, 25, 26, 27; RT 1165:24-1169:25 (Yoshitomi 2/1/12).)
20 The next day, August 22, 2001, Yoshitomi sent an email to La Maina, with a
21 copy to Dunlevy and Behr, discussing the 2001 Exercise of Options and the
22 ///

23 2001 Pre-Show Amendment (discussed below). (Exs. 27, 790 (Behr Decl. ¶
24 19).)

25 111. On August 22, 2001, dcp executed the 2001 Exercise of Options
26 dated "as of" August 21, 2001. The 2001 Exercise of Options contains the
27 following language, in the fourth WHEREAS clause: "WHEREAS, the [HFPA-
28

1 dcp Agreement] is deemed extended for any extension of the NBC/dcp
2 Agreement.” (Ex. 4). This language also appeared in each draft of the
3 document, including the initial draft prepared by HFPA’s counsel. The
4 document also states that dcp was exercising options to produce and distribute
5 the Golden Globe Awards show through 2011. (Exs. 4, 24, 25, 26, 27; RT
6 462:20-24 (La Maina 1/26/12).) It was signed only by dcp.

7 112. By the time Yoshitomi drafted the 2001 Exercise of Options, he
8 was well versed in the legal and business affairs of HFPA, including HFPA’s
9 relationship with dcp. Among other things, he had negotiated and drafted the
10 1997 Amendment to the 1987 Agreement, been involved with HFPA’s audit of
11 dcp, and negotiated and drafted the 1999 pre-show agreement. (RT 1149:3-
12 1156:9 (Yoshitomi 2/1/12).) Yoshitomi also had received the 1987 Agreement
13 between the parties, the 1989 Amendment to the 1987 Agreement, the 1993
14 Amendment to the 1987 Agreement (RT 1151:19-1152:21 (Yoshitomi 2/1/12).)
15 and the transcript of the September 22, 1993 Membership meeting. (RT
16 1152:22-1153:15 (Yoshitomi 2/1/12).) He also had received and reviewed a
17 copy of the 2001 NBC Extension between dcp and NBC. (RT 1156:10-1161:21
18 Yoshitomi 2/1/12)). Yoshitomi believed that the fourth “WHEREAS” clause he
19 drafted in the 2001 Exercise of Options (“WHEREAS, the Agreement is deemed
20 extended for any extension of the NBC/dcp Agreement.”) was accurate. (Exs.
21 24, 25, 26, 27; RT 1165:24-1168:7 (Yoshitomi 2/1/12).)

22 ///

23 113. The evidence does not show that any presentation was
24 made to the HFPA Membership regarding the 2001 Exercise of Options (*See* Ex.
25 267), or that either HFPA’s Board or its Membership was asked to or did
26 approve the 2001 Exercise of Options.

27 114. No member of the HFPA ever objected to the fourth “WHEREAS”
28

1 clause in the 2001 Exercise of Options. (Exs. 24, 25, 26, 27; RT 1707:24-
2 1709:12 (Dunlevy 2/7/12).

3 115. Concurrent with dcp's execution of the 2001 Exercise of Options,
4 "as of" August 21, 2001, HFPA and dcp also entered into an agreement
5 whereby, among other things, HFPA granted dcp the right to produce and
6 distribute the preshow for the 2002 Awards show and further granted dcp one
7 option to produce and distribute the pre-show for the 2003 Awards show (the
8 "2001 Pre-Show Amendment"). (Exs. 573, 603 (agreement), 636; RT 462:20-
9 463:19 (La Maina 1/26/12).) The 2001 Pre-Show Amendment was also drafted
10 by Yoshitomi. (Exs. 24, 25, 26, 27, 790 (Behr Decl. ¶¶ 21-23), 791 (Cline Decl.
11 ¶ 9); RT 1161:22-1164:7 (Yoshitomi 2/1/12).)

12 116. Unlike the 2001 Exercise of Options, which was executed only by
13 dcp, the 2001 Pre-Show Amendment was executed both by dcp and by HFPA's
14 then-President and then-Treasurer, and is affixed with a proxy for the HFPA
15 seal. (*Compare* Ex. 4 and Ex. 603; RT 482:14-23 (La Maina 1/26/12); RT
16 1164:15-1166:9; 1168:8-1169:25; 1172:1-10 (Yoshitomi 2/1/12).) Unlike the
17 2001 Exercise of Options, the 2001 Pre-Show Amendment was approved by
18 HFPA's Board. (Exs. 266, 573.)

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24 **D. In 2002, HFPA Becomes Unhappy With The Parties'**
25 **Relationship**

26 117. In February 2002, dcp was sold to Mosaic Media Group and
27 Capital Communications CDPQ, Inc. (Ex. 28.)
28

1 118. On February 18, 2002, HFPA notified dcp that it had engaged Alex
2 Hershtik, a certified public accountant and HFPA's corporate accountant at the
3 time, to conduct the annual audit of dcp's Golden Globe Awards show accounts,
4 pursuant to HFPA's audit rights contained in the 1987 Agreement, as amended.
5 (Ex. 83; RT 1711:14-1712:20 (Dunlevy 2/7/12).)

6 119. On April 2, 2002 La Maina sent an email to himself to make a note
7 to exercise additional options following the 2011 Golden Globe Awards show.
8 (Ex. 191.) This was consistent with dcp's interpretation of the 1993
9 Amendment, and before any dispute arose between the parties regarding the
10 import of the extensions clause in that amendment.

11 120. On April 9, 2002, a meeting of the HFPA Membership was held.
12 Representatives of dcp were present, and the sale of dcp was discussed. (Ex. 19;
13 467:24-468:22 (La Maina 1/26/12).)

14 121. At around this time, certain HFPA members grew unhappy with the
15 existing dcp-NBC Agreement and, more generally, with HFPA's business
16 relationship with dcp, as a result of issues unrelated to the terms of the 1993
17 Amendment. These members were displeased that HFPA was not forewarned of
18 the sale of dcp to Mosaic Media Group in 2002 (RT 292:12-25, 297:4-9 (La
19 Maina 1/25/12); RT 463:20-467:23 (La Maina 1/26/12); RT 1709:18-1711:13
20 (Dunlevy 2/7/12); were unhappy with the scope and application of the audit
21 provision in the 1987 Agreement (RT 297:10-15 (La Maina 1/25/12); RT
22 468:23-470:11 (La Maina 1/26/12); RT 1711:14-1712:25, 1714:2-23 (Dunlevy
23 2/7/12); and were unhappy that HFPA was not consulted about an agreement
24 that dcp entered into with Telemundo (a Spanish-language NBC subsidiary) to
25 simulcast the Golden Globe Awards show. (*See, e.g.*, RT 297:16-298:1 (La
26 Maina 1/25/12); RT 470:12-472:24 (La Maina 1/26/12); RT 1718:2-1719:4
27 (Dunlevy 2/7/12).)

1 122. HFPA’s then-President, Dunlevy, believed that, because the
2 Golden Globe Awards show had become far more successful since dcp took it
3 over in 1983, that the overall agreement between HFPA and dcp was outdated,
4 that the 50/50 split of profits was too favorable to dcp, and that the extensions
5 clause in the 1993 Amendment was no longer “fair” to HFPA. (RT 1720:13-
6 1723:2 (Dunlevy 2/7/12) (Dunlevy testifying that it was her opinion that the
7 “starlet had become the star” and that the terms of the dcp-HFPA contract were
8 no longer fair).)

9 123. On July 11, 2002, HFPA’s accountant Alex Hershtik wrote an
10 email to Dunlevy stating that the 1983 Agreement is “totally unfavorable to the
11 HFPA. Luckily, the contract was written by the Dick Clark Company. The
12 courts, usually, favor the underdog. I also think you should get, very soon, a
13 good contract attorney.” (Ex. 84; RT 1714:24-1716:8 (Dunlevy 2/7/12).)

14 124. Soon thereafter HFPA retained Bryan Freedman, a litigator, as
15 outside counsel. (RT 1714:24-1716:8, 1723:3-1724:24 (Dunlevy 2/7/12).)

16 125. On September 11, 2002, Dunlevy sent a letter to dcp stating that
17 Freedman had concluded that the 2001 Exercise of Options was “not valid,” and
18 attaching an unsigned letter from him to the same effect, dated September 4,
19 2002. (Ex. 14; RT 307:5-308:10, 309:20-23 (La Maina 1/25/12); RT 1668:11-
20 1671:13 (Freedman 2/7/12); RT 1723:3-1724:24, 1729:4-1731:24 (Dunlevy
21 2/7/12).) This was done in the hopes of renegotiating HFPA’s agreement with
22 dcp. (Ex. 14; RT 1723:21-1724:2, 1731:12-24 (Dunlevy 2/7/12).)

23 ///

24
25 126. On September 19, 2002, dcp responded. Its letter stated that
26 the 2001 Exercise of Options was “prepared by [HFPA’s] counsel and its
27 signing was coordinated with the signing of the NBC Agreement, again at the
28

1 specific request of [HFPA] and its counsel.” (Ex. 48.)

2 127. From September 19, 2002 to September 25, 2002, the parties
3 exchanged correspondence regarding the September 11, 2002 letter and the
4 validity of the 2001 Exercise of Options. (Exs. 48, 50, 51; RT 310:11-314:8 (La
5 Maina 1/25/12); RT 1671:14-1674:11 (Freedman 2/7/12).)

6 128. On October 3, 2002, in a letter signed by Dagmar Dunlevy and
7 nine other members of the HFPA Board, the HFPA Board withdrew its prior
8 repudiation of the 2001 Exercise of Options, including “[the] letter of
9 September 11, 2002, and the letter of September 23, signed by Bryan
10 Freedman.” (Ex. 57.) HFPA noted in this letter that dcp had offered to
11 withdraw two letters it had sent to HFPA in the course of this dispute.

12 129. Thereafter, HFPA again changed counsel, replacing Freedman with
13 Peter Lopez, a transactional entertainment lawyer. Lopez and litigation counsel
14 for dcp exchanged further correspondence regarding the validity of the contract
15 between dcp and HFPA. (Exs. 72, 74; Ex. 790 (Behr Decl. ¶ 28); RT 321:25-
16 322:4 (La Maina 1/25/12); RT 1733:3-1735:15 (Dunlevy 2/7/12).)

17 130. On December 10, 2002, a meeting of **certain HFPA Board members**
18 **(President Dunlevy, Vice-President Lorenzo Soria and Chairman of the Board**
19 **Lawrie Masterson), a past President (Judy Solomon) and HFPA’s outside**
20 **counsel, Lopez,** was held. Representatives of dcp were present. According to the
21 incomplete and somewhat garbled transcript, various aspects of HFPA’s
22 relationship with dcp were discussed, with considerable emphasis on the

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24 ///

25 Telemundo Agreement. (Ex. 70; 475:22-478:1 (La Maina 1/26/12); RT 1019:8-
26 25, 1063:21-1064:16 (Soria 2/1/12).) At one point, past HFPA President and
27 Board member Judy Solomon stated that:

28

1 Yeah, but, I mean, excuse me for asking a stupid question, you
2 know. I don't know very much legal and so on but how can you
3 sign a contract with NBC on something which you only own half a
4 voice, 50%. I don't know. Because if I am mistaken, I mean two
5 lawyers in one room, [a]ccordingly if you will go through the
6 contract to the extension, excuse me, from 1993 it says that
7 we—you have an extension 'til 2005 or as long as NBC wants it.
8 Okay. I am not going to argue that this was not even brought up
9 because we have minutes of the meeting where you ask only for
10 2005 as was the mistake of a president at that time to allow that
11 particular sentence. Unfortunately, she also signed that (Inaudible)
12 which is also not legal as far as but that's binding. There's no seal.
13 All those things. We have no choice but to accept it but it says
14 NBC. (Ex. 70-5.)

