

<b>DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO</b>  1777 Sixth Street Boulder, CO 80302 (303) 441-3750	
<b>Plaintiff(s):</b> GRAND TOURISME AUDIOVISUEL, S.A., a Luxembourg corporation,  v.  <b>Defendant(s):</b> COLORADO SATELLITE BROADCASTING, INC., a Colorado corporation, NEW FRONTIER MEDIA, INC., a Colorado corporation, and DOES 1-10.	
Attorneys for Plaintiff:  Craig N. Johnson, #21905 FAIRFIELD & WOODS, P.C. Wells Fargo Center 1700 Lincoln Street, Suite 2400 Denver, Colorado 80203-4524 Telephone: (303) 830-2400 E-mail: cjohnson@fwlaw.com	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>  <b>Case Number:</b>  <b>Division/Courtroom:</b>
<b>COMPLAINT</b>	

Plaintiff Grand Tourisme Audiovisuel, S.A., (“Plaintiff” or “GTA”), through its attorneys, Fairfield and Woods, P.C., hereby submits the following as its Complaint, and states as follows:

**PARTIES**

1. GTA is a Luxembourg corporation.

2. Defendant Colorado Satellite Broadcasting, Inc. (“CSB”) is a corporation organized under the laws of the State of Colorado with its principal office located in Boulder, Colorado.

3. Defendant New Frontier Media, Inc. (“NFM”) is a corporation organized under the laws of the State of Colorado with its principal office located in Boulder, Colorado.

4. Defendants Doe 1 through Doe 10 are sued herein by these fictitious names because their true names are unknown. Plaintiff will seek leave to amend this complaint to add their true names when these names are ascertained. Plaintiff is informed, believes and thereon alleges that these fictitiously-named defendants are liable as agents, principals, co-conspirators, alter egos or otherwise for the claims alleged in this complaint.

### **JURISDICTION AND VENUE**

5. Jurisdiction is proper in this Court pursuant to Colo. Const. art. VI, sec. 9.

6. Venue is proper in this Court pursuant to C.R.C.P. 98(c), as Defendants CSB and NFM are located in Boulder County, Colorado.

### **GENERAL ALLEGATIONS**

7. GTA owns encrypted entertainment television programming channels that contain adult themed content (the “Channels”). On or around July 21, 2010, GTA and defendant CSB entered into a Master License Agreement (the “License Agreement”), a true and correct copy of which is attached hereto as Exhibit A. Pursuant to the License Agreement, GTA agreed to grant CSB the exclusive license to market and to enter into contractual agreements regarding the Channels, while GTA was to provide the technical management of the Channels.

The License Agreement was to last five years from the date of execution, until July 21, 2015. CSB agreed “[w]ithin thirty (30) days from the effective date, [to] make three (3) monthly payments of \$20,000 USD each, totaling \$60,000 to GTA.” Section 5.1. In addition, CSB agreed to “pay GTA a minimum guarantee of \$20,000 per month for the first Channel and \$10,000 for each subsequent Channel that [defendants] actually distribute to Operators.” Section 5.2. CSB also agreed to “pay GTA a monthly license fee based on the gross revenue actually collected by [defendants] from distribution of the [Channel].” Section 5.3.

8. CSB began distribution of the first Channel under the License Agreement, named “XTSY,” on or around November 9, 2010.

9. Beginning in or around January 2012, CSB failed to make timely payments under the License Agreement.

10. On or about January 18 and 19, 2012, representatives of defendants and GTA met in Las Vegas, NV to discuss the License Agreement. At this meeting, defendants claimed that they were disappointed by the performance of XTSY, and asked GTA to come up with a “new strategy” – even though it was defendants who were responsible for marketing the Channels. After the Las Vegas meeting, defendants continued to fail to meet their payment obligations.

