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11 Attorneys for Plaintiffs
 12 **JOSÉ PADILHA and COLD MOUNTAIN, LLC**

13
 14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **COUNTY OF LOS ANGELES**

16 **JOSÉ PADILHA, an individual;**
 17 **COLD MOUNTAIN, LLC, a New York**
 18 **limited liability company,**

19 Plaintiffs,

20 vs.

21 **ERIC NEWMAN, an individual;**
 22 **SPAHN RANCH, INC., a California**
 23 **corporation; and**
 24 **DOES 1 through 10, inclusive,**

25 Defendants.

CASE NO.: 22SMCV01428

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;**
- (2) ACCOUNTING;**
- and**
- (3) BREACH OF FIDUCIARY DUTY**

DEMAND FOR JURY TRIAL

1 Plaintiffs JOSÉ PADILHA (“Padilha”) and COLD MOUNTAIN, LLC (“Cold
2 Mountain”) (collectively, “Plaintiffs”) hereby bring this Complaint against Defendants Eric
3 Newman (“Newman”) and Spahn Ranch, Inc. (“Spahn Ranch”) (collectively, “Defendants”) and
4 allege as follows:

5 **SUMMARY OF CLAIM**

6 1. Padilha and defendant Newman are both executive producers of the hugely
7 successful television series *Narcos* (the “Series”). Prior to the commencement of production of
8 *Narcos*, Padilha and Newman agreed to share equally 50%/50% (excluding any payments
9 Padilha might receive from directing services) in all revenue, income, and proceeds of any
10 nature (with certain carved-out exceptions) that either might receive based on or connected with
11 the Series.

12 2. In reliance on that agreement and understanding, Padilha rendered producing,
13 writing, and directing services on the Series, and, together with Newman, developed and sold
14 the unique and valuable *Narcos* Series which generates significant amount income. Plaintiffs
15 and Defendants are equal co-owners of all income and payments (other than payments for
16 Padilha’s directing services) that either receive at any time based on or connected with the
17 exploitation of the Series.

18 3. Notwithstanding the agreement of Newman and Padilha to share equally 50/50
19 all revenue, income and proceeds arising from or connected with *Narcos*, Plaintiffs are
20 informed and believe, and on that basis allege, that Defendants have received several millions of
21 dollars in revenues arising from or connected with *Narcos* that have not been reported to
22 Plaintiffs, and that Defendants have not paid Plaintiffs their 50% interest in those revenues,
23 income, and proceeds. Despite Plaintiffs’ efforts to obtain information and documents from
24 Defendants concerning their receipt of revenues, income, and proceeds arising from or
25 connected with *Narcos*, Defendants have steadfastly refused to meaningfully communicate with
26 Plaintiffs or otherwise provide Plaintiffs with any information or documents concerning the
27 revenues, income, and proceeds Defendants have received based on *Narcos* and have concealed
28

1 all information from Plaintiffs concerning payments Defendants have received from the
2 exploitation and huge success of *Narcos*.

3 4. As a result of Defendants' material breach of the agreement with Plaintiffs,
4 Plaintiffs have been forced to commence the instant action to protect and enforce their rights to
5 receive accountings from Defendants and the payment of their 50% share of all revenues,
6 income, and proceeds arising from or connected with *Narcos*. By this action, Plaintiffs seek (i) a
7 full and complete accounting from Defendants of all revenue, income, and proceeds received
8 and/or to be received by Defendants at any time arising from or connected with *Narcos*, (ii)
9 compensatory damages of not less than 50% of all revenue, income, and proceeds received by
10 Defendants based on or connected with *Narcos*, (iii) punitive damages for Defendants' breach
11 of fiduciary duties to Plaintiffs and the failure to truthfully account to and pay Plaintiffs their
12 50% share of all revenues, income, and proceeds based on and arising from the exploitation of
13 *Narcos*, and (iv) all other and additional relief to which Plaintiffs may be entitled.

14 **THE PARTIES**

15 5. Plaintiff Padilha is, and at all times relevant hereto was, an individual residing
16 and conducting business in Los Angeles County, California.

17 6. Plaintiff Cold Mountain is, and at all times relevant hereto was, a New York
18 limited liability company organized and existing pursuant to the laws of the State of New York,
19 with its principal place of business in Rockland County, New York and conducting business in
20 Los Angeles County, California.