15 131. Although the tape recording apparently was interrupted at that
16 point, no member of HFPA contradicted Solomon's statements at the
17 December 10, 2002 meeting that "we – you have an extension 'til 2005 or as
18 long as NBC wants it" or "[w]e have no choice but to accept it" (RT
19 476:11-478:1 (La Maina 1/26/12); RT 1061:17-1065:7 (Soria 2/1/12).)

20 132. By no later than 2002, HFPA was aware that dcp interpreted the
21 "extensions clause" in the 1993 Amendment to permit dcp to exercise options
22 for any extensions, renewals, substitutions, or modifications of the dcp-NBC
23 Agreement. (Ex. 70; RT 936:12-937:13 (Soria 1/31/12); RT 1017:25-1018:4,
24 1064:17-1065:7 (Soria 2/1/12).) Consistent with this, in ruling on dcp's Phase I
25 Motion for Summary Judgment, Judge Fairbank concluded that "[t]he
26 undisputed facts adequately show that Plaintiff would have discovered any
27 mistake no later than 2002, when a dispute arose over the source of Defendant
28 dcp's options." (Dkt. No. 182, at 5.)

1 133. Notwithstanding such knowledge, HFPA continued to perform
2 under the 1993 Amendment and accept dcp's performance, including for the
3 years 2006 through 2011 (which amounted to options nine through fourteen
4 under the 1993 Amendment). (Exs. 271, 272; RT 1021:19-1023:12 (Soria
5 2/1/12).) However, between April 2003 and July 2005, when dcp submitted
6 letters to HFPA with monetary payments for HFPA's percentage of profits from
7 the exploitation of the Golden Globes, dcp asserted in substance that "deposit of
8 the check will constitute HFPA's affirmation of the continuing validity of the
9 [1987] Agreement as amended and extended." HFPA sent a letter in response to
10 each letter from dcp stating in substance: "Contrary to the position taken in
11 your letter, the HFPA's deposit of sums due to it is not conditioned on our
12 affirmation of any agreements. dcp has no right to withhold or condition these
13 payments, and we are depositing the check unconditionally and without
14 implication to any contracts or other legal matters (except, of course, our
15 acknowledgment that these payments have been received.)" (Ex. 789 (Soria
16 Decl. ¶ 74); RT 333:2-335:18 (La Maina 1/25/12); *e.g.*, Exs. 271, Ex. 515.)
17

18 **E. HFPA Seeks To Negotiate An End To The Extensions Clause In**
19 **The 1993 Amendment**

20 134. Between June and August 2004, meetings of the HFPA Board
21 and Membership were held. HFPA's agreement with dcp was discussed. (Exs.
22 118, 119, 120, 467.) The August 4, 2004 minutes of the HFPA Board and
23 HFPA Membership reflect that HFPA's then-President, Lorenzo Soria,⁵ stated
24 that dcp's then-CEO, Allen Shapiro, had "expressed a desire to retain the so-
25

26
27 ⁵ Lorenzo Soria is a current member of HFPA and was previously a member of
28 HFPA's Board; HFPA President from 2003-2005; and HFPA Vice-President from
2000-2002. (RT 914:3-915:4 (Soria 1/31/12).)

1 called 'perpetuity clause' in dcp's contract with the HFPA. He was, however,
2 willing to offer the HFPA a more attractive profit-sharing arrangement." Soria
3 added that "Mr. Shapiro was informed that the 'perpetuity clause' was a major
4 irritant to the HFPA and promised to seek solutions." (Exs. 118, 119, 120; RT
5 1027:3-23 (Soria 2/1/12); RT 1128:22-1129:24 (Orlin 2/1/12).)

6 135. While Soria was President of the HFPA, a position he held from
7 June 2003 to June 2005, he tried to negotiate a way out of the extensions clause.
8 (RT 1015:2-1017:22 (Soria 2/1/12).)

9 136. In June 2007, Red Zone purchased dcp from Mosaic Media Group.
10 (Ex. 490.)

11 137. On May 6, 2009, a meeting of HFPA's Board was held. HFPA's
12 agreement with dcp was discussed. Then-HFPA President Jorge Camara⁶ stated
13 that a suggestion had been "made by dcp to exchange the existing Contract
14 between dcp and HFPA which is 'for perpetuity' by a Contract binding for 30
15 years." (Ex. 233.)

16 138. Between October 2009, and continuing to early 2010 HFPA
17 sought legal advice and formulated a business strategy to try to negotiate a way
18 out of the extensions clause. (RT 1026:6-25, 1028:9-1029:2 (Soria 2/1/12); RT
19 1291:19-1294:3 (Berk 2/2/12).)

20 ///

21
22 139. On November 24, 2009, former HFPA Board member
23 Frances Schoenberger transmitted an email to one S. Bizio attaching a letter to
24 the HFPA Membership drafted by Jorge Camara, which purported to recite the
25 history of the Golden Globe Awards show. Among other things, Camara wrote:
26

27 ⁶ Jorge Camara attended various HFPA meetings with and regarding dcp. Camara
28 executed the 1983 Agreement on behalf of the HFPA. (*See. e.g.*, Exs. 5, 120.)

1 After two networks dropped us, dcp came to the rescue
2 However, either because we didn't know, we were in need, we had
3 bad advice or poor representation, we signed a contract that is
4 construed for perpetuity. Now, dcp has not been all that bad for us.
5 They produced very good shows, and they did bring us back to
6 network television. NBC again. It is because of this NBC contract
7 that we have a building, that we can travel all over the world to two
8 Film Festivals every year, that we have a staff that facilitates our
9 work. (Ex. 251.)

10 140. On July 18, 2010, an HFPA member named Theo Kingman sent
11 an email to various HFPA members in which he asked, "If a network shows
12 interest in the Globes, what prevents us from cutting a similar deal as our
13 agreement with dcp is set to expire anyway?" That same day former HFPA
14 President Solomon responded as follows: "[R]ead the contracts, our agreement
15 with dcp does not expire[,] only the one that dcp has with nbc." (Ex. 542.)

16 141. On February 8, 2010, HFPA's President Philip Berk sent dcp
17 CEO Mark Shapiro an email notifying dcp that dcp's right to produce the
18 Golden Globes expired after the next show—in January 2011—and inquiring "as
19 to whether it would be in our best interest to begin exploring the nature of our
20 relationship after the January 2011 Globes." Ex. 228, (Berk Decl. ¶ 25). Berk's
21 letter also stated: "Of course, until we agree upon the nature of any such future
22 relationship, I want to ensure that dcp does not seek or agree to any subsequent
23 broadcast licensing agreement with NBC (or anyone else, for that matter) as
24 dcp's options obviously also expire with that last broadcast in January 2011.
25 (Ex. 228.)

26 142. Shapiro responded by email the next day, stating "[a]bsolutely,
27 we should sit down for a series of meetings to get the ball rolling on our future
28 network options and our overall strategy and approach." Shapiro added: "btw

1 [by the way], no need to remind me or ask me not to seek a new licensing
2 agreement for the property. I would never make a move on a network renewal
3 or new home without your involvement. We're together on this." (Ex. 228.)

4 143. From February to October 2010, representatives of dcp and HFPA
5 discussed possible revisions to their existing 1987 Agreement, as amended, for
6 the production and licensing of Golden Globe Awards shows after 2011,
7 including a potential revision to the 1987 Agreement, as amended in 1989, 1993,
8 and 1997. (Exs. 132, 228, 231, 245; RT 524:21-525:9, 543:6-544:20 (Shapiro
9 1/26/12); RT 1301:10-1303:10 (Berk 2/2/12).) Those discussions did not result
10 in any revisions to the parties' agreement.

11 144. As part of these discussions, dcp sought from HFPA additional
12 rights not previously granted to dcp, so that dcp could attempt to "monetize"
13 those rights. (RT 543:2-544:11, 545:14-21, 552:4-10, 603:13-604:7 (Shapiro
14 1/26/12).) The additional rights dcp sought included, among others, digital
15 rights, pre-show rights, post-show rights, excerpt rights, archival rights, and
16 commercial integration rights. (*Id.*) In exchange, dcp was willing to consider
17 altering the 50-50 split of profits from the exploitation of the Golden Globe
18 Awards show and replacing its rights under the extensions clause of the 1993
19 Amendment with a fixed grant of options. (*Id.*)

20 145. dcp also sought the right to shop the Golden Globe Awards to other
21 networks in the event that NBC and dcp were unable to agree to extend the dcp-
22 NBC Agreement prior to the expiration of either the term of that agreement or
23 the negotiating period during which NBC had rights of first negotiation. (RT
24 584:22-585:9, 586:7-24, 613:1-5, 616:7-20 (Shapiro 1/26/12).)

25 146. In the course of negotiating with NBC, Shapiro told NBC
26 executives that dcp could not conclude a new broadcast license agreement
27 through 2018 without HFPA's consent and approval. (Exs. 217, 219, 221, 223,
28 226; RT 559:12-562:11; 565:14-566:14; 571:6-572:5 (Shapiro 1/26/12); RT

1 717:3-720:25; 723:3-724:1 (Graboff 1/27/12).) This statement is flatly in
2 conflict with dcp's legal arguments in this case. Shapiro testified that these
3 statements were merely part of a negotiation strategy to obtain the best terms
4 possible from NBC, not because he believed HFPA approval was actually
5 necessary. (RT 559:12-560:13 (Shapiro 1/26/12).)⁷

6
7 **F. In 2010, Dcp Extends The NBC Broadcast License And**
8 **Exercises Additional Options In The Same Manner As In 2001**

9 147. On May 3, 2010, dcp and NBC "enter[ed] into early discussions .
10 . . . regarding an extension of the term of NBC's rights" under the dcp-NBC
11 Agreement beyond 2011. (Ex. 214.)

12 148. During dcp and NBC's negotiations in 2010, NBC sought from dcp
13 rights that NBC had not previously been given, including, among others, digital
14 rights, preshow rights, post-show rights, rights to select the venue, and rights to
15 select the date of the Awards show. (RT 729:6-732:16 (Graboff 1/27/12).) For
16 some of these new rights NBC sought, dcp in turn sought those rights from
17 HFPA, in conjunction with the ongoing discussions between dcp and HFPA
18 about the restructuring of their relationship. (RT 608:6-609:19 (Shapiro
19 1/26/12).)

20
21 149. In July 2010, while dcp and HFPA were in discussions about
22 restructuring their relationship, HFPA's then-President Berk and CBS's Chief
23 Executive Officer Leslie Moonves met in person. (RT 1305:7-1307:10 (Berk
24 2/2/12); Ex. 779 at 16-18, 52:1-58:7 (Moonves 2/2/12).) At the time, Berk
25

26
27 ⁷ This prompted NBC's Marc Graboff to criticize him for being untrustworthy. (See
28 Ex. 221-3.) Although Shapiro may have forfeited any right to complain about such
criticism, perhaps his negotiating tactics may boost his "street cred" as a shrewd
executive in the fabled world of Hollywood deal-making.