11. In or around April 2012, Marc Callipari (“Callipari”), General Counsel for NFM, spoke with a representative of GTA over the phone and told him that defendants would not pay GTA the delinquent payments owed under the License Agreement until and unless GTA agreed to terminate the License Agreement. GTA was unable to survive financially without timely payments from defendants, and was unable to contract with any other company for the Channels under the exclusive license provisions of the License Agreement. Therefore, with no other

option, GTA agreed to terminate the License Agreement with defendants, subject to the conditions of a termination agreement.

12. GTA and CSB entered into a Mutual Termination of Master License Agreement on or about April 25, 2012 (the “Termination Agreement”), a true and correct copy of which is attached hereto as Exhibit B.

13. Almost immediately, CSB breached, and remain in breach, of at least three of their five obligations under the Termination Agreement. Specifically:

- (i) Under Paragraph A of the Termination Agreement, defendants continued to have the right to exhibit content owned by GTA until December 31, 2012, “subject to [defendants’] obligation to remit the applicable Revenue Share to GTA.” Yet defendants have failed to provide GTA with any revenue share whatsoever, even though they continued to exhibit GTA’s content.
- (ii) Under Paragraph D of the Termination Agreement, defendants agreed to “negotiate in good faith regarding certain French language content that GTA desires to license to [defendants].” Yet defendants failed to negotiate in good faith regarding GTA’s French language content. Instead, defendants stalled for almost two months before informing GTA that they “don’t have a need for this type of content,” even though defendants induced GTA to sign the Termination Agreement by falsely claiming that they would purchase the French language content.

- (iii) Under Paragraph E of the Termination Agreement, defendants agreed that “GTA shall have the right to continue using [defendants’] ‘XTSY’ brand, trademark and Adult Themed Content that is available on the XTSY channel until June 30, 2012.” Yet defendants took the XTSY channel off the air on June 15, 2012, more than two weeks early, and left the channel off the air until June 20, 2012. When the channel was back on the air, it displayed the incorrect programming. As a result, GTA was deprived of an opportunity to make an orderly transition from XTSY to a new channel, causing significant and irreparable damage to GTA’s reputation and commercial relationships.

Furthermore, GTA was under the assumption that when the channel was returned to the air on June 20, 2012 that this was a direct result of defendants’ agreeing to return to the original agreement and to set aside the Termination Agreement. Indeed, on or about June 19, 2012 Michael Weiner (“Weiner”), the Chairman and CEO of NFM told GTA that the feed was to be restored on this basis and GTA confirmed to all parties including Weiner and Callipari that “After a discussion with Michael Weiner, NOOF President, the content for XTSY will be provided by NOOF again, as it was before.” Despite this understanding, defendants one again without warning took the channel off the air on July 2, 2012. This second disruption, permanent in nature, served to destroy any remaining credibility which GTA has in the marketplace and fatally undermine the equity in the XTSY brand in GTA’s principal markets.

14. It is now apparent that defendants had no intention of ever fulfilling their obligations under the Termination Agreement. Instead, defendants misled GTA into signing the

Termination Agreement under threat of non-payment, in order to abandon their obligations under the License Agreement. The License Agreement had more than three years remaining at a minimum guaranteed payment \$20,000 per month (i.e., a total of \$780,000, net of the payments received under the Termination Agreement), among other substantial benefits GTA was entitled to receive.

### **FIRST CAUSE OF ACTION**

#### **(For Breach of Written Contract – Termination Agreement – Against CSB)**

15. GTA incorporates herein by reference paragraphs 1 through 14 of this complaint.

16. GTA performed all conditions and covenants to be performed on its part pursuant to the Termination Agreement.

17. CSB has breached the Termination Agreement by failing to provide GTA with the applicable revenue share under Paragraph A of the Termination Agreement; by failing to negotiate in good faith regarding GTA's French language content under Paragraph D of the Termination Agreement; and by preventing GTA from having the right to continue using CSB's "XTSY" brand under Paragraph E of the Termination Agreement.

18. As a direct result of CSB's breaches of the Termination Agreement, GTA has been damaged in an amount to be determined at trial, plus interested as allowed by law.