21 7. Defendant Newman is, and at all times relevant hereto was, an individual
22 residing in and conducting business in Los Angeles County, California.

23 8. Defendant Spahn Ranch is, and at all times relevant hereto was, a California
24 corporation organized and existing pursuant to the laws of the State of California, with its
25 principal place of business in Los Angeles County, California and conducting business in Los
26 Angeles County, California.

27 9. Plaintiffs are presently unaware of the true names and capacities of the
28 defendants sued herein as DOES 1 through 10, inclusive, and therefore sue defendants by such

1 fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of
2 such fictitiously named defendants when the same have been ascertained. Plaintiffs are
3 informed and believe, and based thereon allege, that each of the fictitiously-named defendants is
4 responsible in some manner for the occurrences, acts and omissions alleged herein and that the
5 damages about which Plaintiffs complain were proximately caused by such defendants'
6 conduct. Hereinafter, all defendants (including the Doe Defendants) will be referred to
7 collectively as "Defendants."

8 10. Plaintiffs are informed and believe, and based thereon allege, that each
9 Defendant at all times mentioned in this Complaint was the agent, employee, partner, alter ego,
10 joint venturer and/or employer of the other Defendants and was at all times herein mentioned
11 acting within the course and scope of that agency, employment, partnership, ownership, alter
12 ego, or joint venture. Plaintiffs are further informed and believe, and thereon allege, that the
13 acts and conduct of each Defendant was known to, authorized by and/or ratified by the other
14 Defendants, and each of them.

15 11. Plaintiffs are informed and believe, and based thereon allege, that, at all times
16 relevant hereto, Defendant Newman was the alter ego of Defendant Spahn Ranch, and there
17 exists, and at all times herein mentioned has existed, a unity of interest and ownership between
18 Defendants such that any separateness between them has ceased to exist in that Defendant
19 Newman completely controlled, dominated, managed, and operated Defendant Spahn Ranch to
20 suit his convenience, disregarded legal formalities, used the same office for both Spahn Ranch
21 and his personal matters, used Spahn Ranch as a shell, instrumentality, and/or conduit for
22 himself, and used Spahn Ranch to procure services and/or assets for his own benefit. Plaintiffs
23 are further informed and believe, and based thereon allege, that the facts are such that adherence
24 to the fiction of the separate existence of Spahn Ranch would, under the circumstances, sanction
25 a fraud and/or promote an injustice.

1 **FACTUAL ALLEGATIONS**

2 12. Plaintiff Padilha is an award-winning film and television producer, director, and
3 writer, and Plaintiff Cold Mountain, LLC is the affiliated film and television production
4 company of Padilha by which Padilha co-produced the Netflix series, *Narcos*.

5 13. Defendant Newman is a film and television producer and writer, and Defendant
6 Spahn Ranch is the affiliated film and television production company of Newman by which
7 Newman co-produced the Netflix series, *Narcos*.

8 14. Padilha and Newman are both executive producers of the hit television series
9 *Narcos* exhibited on the popular streaming service, Netflix. To date, Netflix has released six (6)
10 seasons (comprising 60 episodes) of the Series commencing in 2015. Netflix entered into a
11 production agreement with French film studio and production company, Gaumont International
12 Television, LLC (“Gaumont”) for Gaumont to produce the Series. The Series has had immense
13 commercial success. Over the life of the Series, it was nominated for the Golden Globe for
14 “Best Television Series – Drama,” the Satellite Awards for “Best Drama Series,” and the
15 People’s Choice Awards for “Favorite Premium Drama Series.”

16 15. Initially, Padilha and Newman had intended to establish a jointly owned
17 company to provide their services in the development and production of the Series and have that
18 jointly owned company be paid all revenues, income and proceeds of any nature that might
19 become due and owing to Padilha or Newman arising from or connected with any exploitation
20 of the Series. That jointly owned company then would account to and pay Padilha and Newman
21 50%/50% equal shares of all revenue, income and proceeds arising from or connected with the
22 Series. The intent was that the parties would be equal partners in the joint company and co-own
23 all revenue income and proceeds (other than Padilha’s directing fees and payments) generated
24 by or in connection with the Series.