1 understood that, under paragraph 1(a) of the 1987 Agreement, HFPA was
2 prohibited from “discuss[ing] with any third party the production, sale, or
3 licensing” of the Golden Globe Awards until after the expiration of dcp’s rights
4 of first negotiation with HFPA. (RT 771:21-772:9 (Calabrese 1/27/12); RT
5 1305:7-1307:10, 1308:1-10, 1311:16-1312:22 (Berk 2/2/12).) Nevertheless, in
6 what Berk characterized as an “off the record” discussion, Berk solicited an offer
7 from Moonves. (RT 1306:8-1307:10, 1311:16-1312:22, 1315:2-23 (Berk
8 2/2/12); Ex. 779 at 16-18, 52:1-58:7 (Moonves 2/2/12).) Berk’s conduct in this
9 regard was consistent with the view he expressed in 1988 that perhaps a
10 “unanimous vote [by HFPA] is not legal and binding.” (See ¶ 24.)

11 150. dcp was not aware of Berk’s conversations with Moonves. (RT
12 629:5-631:2 (Shapiro 1/26/12).)

13 151. In September 2010, dcp pressured NBC to close negotiations and
14 begin documentation of an extension of the dcp-NBC Agreement. dcp was eager
15 to close the deal because it believed that a number of looming marketplace
16 activities threatened to decrease the value of the Golden Globe Awards show,
17 including: (i) Comcast’s impending acquisition of NBC; (ii) then-NBC Chief
18 Executive Officer Jeff Zucker’s anticipated departure from NBC following
19 Comcast’s acquisition of NBC; (iii) the possibility that the National Football
20 League might announce that its regular season would be extended to 18 games;
21 and (iv) the possibility that the Academy Awards might move its show to earlier
22 in the year. (RT 615:10-622:13 (Shapiro 1/26/12); RT 730:22-731:21 (Graboff
23 1/27/12).)

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25
26 152. On October 29, 2010, dcp and NBC executed an extension of the
27 dcp-NBC Agreement, pursuant to which NBC would broadcast the Golden
28 Globe Awards show from 2012 through 2018. In exchange, NBC agreed to pay

1 substantially larger license fees – an average annual license fee of \$21.5 million.
2 The extension is dated October 21, 2010, “as of” September 30, 2010. (Ex. 211
3 (agreement).)

4 153. In exchange, NBC did not receive any of the additional rights it
5 attempted to acquire during the negotiations. (Ex. 211; RT 608:6-609:19
6 (Shapiro 1/26/12); RT 729:6-732:16 (Graboff 1/27/12).) NBC’s lead negotiator,
7 Graboff, testified that the average annual license fee of \$21.5 million that NBC
8 agreed to pay was higher than the market value of the rights licensed. (RT
9 730:22-732:16, 737:23-739:10 (Graboff 1/27/12).) It thus appears that by
10 deceiving NBC, or at least attempting to, Shapiro managed to obtain more
11 money for HFPA (and for dcp).

12 154. On October 29, 2010, dcp executed a document entitled “Exercise
13 of Options,” stating that dcp was exercising its options to produce and distribute
14 the Golden Globe Awards show through 2018. (Ex. 210.) The text of the 2010
15 Exercise of Options is identical to the 2001 Exercise of Options, except for the
16 date. (Ex. 210 at 2.)

17 155. HFPA filed this lawsuit on November 17, 2010. (*See* Complaint,
18 Dkt. No. 1.) Since that time, dcp has produced and distributed the Golden Globe
19 Awards show in both 2011 and 2012. For both shows, dcp and HFPA
20 collaborated effectively, and all sides considered both shows a success. (RT
21 597:10-598:6 (Shapiro 1/26/12); RT 1662:23-1663:5 (Takla O’Reilly 2/7/12).)

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26 **V. THE MANNER IN WHICH HFPA HAS OPERATED**
27 **DURING THE RELEVANT PERIODS**

28 156. As noted above (*see* ¶ 6), HFPA’s bylaws state that “[a]ll material

1 agreements, contracts or any instruments transferring or in any manner affecting
2 the real or personal property owned or held by the Association, or the title
3 thereto, shall be executed by the President and the Treasurer under the seal of the
4 Association, but only after the said documents or contracts so to be executed
5 shall have been submitted to and approved by the Board of Directors and
6 approved by a majority of all the Active members.” (Ex. 333 § 13.2 (1991
7 HFPA Bylaws); RT 807:6-25 (Dinnage 1/31/12).)

8 157. Notwithstanding these requirements, HFPA has sometimes
9 operated in a manner over the course of many years that is inconsistent with
10 these bylaws. (*See, e.g.*, Exs. 1 (1987 Agreement: not executed by Treasurer; no
11 seal); 2 (1989 Amendment: not executed by Treasurer; no seal); 3 (1993
12 Amendment: not executed by Treasurer; no seal); 10 (1997 Amendment: not
13 executed by President or Treasurer; no seal); 560 (less than a majority of active
14 members present to approve 1987 Agreement); 111 (less than a majority of
15 active members were present); RT 479:10-482:13 (La Maina 1/26/12); RT
16 807:8-808:11 (Dinnage 1/31/12); RT 1070:3-1071:24 (Orlin 2/1/12); RT
17 1245:3-1249:9 (Berk 2/2/12).)

18 158. Prior to execution of the 1993 Amendment, some members of
19 HFPA believed its then-President (Van Blaricom) had violated HFPA’s bylaws
20 and exceeded the scope of her authority in a variety of ways. Complaints
21 unrelated to the 1993 Amendment were made against Van Blaricom between
22 July and September 1993. (Exs. 628, 629; RT 924:7-25, 931:8-932:4 (Soria
23 1/31/12); RT 1194:19-1196:2 (Berk 2/1/12).) These complaints were discussed
24 by the HFPA Grievance Committee meeting on September 17, 1993. (Exs. 497,
25 630, 631.) dcp was unaware of the complaints and the Grievance Committee
26 meeting. (RT 222:6-23 (La Maina 1/24/12); RT 406:22-415:12 (La Maina
27 1/25/12); RT 937:14-938:5 (Soria 1/31/12); RT 1197:19-1199:5 (Berk 2/1/12).)

28 159. In addition, following Van Blaricom’s signing the 1993

1 Amendment, on April 20, 1994, HFPA’s Fact Finding Committee issued a report
2 stating that Van Blaricom and a colleague “invoiced DCP directly, without
3 telling the HFPA” for certain work they had performed. The report characterized
4 this “a brech [*sic*] of fiduciary obligation.” (Ex. 346; RT 1117:4-1120:4 (Orlin
5 2/1/12).) However, the Fact Finding Committee Report also concluded that:
6 “[T]here is widespread disregard of the bylaws: Nobody seems to care about the
7 check writing limits . . . We were repeatedly told that this had been going on for
8 years and decades. We do not know if this is an excuse for continuation of such
9 practices.” (Ex. 346.)

10 160. On April 26, 1994, Van Blaricom relinquished her responsibilities,
11 but not her title, as President of HFPA. She also relinquished her right to serve
12 on the Board after her term as President ended. (Exs. 347, 702; RT 225:8-11,
13 228:5-8 (La Maina 1/24/12); RT 424:3-425:16 (La Maina 1/25/12).) In 1996,
14 HFPA revoked Van Blaricom’s membership privileges. She sued for
15 reinstatement, and a judgment in favor of HFPA and against Van Blaricom was
16 entered. (Exs. 348, 349, 351.)

17 161. The 1993 Amendment — executed by Van Blaricom on HFPA’s
18 behalf — was available for review by HFPA’s Membership prior to and
19 following its execution. Despite various internal complaints against Van
20 Blaricom that she violated HFPA’s bylaws and exceeded the scope of her
21 authority, and despite HFPA’s later revocation of her membership privileges,
22 HFPA never claimed before [December 10, 2002](#) that Van Blaricom agreed to the
23 extensions clause in the 1993 Amendment in derogation of her duties or in
24 excess of her authority as President. (Ex. 70; RT 421:2-18 (La Maina 1/25/12).)

25 ///

26 162. On various occasions prior to 2002, a fully executed copy of the
27 1993 Amendment was provided to and reviewed by successor Presidents,
28 including Takla-O’Reilly in 1995, Berk in 1997, and Voss in 1999; by other

1 members and officers of HFPA; and by HFPA's outside counsel. (Exs. 10, 11,
2 116, 134, 648.

3 163. Although by no later than 2002, HFPA was aware of dcp's
4 understanding of the 1993 Amendment, as well as Van Blaricom's execution of
5 it purportedly in excess of her authority, as well as other acts by Van Blaricom
6 that HFPA believed were in violation of its Bylaws or in excess of her authority,
7 HFPA failed to take legal action against Defendants until November 17, 2010.
8 (Dkt. No. 1; (RT 936:12-937:13 (Soria knew of dcp's interpretation in 2002)
9 (Soria 1/31/12); 1120:5-19 (Orlin did not review the 1993 Amendment even
10 though he knew of a series of grievances against Van Blaricom for violating the
11 bylaws) (Orlin 2/1/12).)

12 164. During the period in which HFPA delayed filing suit: (i)
13 documentary evidence has been lost and memories have undoubtedly faded; (ii)
14 some witnesses such as Gene Weed and Ika Panjotovic, have become
15 unavailable due to death, illness, or other reason; (iii) dcp has invested
16 significant time, money, effort, and reputation in producing the Golden Globe
17 Awards show. (*See, e.g.*, Ex. 472 (4/9/2008 HFPA Membership meeting
18 minutes reflecting dcp's efforts to expand opportunities for HFPA and the
19 Golden Globe Awards); RT 369:2-370:1, 382:24-383:20 (La Maina 1/25/12).)

20 165. HFPA's regular practice is to tape record its meetings, including its
21 Board and Membership meetings. (RT 812:15-814:9, 882:21-885:4 (Dinnage
22 1/31/12); RT 1688:25-1690:18 (Dunlevy 2/7/12).) Sometimes transcripts of the
23 meetings, or partial transcripts of the meetings, are prepared from the tape
24 recordings. (Exs. 19, 64, 729, 730; RT 812:15-814:9, 815:15-817:25 (Dinnage
25 1/31/12).) HFPA's Executive Secretary then prepares minutes of the meetings
26 with the assistance of either the tape recording or the transcript. (RT 812:15-
27 814:9, 882:21-885:4 (Dinnage 1/31/12); RT 1688:25-1690:18 (Dunlevy
28 2/7/12).)

1 166. In August 1999, HFPA moved offices to where it is located today.
2 (Ex. 582; RT 872:23-873:11, 874:20-876:22 (Dinnage 1/31/12).) In or around
3 that time, then-HFPA President Voss instructed Chantal Dinnage, HFPA's
4 officer manager, to assist in collecting and organizing HFPA's historical records,
5 including HFPA's records of its past Board and Membership meetings. (Exs.
6 11, 731; RT 818:3-822:13, 874:20-876:22 (Dinnage 1/31/12).) During HFPA's
7 organization of its historical records, Voss created a list of General Membership
8 meetings for the period 1989 to 1998 and indicated on that list whether the
9 minutes for those meetings either existed or were missing. (Ex. 731.)

10 167. The list reflects the existence of minutes for the September 22,
11 1993 Membership meeting. (Ex. 731; RT 821:2-8 (Dinnage 1/31/12).) Indeed,
12 at the next Membership meeting on October 7, 1993, the members debated
13 whether to read aloud the minutes from the previous Membership meeting
14 (September 22, 1993) and the Board meeting of September 17, 1993. (Ex. 263;
15 RT 820:8-821:21, 823:11-826:25 (Dinnage 1/31/12).) The members "made a
16 compromise, that the minutes of the last membership meeting could be
17 dispensed with, but they insisted that the minutes taken at the special Board
18 meeting be read." (Ex. 263.) The minutes of these meetings are missing. (RT
19 820:8-821:21, 823:11-826:25 (Dinnage 1/31/12).)