### **SECOND CAUSE OF ACTION**

#### **(For Breach of the Implied Covenant of Good Faith And Fair Dealing – Against CSB)**

19. GTA incorporates herein by reference paragraphs 1 through 18 of this complaint, as if set forth fully herein.

20. The Termination Agreement contains an implied covenant of good faith and fair dealing requiring CSB to use good faith and their best efforts to perform all of their obligations under the agreement, including the obligation to negotiate in good faith regarding French language content that GTA wished to lease to defendants.

21. GTA has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the Termination Agreement, except for those for which performance has been excused.

22. In April 2012 and thereafter, CSB breached the implied covenant of good faith and fair dealing contained in the Termination Agreement by failing to exercise good faith and use its best efforts to negotiate for the purchase of the French language content that GTA wished to license to defendants.

23. As a direct result of defendant CBS's breach of the Termination Agreement, GTA has been damaged in an amount to be determined at trial, plus interested as allowed by law.

### **THIRD CAUSE OF ACTION**

#### **(For Rescission)**

24. GTA incorporates by reference each and every allegation contained in paragraphs 1 through 23 of this complaint.

25. As alleged above, defendants induced GTA to enter in to the Termination Agreement on or around April 25, 2012 by refusing to pay monies owed under the License Agreement. In addition, defendants, knowing the representations to be false and with the intent to deceive GTA and induce it to enter into the Termination Agreement, falsely and fraudulently

represented to GTA that it would complete the principal obligations under the Termination Agreement in exchange for termination of the License Agreement.

26. The representations made by defendants were in fact false. The true facts were that defendants never intended to satisfy their obligations under the Termination Agreement, and made these representations in order to induce GTA to terminate the License Agreement, and therefore avoid defendants' obligations under the License Agreement.

27. At the time the representations were made, at the time GTA entered into the Termination Agreement, and at the time GTA rendered its performance under the Termination Agreement, GTA did not know the representations were false, but believed them to be true and reasonably relied on them. Had GTA known the true facts, it would not have entered into the Termination Agreement, and would not have rendered or accepted performance thereunder.

28. In or around May 2012, CSB began to breach the Termination Agreement by committing the material breaches described herein.

29. GTA will suffer substantial harm and injury under the Contract if it is not rescinded in that as a result of defendants' conduct, GTA will be deprived of the benefit of their bargain and the value of the License Agreement, which they were wrongly induced to terminate.

30. On June 17, 2012, GTA sent an e-mail to Callipari and Weiner, informing them that defendants "did not respect at all the terms of [the Termination Agreement]," and that therefore the Termination Agreement was "null and void. GTA considers that we are back to the regular contract and will invoice you for its service till the end of it, during the next 3 years."

31. GTA intends service of the summons and complaint in this action to serve as further notice of rescission of the Termination Agreement, and hereby demands that defendants



revert back and to the original License Agreement. Specifically, defendants must make payments under the License Agreement from the date the Termination Agreement was executed, and reinstate the License Agreement until its termination in July 2015.

32. GTA need not restore the \$70,000 paid to it by defendants under the termination agreement, because GTA was entitled to this \$70,000 in any event, under the terms of the License Agreement.

33. As a result of entering into the Termination Agreement with defendants, GTA has incurred expenses in addition to those alleged above, in an amount to be determined at trial, plus interested as allowed by law.

34. In performing the acts herein alleged, defendants intentionally misrepresented to GTA material facts known to defendants, specifically that defendants had the intention of performing their obligations under the Termination Agreement, with the intention on the part of defendants of depriving GTA of its money and property, thereby justifying an award of punitive damages against defendants.

#### **FOURTH CAUSE OF ACTION**

##### **(For Fraud Against All Defendants)**

35. GTA incorporates by reference each and every allegation contained in paragraphs 1 through 34 of this complaint.

36. As alleged above, defendants induced GTA to enter in to the Termination Agreement on or around April 25, 2012 by refusing to pay monies owed under the License Agreement. In addition, defendants, knowing the representations to be false and with the intent to deceive GTA and induce it to enter into the Termination Agreement, falsely and fraudulently

represented to GTA at or around the time of the signing of the Termination Agreement that it would complete the obligations under the Termination Agreement in exchange for termination of the License Agreement.