25 16. However, because of then-existing prior business arrangements and obligations,
26 Padilha and Newman decided that, instead of forming a jointly owned company to which all
27 revenue, income, and proceeds would be deposited arising from or connected with the Series,
28 they, and their respective affiliated companies, Cold Mountain and Spahn Ranch, would simply

1 report and account to one another for all revenue, income, and proceeds arising from or
2 connected with the exploitation of the Series, and would pay over to one another any amounts
3 necessary such that Padilha and Newman would share equally on “50/50” basis in all revenue,
4 income, and proceeds either received from or in connection with the exploitation of the Series
5 (other than the carved out exceptions).

6 17. Accordingly, Padilha and Newman agreed to establish a partnership whereby
7 they would equally share in all revenues, income, and proceeds arising from or connected with
8 the exploitation of the Series. Consistent with the foregoing understanding and agreement
9 between Padilha and Newman, Cold Mountain and Spahn Ranch entered into a written
10 agreement dated June 27, 2013 (the “Profit Sharing Agreement”), pursuant to which Cold
11 Mountain and Spahn Ranch agreed and acknowledged, among other things, that they would
12 evenly split “all revenue, income, and proceeds” received by either of them or their respective
13 principals, Padilha and Newman, in connection with exploitation of the Series, on a “50/50”
14 basis (other than the carved out exceptions). The express language from the Profit Sharing
15 Agreement to this effect reads:

16 “The Parties intend that *all revenue, income and proceeds* (e.g., fixed fee
17 income, deferred compensation, profit participation, budget underages, etc.) *at*
18 *anytime received by the Parties or their principals in connection with*
19 *exploitation of the Series and executive producer or other services rendered in*
20 *connection therewith* (excluding amounts received on account of directing
21 services rendered by Padilha [e.g., directing fee and royalty, and residuals], but
22 including any profit participation received for directing services) (collectively,
23 “Gross Proceeds”) will be split fifty percent (50%) to [Cold Mountain, LLC] and
24 fifty percent (50%) to [Spahn Ranch, Inc.], on a most-favored-nations basis. . .
25 the Parties agree to allocate the aggregate Gross Proceeds they receive between
26 themselves in a manner that assures, to the extent achievable, that each Party
27 receives an equal amount of Gross Proceeds *at all times.*” (Emphasis added).
28

1 A true and correct copy of the Profit Sharing Agreement is attached hereto this Complaint as

2 **Exhibit 1.**

3 18. Pursuant to the Profit Sharing Agreement, Plaintiffs and Defendants are partners
4 with the contractual right to equally share 50%/50% in all revenue, income, and proceeds
5 arising from or connected with the exploitation of the Series (other than the carved out
6 exceptions).

7 19. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 have been paid several millions of dollars of revenue, income, and proceeds arising from and
9 connected with the Series (collectively and individually “Narcos Revenues”) that have not been
10 reported or accounted to Plaintiffs, nor have Defendants paid Plaintiffs their 50% share of those
11 Narcos Revenues. Plaintiffs are informed and believe that Defendants have knowingly,
12 intentionally, and fraudulently concealed from Plaintiffs significant Narcos Revenues and have
13 failed and refused to account to Plaintiff for their 50% share of all Narcos Revenues. Instead,
14 Defendants have retained all of the Narcos Revenues for their own use and benefit.

15 20. Despite Plaintiffs having made repeated requests to counsel for Defendants for
16 information and documents pertaining to Defendants’ receipt of Narcos Revenues, Defendants
17 have failed and refused to provide any information or documents to Plaintiffs with respect to
18 Defendants’ receipt of Narcos Revenues. As a direct and proximate result of Defendants’
19 material breach of the Profit Sharing Agreement, Plaintiffs have been forced to commence the
20 instant action.

21 21. Upon information and belief, the outstanding amount of monies received by
22 Defendants arising out of the exploitation of the Series that Defendants have not accounted to
23 Plaintiffs is several millions of dollars.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract Against All Defendants)**

26 22. Plaintiffs reallege, adopt, and incorporate by reference Paragraphs 1 through 21
27 hereof, as if fully set forth herein.

28

1 23. Plaintiffs and Defendants are parties to the written Profit Sharing Agreement
2 attached hereto as Exhibit 1.