20 168. There is conflicting evidence with respect to what happened to
21 HFPA's tape recordings of the Board and Membership meetings prior to 1999.
22 Dinnage testified that, in 1999, then-HFPA President Voss ordered then-HFPA
23 Executive Secretary Dunlevy to destroy all of HFPA's tape recordings of its past
24 Board and Membership meetings. (RT 895:6-896:4 (Dinnage 1/31/12).)
25 Dunlevy testified that no such order was given and that "[t]here is no need to
26 have anything destroyed or disappear." (RT 1690:23-1692:10 (Dunlevy
27 2/7/12).) In any event, all of HFPA's tape recordings of its Board and
28 Membership meetings prior to 1999 are missing. (RT 895:6-896:4 (Dinnage

1 1/31/12.) In addition, numerous tape recordings of HFPA's Board and
2 Membership meetings after 1999, which likely involved discussions germane to
3 the dispute between dcp and HFPA, are missing. (RT 887:6-888:7; 889:2-
4 890:12 (Dinnage 1/31/12).)

5 169. Tape recordings are missing of the following Board and
6 Membership meetings, which likely involved discussions germane to the dispute
7 between dcp and HFPA: (1) the April 8, 1993 Board Meeting with dcp
8 representatives; (*see* Ex. 105; RT 822:12-823:10 (Dinnage 1/31/12)); (2) the
9 September 2, 1993 Board and Membership meetings at which Van Blaricom
10 updated the Board and Membership about dcp's ongoing negotiations with NBC
11 (Exs. 7, 107; RT 895:13-896:4 (Dinnage 1/31/12)); (3) the September 22, 1993
12 Board and Membership meetings (Exs. 109, 110; RT 820:8-821:21, 895:13-
13 896:4 (Dinnage 1/31/12)); (4) the October 7, 1993 Membership meeting at
14 which a "detailed explanation" of the 1993 Amendment was given (Ex. 263; RT
15 895:13-896:4 (Dinnage 1/31/12)); (5) the June 11, 2001 informal Board Meeting
16 at which La Maina informed the Board of the 2001 NBC Extension (RT 850:25-
17 851:3 (Dinnage 1/31/12)); (6) the June 12, 2001 Board meeting at which
18 HFPA's Board discussed the 2001 NBC Extension (Ex. 562; RT 851:4-6
19 (Dinnage 1/31/12)); (7) the Board meetings on June 21, 2001, June 28, 2001,
20 July 9, 2001, and July 11, 2001, as to which the minutes reflect no discussion of
21 dcp or the 2001 NBC Extension (Exs. 563, 565, 567, 569; RT 851:6-20
22 (Dinnage 1/31/12)); (8) the July 11, 2001 Membership meeting for which the
23 minutes reflect no discussion regarding either dcp or NBC (Ex. 571; RT 851:20-
24 852:2 (Dinnage 1/31/12)); (9) the December 10, 2002 Board Meeting where
25 Solomon stated that dcp has "an extension 'til 2005 or as long as NBC wants it"
26 (*see* Ex. 70); (10) the August 4, 2002 Board and Membership meetings at which
27 the "'perpetuity clause' in dcp's contract with the HFPA" was described by
28 HFPA as "a major irritant" (*see* Exs. 118, 120); and (11) the May 6, 2009 Board

1 meeting during which then-HFPA President Camara discussed a suggestion
2 “made by dcp to exchange the existing Contract between dcp and HFPA which
3 is ‘for perpetuity’ by a Contract binding for 30 years” (*see* Ex. 233.)

4 170. In late 2002, then-HFPA Executive Secretary Theo Kingma failed
5 to prepare minutes for various Board meetings, including the minutes for Board
6 meetings on June 19, 2002, July 10, 2002, August 1, 2002, September 4, 2002,
7 October 1, 2002, and October 3, 2002. (Exs. 47; RT 827:3-830:22, 834:21-
8 835:9 (Dinnage 1/31/12).) Tape recordings are also missing from several
9 meetings for which minutes were not prepared, including the September 4, 2002
10 Board Meeting which preceded Dunlevy’s September 11, 2002 letter to dcp
11 repudiating the 2001 Exercise of Options (*see* Ex. 47; RT 834:24-835:6
12 (Dinnage 1/31/12)); the October 1, 2002 Board Meeting at which matters
13 relating to Dunlevy’s September 11, 2002 letter were discussed (*see* Ex. 47; RT
14 834:24-835:6 (Dinnage 1/31/12)); and (5) the October 3, 2002 Board Meeting at
15 which an HFPA resolution was discussed regarding the withdrawal of Dunlevy’s
16 September 11, 2002 letter to dcp. (*see* Exs. 14, 47, 55; RT 850:14-23 (Dinnage
17 1/31/12).)

18 CONCLUSIONS OF LAW

19 In Phase I of this litigation, the parties dispute their respective rights with
20 regard to a single clause in the 1993 Amendment, which provides that “HFPA
21 grants to dcp eight (8) additional, consecutive, exclusive and irrevocable options
22 to acquire the exclusive right to produce a live television broadcast of and to
23 produce on tape or film the Awards for each of the years 1998 through and
24 including 2005, *and for any extensions, renewals, substitutions or modifications*
25 *of the NBC Agreement*, and to exploit all productions in all media throughout the
26 world in perpetuity.” (Ex. 3.) The italicized words constitute what the parties
27 have referred to as “the extensions clause.”

28 Plaintiff HFPA seeks a judicial declaration that the disputed clause of the

1 1993 Amendment: (a) permits dcp to exercise options beyond the eight specified
2 for the years 1998-2005 upon any “extensions, renewals, substitutions or
3 modifications” of the dcp-NBC license agreement only if HFPA approves of any
4 such “extensions, renewals, substitutions or modifications”; and/or (b) permits
5 dcp to exercise any of the eight options specified after the period 1998-2005 in
6 the event of a *force majeure* event; and/or (c) permits HFPA to revoke any
7 options granted in the 1993 Amendment under the extensions clause. To the
8 declaration HFPA requests, Defendants assert defenses of: statute of limitations,
9 laches, waiver, unclean hands, and ratification.

10 Defendants also seek a judicial declaration – namely, that the extensions
11 clause permits dcp to exercise options beyond the eight specified for the years
12 1998-2005 upon *any* “extensions, renewals, substitutions or modifications” of
13 the dcp-NBC license agreement, with or without HFPA’s approval. To the
14 declaration dcp seeks, HFPA asserts affirmative defenses of: lack of
15 consideration, mistake, unclean hands, estoppel, and lack of authority.

16 In the event Defendants’ contract interpretation is adopted by the Court,
17 HFPA seeks a ruling that the 1993 Amendment is invalid and should be
18 cancelled or otherwise not enforced on the ground that Mirjana Van Blaricom,
19 the HFPA President who negotiated and executed the 1993 Amendment on
20 behalf of HFPA, lacked authority to do so.

21 The parties agree that this Court has subject matter jurisdiction over the
22 Phase I claims, affirmative defenses and counterclaims. The parties also agree
23 that these disputes are governed by California law. The burden of proof lies
24 with the party asserting each claim, counterclaim or defense, except for the
25 burden of proving agency and the scope of the agent's authority, which rests
26 upon the party asserting the existence thereof. *Cal. Viking Sprinkler Co. v. Pac.*
27 *Indem. Co.*, 213 Cal. App. 2d 844, 850 (1963).

28 **A. dcp’s Interpretation Is The Most Reasonable**

1 **1. The Elements Of A Claim For Declaratory Relief**

2 The elements of HFPA’s and Defendants’ respective claims for
3 declaratory relief are: (a) an actual and substantial controversy has arisen, and
4 now exists, between Defendants and HFPA concerning their respective rights
5 and duties under the 1987 Agreement, as amended; (b) Defendants and HFPA
6 have adverse legal interests; (c) the controversy is of sufficient immediacy and
7 reality to warrant the issuance of a declaratory judgment; (d) the parties desire a
8 judicial determination of the parties’ respective rights and duties under the 1987
9 Agreement as amended; and (e) a judicial declaration is necessary and
10 appropriate in order to set at rest the respective rights and obligations of the
11 parties. *See Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1222 (9th Cir. 1998);
12 Cal. Prac. Guide: Fed. Civ. Pro. Before Trial § 10:24 (The Rutter Group 2012).
13 Declaratory relief is appropriate where the judgment will “serve a useful purpose
14 in clarifying and settling the legal relations in issue, and . . . will terminate and
15 afford relief from the uncertainty, insecurity, and controversy giving rise to the
16 proceeding.” *DeFeo v. Procter & Gamble Co.*, 831 F. Supp. 776, 778 (N.D. Cal.
17 1993) (quoting *Guerra v. Sutton*, 783 F.2d 1371, 1376 (9th Cir. 1986)).

18 There is a justiciable controversy between HFPA and dcp regarding the
19 meaning of the 1993 Amendment, and declaratory relief is appropriate because it
20 will clarify and settle the parties’ rights and obligations with respect to the 1993
21 Amendment, and eliminate uncertainty, insecurity and doubt as to the meaning
22 of the 1993 Amendment.

23 Under the applicable rules of contract interpretation and for the reasons
24 explained below, Defendants are entitled to a judicial declaration that the 1993
25 Amendment grants dcp the option to extend its rights to produce and distribute
26 the Golden Globe Awards show beyond 2005 for “any extensions, renewals,
27 substitutions or modifications of the NBC Agreement,” with or without HFPA’s
28 approval.

1 **2. The Applicable Rules Of Contract Interpretation**

2 **(a) Discerning The Parties' Intent**

3 The fundamental goal of contract interpretation is to give effect to the
4 mutual intention of the parties at the time of contracting. Cal. Civ. Code § 1636;
5 *Morey v. Vannucci*, 64 Cal. App. 4th 904, 912 (1998). A court must determine
6 what the parties meant by the words used, in light of all the circumstances. *Pac.*
7 *Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 38
8 (1968) (“*PG&E*”); Cal. Civ. Code § 1638 (“The language of a contract is to
9 govern its interpretation, if the language is clear and explicit, and does not
10 involve an absurdity”); *Id.* § 1639 (“the intention of the parties is to be
11 ascertained from the writing alone, if possible; subject, however, to the other
12 provisions of this Title.”); *Binder v. Aetna Life Ins. Co.*, 75 Cal. App. 4th 832,
13 852 (1999) (while “it is assumed that each term of an agreement has a
14 reasonable rather than an unreasonable meaning . . . parties are free to make
15 agreements which seem unreasonable to others.” (internal quotations and
16 citation omitted)); *South-Western Pub. Co. v. Simons*, 651 F.2d 653, 657 (9th
17 Cir. 1981) (rejecting argument that an agreement to revise text in perpetuity was
18 absurd where author might have purposely agreed to that provision in order to
19 find a publisher).

20 **(b) The Role Of Extrinsic Evidence**

21 Under California law, the court first provisionally considers relevant
22 extrinsic evidence in order to determine whether the words of a contract are
23 reasonably susceptible to a particular meaning urged by either party, before
24 actually admitting any such evidence to assist with interpretation. *PG&E*, 69
25 Cal. 2d at 39-40; *Wolf v. Walt Disney Pictures & Television*, 162 Cal. App. 4th
26 1107, 1126-27 (2008); *F.B.T. Prods., LLC v. Aftermath Records*, 621 F.3d 958,
27 963 (9th Cir. 2010); *see also Bank of the West v. Super. Ct.*, 2 Cal. 4th 1254,
28 1265 (1992) (“*language in a contract must be construed in the context of that*

1 instrument as a whole, and in the circumstances of that case, and *cannot be*
2 *found to be ambiguous in the abstract.*”) (emphasis in the original). If the court
3 concludes that the words are reasonably susceptible to more than one
4 interpretation, it admits extrinsic evidence to interpret those words. *PG&E*, 69
5 Cal. 2d at 39.