37. The representations made by defendants were in fact false. The true facts were that defendants never intended to satisfy their obligations under the Termination Agreement, and made these representations in order to induce GTA to terminate the License Agreement, and therefore avoid defendants' obligations under the License Agreement.

38. At the time the representations were made, at the time GTA entered into the Termination Agreement, and at the time GTA rendered its performance under the Termination Agreement, GTA did not know the representations were false, but believed them to be true and reasonably relied on them. Had GTA known the true facts, it would not have entered into the Termination Agreement, and would not have rendered or accepted performance thereunder.

39. As a proximate cause of defendants' false representations and omissions, GTA has suffered, and will continue to suffer, damages in an amount to be proven at trial.

40. By reason of defendants' fraudulent conduct, as herein alleged, GTA is entitled to an award of punitive damages against defendants, in amounts sufficient to make an example of them and to punish him for his wrongful conduct.

### **FIFTH CAUSE OF ACTION**

#### **(For Intentional Interference with Economic Relationships Against All Defendants)**

41. GTA incorporates paragraphs 1 through 40 of this complaint, as if set forth fully herein.

42. GTA customarily provided services relating to its entertainment television programming channels to cable providers and other third party operators, and these business relationships were vital to GTA's existence. Defendants knew about the above described relationships between GTA and third parties.

43. As described in paragraph 12(iii) of this complaint, on or around June 15, 2012, defendants intentionally took the XTSY channel off the air early, in direct violation of the Termination Agreement. When the channel was back on the air, it displayed the incorrect programming. As a result of defendants' actions, GTA was deprived of an opportunity to make an orderly transition from XTSY to a new channel without any interruption in service.

44. Defendants' conduct damaged GTA's relationships with the cable companies GTA had previously provided services for, caused GTA to lose the opportunity to obtain additional contracts, and irreparably damaged GTA's reputation and commercial relationships. Plaintiffs has suffered damages due to defendants' conduct in an amount to be proven at trial, but in no event less than \$200,000.

45. The aforementioned acts of defendants were willful and malicious. Plaintiff is therefore entitled to punitive damages.

46. Neither the whole nor any part of the debt has been paid, although demand therefore has been made. Accordingly, there is now due, owing, and unpaid from defendants to GTA the sum of \$780,000, plus interest thereon.

## **SIXTH CAUSE OF ACTION**

### **(Alter Ego Liability – NFM)**

47. GTA incorporates paragraphs 1 through 46 of the complaint as if fully set forth herein.

48. NFM owns one hundred percent of the stock of CSB and has failed to operate CSB as a separate corporate entity.

49. Among other things, CSB has at all times communicated through NFM and all of the “employees” of CSB represented themselves to be employees of NFM. As set forth above, NFM made representation on behalf of CSB, and paid the consideration for CSB under the License Agreement and Termination Agreement. Upon information and belief NFM essentially runs CSB and has ignored corporate formalities in the operation of CSU.

50. CSB is the alter ego of NFM and to treat CSB and NFM as separate and distinct legal entities would sanction a fraud and promote injustice in that it would prevent GTA from recovering on the claims asserted herein.

51. As the alter ego of CSB, NFM is liable for all claims asserted against CSB in this action.

WHEREFORE, Plaintiff Grand Tourisme Audiovisuel, S.A., prays that judgment enter in its favor and against the Defendants on each and every claim asserted herein, and that it be awarded the following relief:

1. Compensatory damages in an amount to be proven at trial, plus interest at the legal rate according to proof;
2. A declaration that the Termination Agreement has been rescinded;

3. An accounting;
4. An award of its reasonable costs and attorneys' fees; and
5. Such other and further relief as the court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury on all claims so triable.

Dated this 3rd day of August, 2012.

FAIRFIELD AND WOODS, P.C.

s/ Craig N. Johnson

Craig N. Johnson

ATTORNEYS FOR PLAINTIFF

Plaintiff's Address:

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