3 24. In addition to the express provisions of the written Profit Sharing Agreement, an
4 implied covenant of good faith and fair dealing also existed which precluded Defendants from
5 doing anything that would injure Plaintiffs’ right to receive the benefits of the written Profit
6 Sharing Agreement.

7 25. Defendants have materially breached the express terms of the Profit Sharing
8 Agreement, as well as the implied covenant of good faith and fair dealing, by, *inter alia*, (i)
9 failing and refusing to pay Plaintiffs the 50% share of the Narcos Revenues received by them
10 (including, but not limited to Narcos Revenues received pursuant to their audit of Gaumont and
11 any bonuses), and (ii) failing to account to Plaintiffs for Defendants’ receipt of the Narcos
12 Revenues.

13 26. Plaintiffs have performed all duties and obligations on their part required to be
14 performed by them pursuant to the Profit Sharing Agreement and have assured Defendants that
15 any payments of monies by Gaumont to Plaintiffs that are received by Plaintiffs and subject to
16 split, if any, will be shared evenly with Defendants pursuant to the express terms of the Profit
17 Sharing Agreement.

18 27. As a direct and proximate result of the material breach of the Profit Sharing
19 Agreement by Defendants, Plaintiffs have been damaged in an amount that has not yet been
20 fully ascertained but which Plaintiffs believe to be in excess of One Million Dollars. If and
21 when Plaintiffs have ascertained the full amount of the damages, it will seek leave of the Court
22 to amend this Complaint accordingly.

23 **SECOND CAUSE OF ACTION**

24 **(Accounting Against All Defendants)**

25 28. Plaintiffs reallege, adopt, and incorporate by reference Paragraphs 1 through 27
26 hereof, as if fully set forth herein.

27 29. Pursuant to Paragraph 4 of the Profit Sharing Agreement, Defendants are
28 obligated to evenly share “all revenue, income and proceeds (*e.g.*, fixed income, deferred

1 compensation, profit participation, budget underages, etc.)” received “at anytime” by “the
2 Parties or their principals in connection with the exploitation of the Series and executive
3 producer or other services rendered in connection therewith” on a “50/50” basis.

4 30. As alleged above, Defendants have refused to account to Plaintiffs for all
5 payments and otherwise provide Plaintiffs with all related documents and/or other information
6 pertaining the Narcos Revenues, despite Plaintiffs having repeatedly requested all such
7 documents and information from Defendants.

8 31. Plaintiffs are informed and believe and based thereon allege that Defendants
9 have derived and received significant “revenue, income and proceeds” and other benefits from
10 the aforesaid deceptive and unfair accounting practices. By virtue of the relationship between
11 Plaintiffs, on the one hand, and Defendants, on the other hand, and Plaintiffs’ entitlement to
12 receive fifty percent (50%) of any and all “revenue, income and proceeds” received by
13 Defendants in connection with the exploitation of the Series, Plaintiffs are entitled to a full and
14 accurate accounting of any and all revenues, income and proceeds received by Defendants (or
15 either of them) at any time arising from or connected with the exploitation of the Series.

16 32. The precise amount of money due from Defendants to Plaintiffs is unknown to
17 Plaintiffs and cannot be reasonably ascertained without a full and complete accounting of
18 Defendants’ relevant books and records. Defendants have failed and refused to provide any
19 information and documents in their custody, possession, or control necessary to establish and
20 verify all revenue, income and proceeds received at any time – or to be received in the future –
21 by Defendants (or either of them) arising from or connected with the exploitation of the Series.
22 As a result, the full amount due and owing to Plaintiffs remains unknown. Due to Plaintiffs’
23 exclusion from exercising any control or management over the Narcos Revenues received by
24 Defendants, and the collection, reporting, and accounting of revenues, income, and proceeds
25 paid or to be paid to Defendants from exploitation of the Series, it is impractical to ascertain a
26 fixed sum that is currently owed to Plaintiffs beyond the amount informally disclosed to
27 Plaintiffs to be in excess of One Million Dollars. Accordingly, the full and precise amount owed
28 and becoming due to Plaintiffs can only be determined pursuant to a full and accurate

1 accounting of all revenues, income and proceeds received by Defendants at any time arising
2 from or connected with the Series.