6 Admissible extrinsic evidence includes: (1) the circumstances, under
7 which it was made and the matter to which it relates (Cal. Civ. Code § 1647); (2)
8 the parties’ statements during negotiations and communicated intent (*Heston v.*
9 *Farmers Ins. Group*, 160 Cal. App. 3d 402, 412 (1984)); (3) the parties’ “course
10 of dealing” and “course of performance,” including pre-dispute conduct (Cal.
11 Code Civ. Proc. § 1856(c); *City of Hope Nat’l Med. Ctr. v. Genentech, Inc.*, 43
12 Cal. 4th 375, 393 (2008)); and (4) usage of trade (*Id.*; *Midwest Television, Inc. v.*
13 *Scott, Lancaster, Mills & Atha, Inc.*, 205 Cal. App. 3d 442, 451 (1988)
14 (“industry custom binds those engaged in the business even though there is no
15 specific proof that the particular party to the litigation knew of the custom”)
16 (citation omitted)).

17 **(c) Limitations On The Use Of Extrinsic Evidence**

18 The use of extrinsic evidence is limited. First, a party’s undisclosed intent
19 or understanding is not relevant. *Founding Members of the Newport Beach*
20 *Country Club v. Newport Beach Country Club, Inc.*, 109 Cal. App. 4th 944, 956
21 (2003); *Winet v. Price*, 4 Cal. App. 4th 1159, 1166 (1992).

22 Second, extrinsic evidence and other rules of construction may be used to
23 interpret the words chosen, but not to add, subtract, or vary the words used in the
24 written agreement. *See Wagner v. Columbia Pictures Indus., Inc.*, 146 Cal. App.
25 4th 586, 592 (2007) (extrinsic evidence not credible because “it does not explain
26 the contract language, it contradicts it.”); *Bionghi v. Metro. Water Dist. of S.*
27 *Cal.*, 70 Cal. App. 4th 1358, 1364-65 (1999) (party cannot “smuggle extrinsic
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1 evidence to add a term to an integrated contract”); *Appling v. State Farm Mut.*
2 *Auto Ins. Co.*, 340 F.3d 769, 778 (9th Cir. 2003) (extrinsic evidence cannot be
3 used to graft on a “good cause” requirement); *Levi Strauss & Co. v. Aetna Cas.*
4 *& Surety Co.*, 184 Cal. App. 3d 1479, 1486 (1986) (“[t]he court does not have
5 the power to create for the parties a contract which they did not make, and it
6 cannot insert in the contract language which one of the parties now wishes were
7 there.”) (citation omitted).

8 Third, a written agreement “supersedes all the negotiations or stipulations
9 concerning its matter which preceded or accompanied the execution of the
10 instrument” (Cal. Civ. Code § 1625), and those terms “may not be contradicted
11 by evidence of any prior agreement or of a contemporaneous oral agreement.”
12 Cal. Code Civ. Proc. § 1856(a).

13 Fourth, the terms of a writing may be “explained or supplemented by
14 extrinsic evidence of consistent additional terms,” but not if “the writing is
15 intended also as a complete and exclusive statement of the terms of the
16 agreement.” Cal. Code Civ. Proc. § 1856(b).

17 **3. The Plain Language of the 1993 Amendment Supports dcp’s** 18 **Interpretation**

19 The plain language of the 1993 Amendment supports dcp’s interpretation.
20 The 1993 Amendment extends dcp’s “consecutive, exclusive, irrevocable
21 options” through 2005, and beyond 2005 “for any extensions, renewals,
22 substitutions or modifications” of the dcp-NBC Agreement. (Ex. 3.) It provides
23 that “HFPA grants to dcp” not only the specified options for each of the
24 specified years, but also for any “extensions, renewals, substitutions or
25 modifications of the NBC Agreement . . . in perpetuity.” There is no operative
26 intervening verb between “HFPA grants” and the clause “and for any extensions
27 . . .” HFPA accepted this language and is bound by it. Absent is any language
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1 requiring HFPA's consent. The extensions clause gives dcp the right to produce
2 and distribute the Golden Globe Awards show so long as the show remains on
3 NBC as the result of any extensions, renewals, substitutions or modifications of
4 the NBC Agreement.

5 The plain meaning of the extensions clause is consistent with the entirety
6 of the parties' agreement. *See* Cal. Civ. Code § 1641 ("The whole of a contract
7 is to be taken together, so as to give effect to every part, if reasonably
8 practicable, each clause helping to interpret the other.").

9 The grant of options provisions in the 1983 Agreement, the 1987
10 Agreement and the 1989 Amendment are structured identically. Each grants dcp
11 only a specified number of options with a finite expiration date.⁸ Nevertheless,
12 the Court concludes that the parties intended the 1993 Amendment to go further.
13 In addition to listing eight years by date (*i.e.*, options for the years 1998 through
14 2005) and using the same wording in the 1987 Agreement and 1989
15 Amendment, the 1993 Amendment added a new term. It granted dcp not only
16 "eight (8) additional, consecutive, exclusive, and irrevocable options . . . for
17 each of the years 1998 through and including 2005, but also options "*for any*
18 *extensions, renewals, substitutions or modifications of the NBC Agreement.*"
19 (Ex. 3 (emphasis added).) This new language is reasonably susceptible to the
20 interpretation that dcp was granted options for the years after 2005 to produce
21 and distribute the Golden Globe Awards show, so long as dcp extends, renews,
22 substitutes or modifies its broadcast agreement with NBC.

23 In addition to adding the extensions clause to the parties' agreement, the
24 1993 Amendment also revised paragraphs 1(a) and (b) of the 1987 Agreement
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26 ⁸The 1983 Agreement granted dcp "four consecutive, exclusive, irrevocable options
27 . . . for 1984, 1985, 1986 and 1987." (Ex. 5.) The 1987 Agreement granted dcp
28 "five (5) consecutive, exclusive, irrevocable options . . . for 1988, 1989, 1990, 1991
and 1992, " and the 1989 Amendment granted dcp "five (5) additional consecutive,
exclusive, irrevocable options . . . for 1993, 1994, 1995, 1996[,] and 1997." (Ex. 1;
Ex. 2.)

1 relating to the parties' contractual negotiation period and right of first refusal.
2 Whereas the 1987 Agreement and 1989 Amendment provided a date certain for
3 commencement of the negotiation period, which corresponded with the final
4 year in which dcp could exercise its last option under the contract (*i.e.*, 1992 and
5 1997, respectively), in the 1993 Amendment the parties could not and did not
6 conform all date references merely by replacing the old final option year with a
7 specific later year (*e.g.*, 2005). That is because, under the extensions clause in
8 the 1993 Amendment, the dcp-HFPA contract could and would continue for an
9 indefinite number of additional years, so long as the dcp-NBC Agreement
10 remained in effect as a result of any "extensions, renewals, substitutions or
11 modifications" of that agreement. Thus, the 1993 Amendment stated:

12 This will also confirm that the reference to "1997" in
13 Paragraph 1(a) of the [Main Show] Agreement as
14 amended [by the 1989 Amendment] shall be changed
15 to, "2005, or the date of the broadcast of the last
16 Awards under the NBC Agreement, whichever is later .
17 .."

18 This will also confirm that the reference to "July 15,
19 1997" in paragraph 1(b) of the [Main Show]
20 Agreement as amended [by the 1989 Amendment]
21 shall be changed to read: "July 15, 2005, or July 15
22 after the last broadcast of the Awards under the NBC
23 Agreement, whichever is later."

24 Ex. 3 (emphases added.)

25 The emphasized language in these provisions—particularly the phrase,
26 "whichever is later"—supports dcp's interpretation that the parties intended to
27 grant dcp the right to exercise options beyond 2005 in the event of any
28 "extensions, renewals, substitutions or modifications of the NBC Agreement."
See Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so
as to give effect to every part . . .").

Other courts interpreting language similar to the extensions clause have
similarly held that it has the same plain meaning that the Court adopts here. *See*,

1 e.g., *Branch Banking & Trust Co. v. Chicago Title Ins. Co.*, 714 S.E.2d 514, 520
2 (N.C. Ct. App. 2011) (title insurance policy that covered “all renewals or
3 extensions” of 2003 deed of trust applied to a 2005 deed of trust on the identical
4 property because “the language” – i.e., “all renewals or extensions” – was “clear,
5 and . . . only one reasonable interpretation exists”); *Cheek v. Jackson Wax*
6 *Museum*, 220 P.3d 1288, 1292-93 (Wyo. 2009) (although the “renewal provision
7 of the brokerage agreement was ‘entirely open-ended’ and, theoretically, would
8 entitle the broker to a commission every time the lease was renewed on into the
9 future,” the court held that “the parties to a contract are free to incorporate
10 within their agreement whatever lawful terms they desire, and the courts are not
11 at liberty, under the guise of judicial construction, to rewrite the contract.”);
12 *Pollard & Bagby, Inc. v. Pierce Arrow, L.L.C.*, 521 S.E.2d 761, 763 (Va. 1999)
13 (“Paragraph 15(A) of the leases is unambiguous and [] the plain meaning of its
14 terms obligate the [landlord] to pay commissions to [the Leasing Agent] on all
15 rental payments received from tenants procured by [the Leasing Agent]. Under
16 that language, this obligation continues during the term of the original lease and
17 ‘during any renewal and extension thereof or during the term of any new
18 lease’ . . . This obligation remains unchanged if an existing tenant executes a
19 new lease for the leased premises.”).

20 A key HFPA contention, stressed very effectively by its counsel during
21 closing argument, is that it is not reasonable to adopt dcp’s construction of the
22 1993 Amendment and the extensions clause, because no one would grant the
23 production and broadcast rights in question to another in perpetuity. Appealing
24 as that proposition is in the abstract, it is nevertheless misplaced. To be sure, the
25 duration of the agreement is indefinite, but it is dependent on the continuation of
26 dcp’s agreement with NBC. NBC could terminate the agreement, or not renew
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1 its commitment to broadcast the show. If that happened, dcp would have no
2 options to exercise.

3 **4. The Extrinsic Evidence Supports The Plain Meaning Of**
4 **The 1993 Amendment**

5 **(a) Surrounding Circumstances**

6 In interpreting a contract, the Court may also consider “the circumstances
7 under which [the contract] was made, and the matter to which it relates.” Cal.
8 Civ. Code § 1647. Here, the circumstances surrounding execution of the 1993
9 Amendment further support dcp’s interpretation of the extensions clause and
10 demonstrate why both parties would agree that dcp would have options to
11 produce the show so long as NBC continued to broadcast it.

12 **(i) The Importance of a Network Deal**

13 Prior to 1983, the Golden Globe Awards had been televised on a national
14 television network only three times (twice on NBC and once on CBS), and all
15 three times it was dropped by the network. (Ex. 200.) In late 1982, HFPA
16 attempted to negotiate with a producer to produce and distribute the 1983
17 Golden Globe Awards show, but the producer backed out of a proposed deal
18 with HFPA on the eve of the January 1983 date scheduled for the event. (Ex.
19 99, 202, 254.) In December 1982, just weeks before the hoped-for January 1983
20 broadcast, HFPA and dcp entered into their first agreement. (Exs. 5, 254.) At
21 that time, an important goal of HFPA was to get the show back on television.
22 (See Exs. 202, 254 (Membership meeting minutes indicating that members
23 believed it was “critical” and “very important to be on TV even if it costs
24 [HFPA] money.”))

25 During the five-year term of that 1983 agreement in which the show was
26 televised in national syndication, the popularity and stature of the Golden Globe
27 Awards began to increase. During that time, the Golden Globe Awards went
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1 from almost having no broadcaster for the 1983 show (before the agreement
2 with dcp was reached), to being televised in syndication from 1983 to 1988, to
3 being televised on TBS, a national cable network, in 1989. (Ex. 200.) Then, in
4 1993, dcp secured a network deal for the show with a broadcast network, NBC.
5 This history and background shows that the extensions clause was intended to
6 protect and reward dcp, so long as dcp arranged to keep the show on NBC. (RT
7 112:12-17 (La Maina 1/24/12).

8 **(ii) dcp's Repeated Attempts To Obtain End-Of-**
9 **Deal Protection**

10 As dcp succeeded in securing television broadcasts, it continually sought
11 increasing end-of-deal protection from HFPA. At the outset of the parties'
12 relationship in 1983, dcp unsuccessfully sought rights of first negotiation and
13 first refusal from HFPA. In 1987, however, after dcp succeeded in distributing
14 the Golden Globe Awards in syndication, HFPA granted dcp rights of first
15 negotiation and first refusal. In 1989, when dcp obtained a licensing deal with
16 TBS, a national cable network, HFPA granted dcp options to produce and
17 distribute the Golden Globe Awards for two additional years beyond the network
18 deal (in addition to the rights of first negotiation and first refusal). Finally, in
19 1993, when dcp secured a contract with NBC, dcp sought and obtained from
20 HFPA the extensions clause.

21 The extensions clause was an additional form of end-of-deal protection for
22 dcp. It ensured that dcp would continue to receive the benefits of having
23 obtained, and committed to maintaining, a network broadcasting deal for the
24 Golden Globe Awards.
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1 (iii) **The Source Of The Language In Dispute**

2 The language of the extensions clause in the 1993 Amendment was
3 supplied by Joel Behr, dcp's outside counsel. Behr had seen such clauses used in
4 talent agency contracts, and he took the disputed language in the 1993
5 Amendment directly from a talent agency contract. (Ex. 238 (Behr Decl. ¶¶ 7-
6 8).)

7 Behr's understanding at the time he supplied the wording of the
8 extensions clause for the 1993 Amendment (and today) is that such clauses are
9 designed to protect the talent agency by ensuring that it enjoys the full benefit of
10 the business relationship and opportunity that it generated for the client. (*Id.*)
11 While undisclosed, subjective intent is not relevant to contract interpretation,
12 Behr's understanding, as discussed further below, is consistent with (1) the
13 parties' communicated intent, and (2) industry custom and practice with respect
14 to the use of similar language in talent agency contracts. (Ex. 240 (Brooks Decl.
15 ¶¶ 11-13).)

16
17 (b) **Communicated Intent At The Time Of Contracting**

18 The Court may consider extrinsic evidence of the parties' communicated
19 intent at the time that they negotiated and entered into a contract to aid in the
20 interpretation of the words in that contract. *See Heston v. Farmers Ins. Group*,
21 160 Cal.App.3d 402, 412 (1984).

22 As the Court found above, prior to entering the 1993 Amendment, the
23 main negotiators for each party — Francis La Maina, on behalf of dcp, and
24 Mirjana Van Blaricom, on behalf of HFPA — discussed what Behr understood
25 to be the purpose of the extensions clause: namely, that if dcp obtained and
26 continued to maintain a broadcast deal with NBC, so long as that deal remained
27 in place, dcp could continue to produce and distribute the show. According to
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1 La Maina, his objective in using the specific phrase “for any extensions,
2 renewals, substitutions or modifications of the NBC Agreement” in the 1993
3 Amendment was to ensure that dcp would have options to produce the Golden
4 Globe Awards show so long as it aired on NBC, a matter he discussed with
5 HFPA’s President. The evidence establishes that Van Blaricom had the same
6 understanding. Both of them knew what the extensions clause would
7 accomplish at the time of contracting. Although HFPA mounted a serious
8 challenge to Van Blaricom’s testimony because of her bias, the Court finds her
9 testimony credible as to the fact that she and La Maina understood that HFPA
10 was bound to dcp so long as the show remained on NBC. (Ex. 794 (4/26/11 Van
11 Blaricom Decl., Dkt. No. 270-1, ¶¶ 6-7); RT 122:4-123:11, 123:21-25, 155:22-
12 156:15 (La Maina 1/24/12); RT 1605:17-1606:3, 1607:18-1608:2, 1616:22-
13 1617:8 (Van Blaricom 2/3/12.)

14 La Maina’s September 22, 1993 presentation to HFPA’s Membership
15 does not conflict with his testimony or that of Van Blaricom. His statement that
16 dcp’s proposal was to extend the dcp-HFPA contract “for as long as necessary to
17 satisfy the NBC term,” general and unspecific as that statement was, is
18 consistent with dcp’s interpretation. (Ex. 110-20.) Although the only duration
19 that was enumerated was ten years, that was because (or at least a reflection of
20 the fact that) ten years was all that NBC had committed to at that point. That is
21 not the same as, and need not necessarily be construed to be an assurance that,
22 the deal with NBC, and thus any corresponding grant by HFPA of options to
23 dcp, would be limited to those ten years. Although La Maina did not touch upon
24 what would happen if NBC exercised all its options and then agreed to extend
25 the term further, the absence of such further discussion does not undermine what
26 was communicated by and between Van Blaricom and La Maina. Nor does it
27 vitiate the plain language of the written amendment provided to HFPA.
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(c) Post-Contracting Conduct

A court may also consider the post-contracting, pre-dispute conduct and statements of the parties to aid in the interpretation of disputed words or phrases in a contract. *See City of Hope Nat’l Med. Ctr.*, *supra*, 43 Cal. 4th at 393 (2008); *Oceanside 84, Ltd.*, 56 Cal. App. 4th 1441, 1449 (1997).

Here, the parties’ conduct demonstrates that the extensions clause was understood to permit dcp to unilaterally extend its contract with HFPA for the period of any “extensions, renewals, substitutions or modifications of the NBC Agreement.” In particular, dcp’s extension of the NBC broadcast deal in 2001 — and its unilateral exercise of options pursuant to that extension — is critical evidence of the parties’ pre-dispute interpretation of the 1993 Amendment.

The options specified by year in the 1993 Amendment ran only through 2005. Nonetheless, dcp entered into the 2001 NBC Extension (extending the term of the dcp-NBC Agreement from 2006 to 2011) without any further amendment to the dcp-HFPA agreement. Although the HFPA Membership may have been informally told of the dcp-NBC deal before dcp executed the extension with NBC, there is no evidence to suggest that any such membership approval was sought by dcp. (Exs. 21, 79.) To the extent that members of the HFPA Board voiced approval of the deal at the June 11, 2001 meeting or during the ensuing weeks, the Court concludes that there is inadequate basis in the contract or extrinsic evidence to determine that such approval was required.

Over the prior two decades, each time HFPA granted new or additional options to dcp the parties executed a new agreement or an amendment to their existing agreement. That was done in 1983, 1987, 1989 and 1993. But in 2001, the parties neither entered into a new agreement nor amended their existing

1 agreement. To the contrary, the language of the 2001 Exercise of Options and
2 the fact that it was exercised unilaterally by dcp confirms that the parties
3 understood the extensions clause in the 1993 Amendment to automatically
4 provide dcp with the rights to additional options to cover the 2001 NBC
5 Extension. (Ex. 4.) The 2001 Exercise of Options was drafted by HFPA's
6 counsel with the knowledge of HFPA's President. It plainly states that the
7 contract between dcp and HFPA is "deemed extended for any extensions of the
8 NBC/dcp Agreement." (Ex. 4, 24-27.) In order to obtain additional options
9 from HFPA to produce and distribute the Golden Globe Awards show for the
10 years 2006 to 2011, dcp needed only to extend its contract with NBC, and then
11 exercise its rights to additional options, and dcp proceeded accordingly.

12 Finally, statements made by various HFPA members, officers and
13 directors over the span of years prior to the filing of this lawsuit provide
14 additional support for both dcp's plain language reading of the clause and for the
15 Court's determination that HFPA interpreted the extensions clause of the 1993
16 Amendment to mean that dcp had the right to exercise its options to produce the
17 Golden Globe Awards for so long as NBC agreed to televise the show. For
18 example, at the December 10, 2002 HFPA Board meeting attended by
19 representatives of dcp, past HFPA President and Board member Judy Solomon
20 stated: "[A]ccordingly if you will go through the contract to the extension,
21 excuse me, from 1993 it says that we – you have an extension 'til 2005 or as
22 long as NBC wants it." (Ex. 70.) In July 2010, Solomon informed another
23 HFPA member that "[HFPA's] agreement with dcp does not expire[,] only the
24 one that dcp has with nbc." (Ex. 542.) In addition, HFPA's Presidents made
25 more than one reference to the "perpetuity clause" (which dcp was told was a
26 "major irritant" to the organization) and they made several attempts to extricate
27 HFPA from that clause. (See Exs. 118, 120, 252.) These statements and actions
28

1 further support the finding that the parties understood the 1993 Amendment to
2 permit dcp to extend its contract with HFPA for any “extensions, renewals,
3 substitutions or modifications of the NBC Agreement.”

4 **(d) Evidence Of Industry Custom And Practice**

5 Evidence of industry “custom or standard practice is admissible to
6 interpret the terms of a contract,” *Midwest TV*, 205 Cal. App. 3d at 451, as
7 contracts “are to be read on the assumption that . . . the usages of trade were
8 taken for granted when the document was phrased.” Cal. Code Civ. Proc. §
9 1856(b), Law Rev. Comm. Comment. Industry usage becomes “an element of
10 the meaning of the words used” unless it is “carefully negated.” *Id.* Evidence of
11 custom and practice applies regardless of whether the signatories are industry
12 insiders, because “when there is a custom in a certain industry, those engaged in
13 that industry are deemed to have contracted in reference to that practice unless
14 the contrary appears.” *Midwest TV*, 205 Cal. App. 3d at 451 (“industry custom
15 binds those engaged in the business even though there is no specific proof that
16 the particular party . . . knew of the custom”).

17 In the entertainment industry, talent agency agreements typically contain
18 the language of the extensions clause, or similar language, to ensure that an
19 agent continues receiving a commission on a contract that he secured on behalf
20 of a principal in the event that the contract is extended, renewed, substituted or
21 modified. (Ex. 240 (Brooks Decl. ¶¶ 11-13).) Thus, to the extent the language
22 of the extensions clause has been used within the entertainment industry to
23 define the rights of talent agents and “talent,” it is consistent with dcp’s
24 interpretation of the 1993 Amendment. However, talent agent contracts do not
25 typically allow the agent to extend a contract without the principal’s consent.
26 (Ex. 244 (Tenzer Decl. ¶¶ 16-18.)) The Court concludes that the dcp-HFPA
27 relationship is sufficiently unique in several respects, and the testimony of the
28

1 opposing experts about industry custom and practice sufficiently distinguishable
2 or inapposite, as to make this factor inconsequential in the Court’s overall ruling.
3

4 **(e) There Is Inadequate Extrinsic Evidence To**
5 **Support HFPA’s Interpretations Of The 1993**
6 **Amendment, And dcp’s Interpretation Is The**
7 **Most Reasonable Interpretation**

8 HFPA contends that the parties intended that the broadcast license
9 agreement between dcp and NBC, and dcp's options, could not be extended
10 “without HFPA's prior knowledge and approval.” (FAC, Dkt. No. 50 ¶ 88(c).)
11 However, such interpretation is untenable because it would require the contract
12 to be construed as if it contained language requiring HFPA approval – and it
13 does not. Therefore, HFPA’s interpretation is contrary to the settled principles
14 of contract interpretation. *See Wagner*, 146 Cal. App. 4th at 592.