3 **THIRD CAUSE OF ACTION**

4 **(Breach of Fiduciary Duty Against All Defendants)**

5 33. Plaintiffs reallege, adopt, and incorporate by reference Paragraphs 1 through 32
6 hereof, as if fully set forth herein.

7 34. As alleged above, Padilha and Newman both agreed to develop, executive
8 produce and exploit the Series for their equal mutual benefit and created a *de facto* partnership
9 by which they evenly share profits and losses pursuant to the Profit Sharing Agreement, which
10 expressly provides that revenues, income and proceeds received at any time by Cold Mountain
11 or Spahn Ranch (or their principals) in connection with exploitation of the Series are to be
12 shared evenly between Plaintiffs and Defendants on a “50/50” basis. The parties entered into
13 the Profit Sharing Agreement with the intent that they would equally share in any and all
14 revenues, income and proceeds that either Defendants or Plaintiffs might receive at any time
15 based on or connected with the Series.

16 35. Given that they were partners, Plaintiffs relied on Defendants to be loyal, to not
17 self-deal, to not take any action that would interfere with Plaintiffs’ right to receive their share
18 of any and all revenues, income and proceeds from the exploitation of the Series, and to timely,
19 accurately, and fully account for all revenues, income, and proceeds generated and expenses
20 incurred from the exploitation of the Series. Defendants owed and continue to owe a fiduciary
21 duty to Plaintiffs to be loyal, not to self-deal, and not to engage in any act or omission which
22 would harm Plaintiffs in any manner or decrease or diminish Plaintiff’s expected benefits under
23 the Profit Sharing Agreement.

24 36. Despite having voluntarily accepted the trust reposed in him by Plaintiffs, and in
25 violation of this relationship of trust, Newman (both individually and on behalf of Spahn
26 Ranch) caused Narcos Revenues to be paid solely and directly to Defendants, including, but not
27 limited to Gaumont audit proceeds and bonuses, without making Plaintiffs aware of that these
28 Narcos Revenues had been received by Defendants. Pursuant to Defendants’ scheme, Narcos

1 Revenues were paid to and received by Defendants, and Defendants failed to account to
2 Plaintiffs or otherwise pay any of them to Plaintiffs pursuant to the Profit Sharing Agreement.
3 Instead of disclosing the Narcos Revenues received by them to Plaintiffs, as they were expected
4 and required to do pursuant to the terms of the Profit Sharing Agreement, Defendants
5 intentionally concealed these monies from Plaintiffs.

6 37. Defendants have repeatedly breached their fiduciary duties and obligations to
7 Plaintiffs by consistently placing their own interests above those of Plaintiffs by perpetrating the
8 acts and omissions alleged herein, by self-dealing, and by failing and refusing to timely,
9 accurately, and fully account for, report, and pay to Plaintiffs all amounts due and owing to
10 Plaintiffs from the exploitation of the Series, including, but not limited to the Narcos Revenues,
11 pursuant to the terms of the Profit Sharing Agreement.

12 38. As a direct and proximate result of the aforesaid breaches of fiduciary duty by
13 Defendants, Plaintiffs have been damaged in an amount that has not yet been fully ascertained
14 but which Plaintiffs believe to be in excess of One Million Dollars. If and when Plaintiffs have
15 ascertained the full amount of the damages, they will seek leave of the Court to amend this
16 Complaint accordingly.

17 39. Plaintiffs are informed and believe and based thereon allege that Defendants, in
18 doing the things herein alleged, acted willfully, maliciously, oppressively, and despicably with
19 the full knowledge of the adverse effect of their actions on Plaintiffs, and with willful and
20 deliberate disregard of the consequences to Plaintiffs. By reason thereof, Plaintiffs are entitled to
21 recover punitive and exemplary damages from Defendants in an amount to be determined at the
22 time of trial.
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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

1. For compensatory damages in an amount according to proof at the time of trial;
2. For punitive damages in an amount to be determined by the Court according to proof at the time of trial;
3. For an accounting of the Narcos Revenues received by Defendants;
4. For a constructive trust for the benefit of the Narcos Revenues received by Defendants, as well as any and all profits derived by Defendants from its use and enjoyment of the Narcos Revenues, in an amount according to proof at the time of trial;
5. For an award of costs as may be provided by law;
6. For an award of reasonable attorneys' fees as may be provided by law;
7. For an award of pre-judgment and post-judgment interest for the maximum amount allowed by law; and
8. For any and all other relief the Court deems just and proper.