15 Next, there also is inadequate evidence to support HFPA’s second theory
16 that the parties intended to have the extensions clause apply only as a *force*
17 *majeure* provision “drafted to provide dcp flexibility to assure that . . . it would
18 get to produce and license for broadcast the eight Awards show it had optioned”
19 in the event unforeseen circumstances caused the cancellation of a show. There
20 is no evidence that this was on the mind of either La Maina or Van Blaricom (or
21 anyone else at their respective organizations). The *force majeure* interpretation
22 is squarely at odds with evidence of what the parties who negotiated and entered
23 into the 1993 Amendment testified that they intended the extensions clause to
24 mean. (Ex. 794 (4/26/11 Van Blaricom Decl., Dkt. No. 270-1, ¶¶ 6-7); RT
25 122:4-123:11, 123:21-25, 155:22-156:15 (La Maina 1/24/12); RT 1605:17-
26 1606:3, 1607:18-1608:2, 1616:22-1617:8 (Van Blaricom 2/3/12.)

27 The *force majeure* theory must be rejected for other reasons as well. The
28 possibility that a show could be delayed by *force majeure* existed under the prior

1 dcp-HFPA agreements, yet these contracts contain no express provision dealing
2 with such an event. Moreover, HFPA's own expert acknowledged that the basic
3 agreement does not have a *force majeure* clause, and that he would not expect to
4 see such a clause in the 1993 Amendment. (RT 1344:3-6, 1370:4-10 (Tenzer
5 2/2/12).) In any event, HFPA's primary contention that it understood the
6 extensions clause to require HFPA's prior informed approval is inconsistent with
7 its *force majeure* theory. (FAC, Dkt. No. 50 ¶ 88(c).)

8 Next, although HFPA has challenged the relevance of the 2001 Exercise of
9 Options, including by arguing that Yoshitomi's views have no bearing on the
10 interpretation of the 1993 Amendment (citing *General Motors Corp. v. Superior*
11 *Court*, 12 Cal. App. 4th 435, 442 (2008)), HFPA has provided no persuasive
12 alternative contractual or legal explanation for dcp's continued licensing of the
13 Golden Globe Awards to NBC from 2006 to 2011. Under HFPA's "only with
14 HFPA approval" and "*force majeure*" interpretations of the contract, in the
15 absence of a further written amendment of the 1987 Agreement, dcp's options
16 would necessarily have been exhausted or expired in 2005. To be sure, HFPA
17 argues that it "approved" the 2001 NBC Extension, but it cannot point to any
18 contractual language which could serve as the basis of dcp's post-2005 options
19 even with that purported approval. Nor can HFPA claim that its "approval" was
20 an oral amendment of "eight" options to "fourteen," because the parties'
21 agreement explicitly forbids oral amendments. (Ex. 1 ¶ 19.)

22 In sum, the extrinsic evidence supports the conclusion that HFPA's
23 unhappiness with the extensions clause stems from post-1993 events. The
24 evidence reflects that, at the time of the 1993 Amendment, HFPA's main goal
25 was to obtain and maintain a broadcast network deal. The extensions clause
26 embodied the direction HFPA gave to dcp, which was to obtain and maintain a
27 broadcast network deal with NBC, in which event we will continue to operate
28

1 under the existing agreement. Thereafter, the show “took off” and by 2002
2 HFPA had begun to think beyond its previous objective. HFPA realized that it
3 might achieve greater benefits, including a better profit split with dcp or even a
4 more lucrative deal with another network. Moreover, the relationship between
5 HFPA and dcp became strained by issues such as the sale of dcp to Mosaic
6 Media Group in 2002, the dispute over the scope and application of the audit
7 provision in the 1987 Agreement, and dcp’s failure to consult with HFPA about
8 a simulcast agreement with Telemundo. So in 2002, when HFPA sought to
9 escape the application of the extensions clause by repudiating the 2001 Exercise
10 of Options and attempting to negotiate its way out of the provision, there were a
11 number of factors explaining its conduct.

12 For all the foregoing reasons, the Court concludes that the extensions
13 clause means what dcp says it does: dcp may exercise options beyond the eight
14 options specified for the years 1998-2005 upon any “extensions, renewals,
15 substitutions or modifications” of the dcp-NBC license Agreement, even without
16 HFPA’s approval.

17 **B. HFPA’s Affirmative Defenses Lack Merit**

18 **1. The Post-2011 Options Provided In The Extensions**
19 **Clause Are Irrevocable And Supported By Adequate**
20 **Consideration**

21 In order for an option to be irrevocable, the offeree must (1) “confer a
22 benefit or suffer prejudice” that (2) was “actually . . . bargained for as the
23 exchange” for the offer. *See, e.g., Steiner v. Thexton*, 48 Cal. 4th 411, 420-21
24 (2010). The options granted in the 1993 Amendment were described explicitly
25 as “irrevocable.” (Ex. 3.) An option unsupported by consideration may be
26 withdrawn at any time prior to exercise. *Steiner*, 48 Cal. 4th at 420. Where an
27 option contract as a whole is supported by consideration, each option contained
28 therein need not be supported by separate consideration. *See Brawley v. Crosby*

1 *Research Foundation*, 73 Cal. App. 2d 103, 118 (1946) (“It is not necessary that
2 the provision giving to one party an option . . . be supported by a consideration
3 different from considerations supporting the entire agreement.”); *Crossman v.*
4 *Fontainebleau Hotel Corp.*, 273 F.2d 720, 727 (5th Cir. 1959) (if an option is
5 “part and parcel of the main agreement, it requires no separate consideration”).

6 The 1993 Amendment was supported by consideration because dcp had
7 negotiated and secured a commitment from NBC to broadcast the Golden Globe
8 Awards show. That was consideration for dcp receiving options to produce the
9 show so long as it remained on NBC. (Ex. 293.) Because no separate
10 consideration was required for the contingent post-2005 options contained in the
11 1993 Amendment, those options are irrevocable and cannot be unilaterally
12 revoked by HFPA.

13 In addition to the consideration dcp provided in connection with the 1993
14 Amendment at the time of contracting, dcp’s performance over the next
15 seventeen years provided consideration for the 1993 Amendment and all of the
16 options contained therein. *See Steiner*, 48 Cal. 4th at 422 (holding that part
17 performance “created sufficient consideration to render the option irrevocable”).
18 It is undisputed that dcp continued to perform under the parties’ agreement, as
19 amended by the 1993 Amendment. Among other things, it maintained the show
20 on NBC, negotiated higher license fees with NBC in 2001 and 2010, and
21 continued to account for profits generated under the dcp-NBC Agreement, half
22 of which were paid to HFPA.

23
24 dcp’s subsequent performance provided HFPA with consideration for all
25 of the options granted in the 1993 Amendment, including those granted in the
26 extensions clause, further rendering those options irrevocable. Accordingly,
27 HFPA lacked the right to revoke dcp’s options on February 8, 2010, when it
28

1 purported to have done so.

2 Additionally, a conditional promise is valid consideration for another
3 promise. *See Fosson v. Palace (Waterland), Ltd.*, 78 F.3d 1448, 1454 (9th Cir.
4 1996) (under California law, “[a]ny valid promise, whether absolute or
5 conditional, is valid consideration for another promise”) (quoting Witkin, §
6 215). Here, the options granted to dcp beyond 2005 were conditioned on dcp
7 securing an extension of the NBC deal, and supported by the promise that, if dcp
8 exercised those options, it would pay HFPA half of the net profits from any
9 exploitation of the broadcast. (Ex. 1 ¶ 3.)

10 For all the foregoing reasons, the extensions clause is part of a valid
11 contract supported by consideration, and the “irrevocable options” granted under
12 it are, in fact, irrevocable.

13 **2. HFPA Has Not Proved Its Defenses Based On Mistake**

14 HFPA has not presented adequate evidence to support its affirmative
15 defense of mistake, brought in opposition to dcp’s counterclaims. To prove
16 mistake, HFPA must show that the parties attach materially different meanings
17 to their manifestations of mutual assent, or a misapprehension of the law by both
18 parties, or a misapprehension of the law by HFPA not caused by its own
19 excessive carelessness and of which dcp was aware at the time of contracting but
20 failed to rectify. *Merced County Sheriff’s Empls’ Ass’n v. County of Merced*,
21 188 Cal. App. 3d 662, 675-76 (1987); Restatement (Second) of Contracts §
22 20(1); California Advisory Committee on Jury Instructions (“CACI”) §§ 330,
23 331; Cal. Civ. Code § 1578; 1 Witkin, Summary 10th (2005) Contracts, § 273,
24 p. 304; 1 Witkin, Summary 10th (2005) Contracts, § 274, p. 305.

25 As dcp contends, the evidence shows that both parties understood the
26 contract to grant eight specified options and additional options beyond 2005 in
27 the event dcp procured extensions, renewals, substitutions or modifications of
28

1 the NBC deal.

2 First, La Maina and Van Blaricom both testified that La Maina
3 communicated and Van Blaricom understood that HFPA was tied to dcp so long
4 as dcp kept the show on NBC. (RT 122:22-123:25 (La Maina 1/24/12); RT
5 1617:1-6 (Van Blaricom 2/3/12).)

6 Second, while HFPA is correct that La Maina did not state or explain at
7 the September 22, 1993 Membership meeting that dcp might have “perpetual”
8 options, he did state that dcp and HFPA would be tied together for “as long as
9 we’re doing the NBC deal” and “for as long as necessary to fulfill the NBC deal
10” (Ex. 110 at 20.) That language is consistent with dcp’s assertion and the
11 other evidence cited above showing that both sides understood that the HFPA-
12 dcp deal would be extended if dcp extended the NBC deal.

13 In addition, the events of 2001 confirm that the parties understood the
14 1993 Amendment to extend additional options to dcp automatically in the event
15 of any extensions, renewals, substitutions or modifications of the NBC deal.
16 First, HFPA cannot point to any evidence showing that prior to the signing of
17 the NBC deal, HFPA’s Membership formally voted to approve or generated a
18 written record conveying approval of the deal. Nor did it refute La Maina’s
19 testimony that he did not need approval. (Exs. 698, 699.) Second, after the dcp-
20 NBC deal was signed, the parties collaboratively prepared the “Exercise of
21 Options,” which was drafted by HFPA’s lawyer with the knowledge of HFPA’s
22 President. That key document states that the dcp-HFPA agreement is “deemed
23 extended for any extension of the NBC/dcp Agreement” and provides for a
24 signature only by dcp with no mention of HFPA approval being required. (Exs.
25 4, 24-27.) The Exercise of Options corroborates that the parties understood the
26 HFPA-dcp contract to provide automatic options to dcp for any extension of the
27 dcp-NBC contract.
28

1 Finally, there is no evidence entitling the Court to infer that dcp knew of
2 and intended to take advantage of any HFPA mistake. Indeed, during or
3 following the September 22, 1993 Membership meeting, La Maina left copies of
4 the draft 1993 Amendment with HFPA, and so informed the members (Exs. 3;
5 110 at 21); he suggested names of respected attorneys with whom HFPA might
6 review the document (Ex. 344); and he allowed HFPA adequate opportunity to
7 consult with counsel before Van Blaricom returned the signed document on
8 September 29, 1993 (Ex. 503).

9 Accordingly, the Court concludes that HFPA has not proven either
10 unilateral or mutual mistake.

11 **3. HFPA Has Not Proved Its Defense Of Unclean Hands**

12 To succeed on its unclean hands defense to dcp's counterclaim, HFPA
13 must show: (1) dcp's conduct was inequitable, violated the conscience or other
14 equitable principles, or was not undertaken in good faith; (2) dcp's conduct
15 relates directly to the cause at issue or was taken in acquiring the rights it now
16 asserts; and (3) dcp's conduct, if permitted, would prejudice HFPA. *See Jay*
17 *Bharat Developers, Inc. v. Minidis*, 167 Cal. App. 4th 437, 445 (2008); *Cal.*
18 *School Employees Ass'n v. Tustin Unified School Dist.*, 148 Cal. App. 4th 510,
19 523 (2007).⁹

20 This defense also fails, because HFPA has not shown any conduct by dcp
21 in the course of acquiring its rights under the extensions clause that was
22 inequitable, violated the conscience, or was in bad faith. HFPA's unclean hands
23 defense is premised on HFPA's allegation that dcp misrepresented the nature of
24 the 1993 Amendment when dcp presented it to the HFPA Membership for
25

26
27 ⁹ Any inequitable or bad faith conduct by dcp at the time of the 2010 NBC extension
28 is insufficient to support the defense of unclean hands because it was subsequent to
and has no bearing on the acquisition of the rights at issue in the 1993 Amendment.

1 approval. However, even though the Court has found that several aspects of
2 what La Maina said at the September 22, 1993 meeting could be construed to
3 support HFPA's contentions, there is no basis to find that dcp acted intentionally
4 to mislead HFPA. After all, La Maina provided the proposed 1993 Amendment
5 to HFPA for its review, encouraged HFPA to seek independent counsel, and
6 specifically told the HFPA President that dcp understood the deal to provide
7 options to dcp so long as the show was or is on NBC. Accordingly, the
8 evidence does not support HFPA's defense of unclean hands.

9 **4. HFPA's Defense of Estoppel Is Also Without Merit**

10 The parties do not dispute that, in order to prevail on its estoppel defense,
11 HFPA must show that: (1) dcp made a representation of fact by words or
12 conduct, intending HFPA to rely on it; (2) dcp knew the true state of facts; (3)
13 HFPA was ignorant of the true state of facts; and (4) HFPA reasonably relied on
14 dcp's representation to HFPA's injury.

15 HFPA argues that Defendants should be estopped from asserting their
16 interpretation of the 1993 Amendment because of certain statements La Maina
17 made at the September 22, 1993 meeting. As explained above, La Maina's
18 general statement that dcp's proposal was to extend the contract "for as long as
19 necessary to satisfy the NBC term" is consistent with dcp's interpretation. (Ex.
20 110-20.) His presentation to HFPA's Membership did not touch upon what
21 might happen if NBC exercised all its options and then agreed to extend the term
22 further. Similarly, La Maina's informal presentation to the HFPA Board on June
23 11, 2001 did not touch upon what might happen if NBC exercised all its options
24 and then agreed to extend the term beyond 2011. Finally, to the extent that
25 HFPA also relies on Shapiro's assurance in February 2010 that dcp would seek
26 to involve HFPA in any new network deal, his conduct does not estop dcp from
27 relying on and enforcing the interpretation of the 1993 Amendment that dcp had
28

1 relied on and that HFPA had acknowledged by no later than 2002. Moreover,
2 according to NBC's executive Graboff, Shapiro's devious conduct inured to
3 HFPA's benefit because he was able to extract more favorable terms from NBC.
4 Thus HFPA cannot establish injury.

5 **C. Van Blaricom Was Authorized To Enter The Agreement On**
6 **Behalf Of HFPA**

7 HFPA contends that, even if dcp's interpretation of the extensions
8 clause is correct, that portion of the 1993 Amendment is invalid because then-
9 HFPA President Mirjana Van Blaricom did not have authority to agree to the
10 extensions clause.

11 This partial invalidity claim fails because Van Blaricom had both
12 actual and ostensible authority to contract on behalf of HFPA.

13 **1. Van Blaricom Had Actual Authority To Execute The**
14 **1993 Amendment**

15 Actual authority is what a principal (here, for purposes of this analysis,
16 HFPA) intentionally confers upon the agent (here, Van Blaricom), or what the
17 principal intentionally or by want of reasonable care, allows the agent to believe
18 she possesses. Cal. Civ. Code § 2316; *see also S. Sacramento Drayage*, 220
19 Cal. App. 2d at 856; *Tomerlin v. Canadian Indem. Co.*, 61 Cal. 2d 638, 644
20 (1964) (“[a]ctual authority arises as a consequence of conduct of the principal
21 which causes an agent reasonably to believe that the principal consents to the
22 agent's execution of an act on behalf of the principal”). An agent's failure to
23 follow the necessary organizational bylaws for approval of a contract could
24 mean a contract was unauthorized. *See Lindsay-Field v. Friendly*, 36 Cal. App.
25 4th 1728, 1735 (1995).

26 HFPA's argument that Van Blaricom lacked authority relies on Section
27 13.2 of HFPA's then-operative Bylaws, which provided that: “All material
28

1 agreements . . . shall be executed by the President and the Treasurer under the
2 seal of the Association, but only after said documents or contracts so to be
3 executed shall have been submitted to and approved by the Board of Directors
4 and approved by a majority of all the Active members.” (Ex. 333-40.)

5 Notwithstanding these requirements, in its relationship and contracts with
6 dcp, over the course of many years HFPA operated in a manner inconsistent with
7 its bylaws. For example, it disregarded the requirements in the bylaws that
8 HFPA’s contracts be executed by both its President and Treasurer, executed
9 under the seal of HFPA, approved by a majority of all of its Active members,
10 and submitted to and approved by HFPA’s Board. (*See, e.g.*, Exs. 1, 2, 3, 5, 109,
11 110, 111.)

12 In light of HFPA’s prior conduct and the Membership’s silence regarding
13 several of its Presidents’ prior actions, Van Blaricom could reasonably conclude
14 that HFPA did not require strict compliance with its Bylaws regarding the
15 execution of contracts. She also could reasonably conclude on the basis of the
16 events and meetings of September 22, 1993 that she had authority to execute the
17 1993 Amendment in its entirety. *See Tomerlin*, 61 Cal. 2d at 644 (holding that
18 the principal’s silence in the face of a history of the agent’s exercising authority
19 in similar circumstances reasonably caused the agent to believe that he possessed
20 actual authority).

21 In addition, in late September 1993, the Membership allowed Van
22 Blaricom to believe that she had actual authority to execute the contract by
23 failing to read the contract or raise any issue with regard to approval of the
24 extensions clause. The Membership was aware that dcp gave HFPA a draft of
25 the 1993 Amendment “to discuss with your attorneys or whoever you’d like to
26 discuss them with.” (Ex. 110.) HFPA cannot, on the one hand, argue that only
27 HFPA’s Membership (and not Van Blaricom) was capable of entering into the
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1 1993 Amendment, and at the same time, argue that the contract should be
2 partially cancelled or otherwise avoided because the Membership misunderstood
3 the import of that agreement by neglecting to read the contract. *See Tomerlin*,
4 61 Cal. 2d at 644 (“[a]ctual authority arises as a consequence of conduct of the
5 principal which causes an agent reasonably to believe that the principal consents
6 to the agent’s execution of an act on behalf of the principal.”); (Ex. 652.)

7 Accordingly, Van Blaricom had actual authority to enter into the 1993
8 Amendment.

9 **2. Van Blaricom Had Ostensible Authority To Execute The**
10 **1993 Amendment**

11 Van Blaricom also had ostensible authority to execute the 1993
12 Amendment. Ostensible authority is what a “principal, intentionally or by want
13 of ordinary care, causes or allows a third person to believe the agent to possess.”
14 Cal. Civ. Code § 2317. However, an agent cannot have ostensible authority “as
15 to persons who have actual or constructive notice of the restriction upon his
16 authority.” *Id.* § 2318; *Lindsay-Field*, 36 Cal. App. 4th at 1734 (no ostensible
17 authority where opposing party “knew a vote of the membership was required”
18 and “did not ask for written evidence of [the agent’s] authority”).

19 Ostensible authority cannot arise from conduct by the agent, but rather
20 must arise from conduct by the principal which causes a third party to
21 reasonably believe that the agent has authority. *Lindsay-Field*, 36 Cal. App. 4th
22 at 1734; *see also Jones v. Title Guarantee & Trust Co.*, 178 Cal. 375, 379
23 (1918). Where a principal acts in disregard of its duties for many years and
24 accepts the benefits of a transaction, this may support a finding of ostensible
25 authority. *See County First Nat. Bank of Santa Cruz v. Coast Dairies & Land*
26 *Co.*, 46 Cal. App. 2d 355, 366-67 (1941) (where two directors made no attempt
27 to discover what third director was doing and allowed him to manage the affairs
28

1 of the company, the two directors cannot later claim that third director lacked
2 authority thirteen years after the transaction in question, when it turned out
3 poorly).

4 Here, La Maina reasonably believed that Van Blaricom, as President of
5 HFPA, had authority to enter into the 1993 Amendment and to agree to the
6 extensions clause. First, La Maina was present when the Membership voted to
7 approve the terms of the contract. Before that vote he told the members that dcp
8 and HFPA would be contractually bound so long as the show is televised on
9 NBC. (Ex. 110.) While La Maina and other dcp representatives may have
10 known the general process by which the HFPA Membership approved contracts,
11 there is no evidence that they knew the exact terms of HFPA's Bylaws or
12 whether HFPA strictly followed them. As noted above, HFPA operated in a
13 manner inconsistent with its bylaws over the course of many years.

14 Second, La Maina left copies of the draft 1993 Amendment with HFPA,
15 and if the Membership had objected to the terms of the written contract, he could
16 reasonably have expected the Membership would have so communicated. (Ex.
17 110.)

18 Third, La Maina relied on the signature of the designated HFPA
19 representative, Van Blaricom, as confirmation that all internal steps had been
20 taken at HFPA to permit HFPA to enter into and execute the 1993 Amendment.
21

22 Accordingly, Van Blaricom had ostensible authority to enter into the 1993
23 Amendment.¹⁰
24
25
26
27

28 _____
¹⁰ The Court need not reach the issue of ratification.

1 **CONCLUSION**

2 Because the plain meaning and the extrinsic evidence support dcp's
3 interpretation of the 1993 Amendment, dcp's counterclaim for declaratory relief
4 is granted and HFPA's claim for declaratory relief is denied.

5 HFPA's affirmative defenses of lack of consideration, mistake, unclean,
6 hands, estoppel, and lack of authority fail on the merits, as does HFPA's lack of
7 authority claim. The Court need not and does not reach dcp's affirmative
8 defenses.

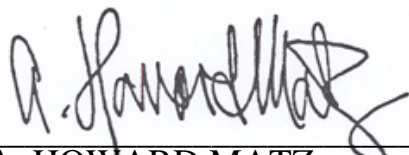
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10 The Court recognizes that some of the foregoing Findings of Fact may
11 also be considered Conclusions of Law, and *vice-versa*. The Court intends that
12 all of the preceding findings and rulings be given appropriate and applicable
13 classification and weight.

14
15 ***

16 Because Judge Fairbank bifurcated this dispute, the Court may not enter
17 judgment. Accordingly, by not later than May 14, 2012, the parties shall file a
18 Joint Status Report containing their respective views on any further proceedings
19 in this case.

20 IT IS SO ORDERED.

21
22 Dated: April 30, 2012

23 
24 _____
25 A. HOWARD MATZ
26 Senior U.S. District Judge
27
28