Dated: August 26, 2022

LAVELY & SINGER
PROFESSIONAL CORPORATION
BRIAN G. WOLF
T. WAYNE HARMAN

By: /s/ Brian G. Wolf
BRIAN G. WOLF
Attorneys for Plaintiffs
JOSÉ PADILHA and
COLD MOUNTAIN, LLC

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REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues.

Dated: August 26, 2022

LAVELY & SINGER
PROFESSIONAL CORPORATION
BRIAN G. WOLF
T. WAYNE HARMAN

By: /s/ Brian G. Wolf
BRIAN G. WOLF
Attorneys for Plaintiffs
JOSÉ PADILHA and
COLD MOUNTAIN, LLC

EXHIBIT A

Cold Mountain, LLC
c/o Cowan DeBaets Abrahams & Sheppard LLP
41 Madison Avenue, 34th Floor
New York, New York 10010
Attention: Susan H. Bodine, Esq.

As of June 27, 2013

Spahn Ranch, Inc.
c/o Hansen, Jacobson, Teller, Hoberman,
Newman, Warren, Richman, Rush & Kaller LLP
450 North Roxbury Drive, 8th Floor
Beverly Hills, California 90210
Attention: Stewart Brookman

RE: NARCOS

Ladies and Gentlemen:

This letter agreement ("Agreement") is entered into by and between Spahn Ranch, Inc. ("SR"), the principal of which is Eric Newman ("Newman"), and Cold Mountain, LLC ("CM"), the principal of which is Jose Padilha ("Padilha"), in connection with the sixty (60) minute new media series currently entitled "Narcos" (the "Series") intended for initial exhibition as part of the Netflix streaming service. SR and CM are collectively referred to herein as the "Parties", and each is individually a "Party".

It is hereby acknowledged that SR has entered into an agreement with the production company Alice Guy Productions LLC ("Producer") for the executive producer services of Newman on the Series, and CM has entered into an agreement with Producer for the directing and executive producing services of Padilha on the Series.

The Parties, for themselves and Padilha and Newman, as applicable, agree as follows:

1. Exploitation of the Series: Each Party agrees not to exploit any intellectual property or other proprietary rights it may have in or to the Series, or any underlying rights, without the other Party's prior written consent, including, without limitation, by exploitation of Series materials that may revert back to CM or Padilha and underlying or other proprietary rights (including life rights) in the Series that may revert back to SR or Newman, under their respective agreements with Producer.
2. Credit: The Parties acknowledge that their agreements with Producer provide that Padilha and Newman will receive executive producer credit on a shared card with each other in connection with each episode of the Series for which they render executive producer services. The Parties agree that Padilha's name shall be in first position on such shared card.
3. Approvals: To the extent Producer accords approval over Series episode scripts to Padilha and/or Newman, the Parties agree that neither Padilha nor Newman will communicate approval to Producer over any such script without the other individual's prior written consent.
4. Series Compensation: The Parties intend that all revenue, income and proceeds (*e.g.*, fixed fee income, deferred compensation, profit participation, budget underages, etc.) at anytime received by the Parties or their principals in connection with exploitation of the Series and executive producer or other

services rendered in connection therewith (excluding amounts received on account of directing services rendered by Padilha [e.g., directing fee and royalty, and residuals], but including any profit participation received for directing services) (collectively, "Gross Proceeds") will be split fifty percent (50%) to CM and fifty percent (50%) to SR, on a most-favored-nations basis. In the event the Parties receive different percentages of Gross Proceeds and/or Gross Proceeds are paid to the Parties at different times or calculated on different terms, whether derived from their respective agreements with Alice Guy Productions LLC, or otherwise, then the Parties agree to allocate the aggregate Gross Proceeds they receive between themselves in a manner that assures, to the extent achievable, that each Party receives an equal amount of Gross Proceeds at all times.

If the foregoing terms are acceptable, please sign where indicated below and return this letter to us at your earliest convenience.

Sincerely,

COLD MOUNTAIN, LLC ("CM")

By: 

Authorized Representative

ACCEPTED AND AGREED TO BY:

SPAHN RANCH, INC. ("SR")

By: 

Authorized Representative