

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

AI INTERNATIONAL HOLDINGS (BVI),
LIMITED

Plaintiff,

– against –

TWC BORROWER 2016, LLC, THE
WEINSTEIN COMPANY HOLDINGS LLC,
and HARVEY WEINSTEIN,

Defendants.

Index No. _____

SUMMONS

**Plaintiff designates New York
County as the place of trial.**

**Venue is proper in this
County pursuant to CPLR § 501**

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff’s attorneys an answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of its day of service, or within thirty (30) days after service is complete if the Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you on default for the relief demanded in the Complaint.

Plaintiff designated New York County as the place of trial. Venue is appropriate in New York County pursuant to CPLR § 501.

Dated: New York, New York
November 10, 2017

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

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To: TWC BORROWER 2016
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New York, NY 10013

The Weinstein Company Holdings LLC
99 Hudson Street
New York, NY 10013

Harvey Weinstein
c/o Dev R. Sen
Boies Schiller & Flexner, LLP
575 Lexington Avenue, 7th Floor
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COMPLAINT

Plaintiff AI International Holdings (BVI) Limited, for its complaint against defendants TWC Borrower 2016, LLC, The Weinstein Company Holdings LLC, and Harvey Weinstein, states as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract. The business that supports a \$45 million loan has dramatically imploded as a result of a massive, public scandal involving its founder and now-former senior leader, resulting in a default under the relevant loan documents that allows the lender to demand immediate repayment of all amounts due and owing under the loan. The lender has properly declared a default and demanded immediate repayment of the approximately \$44 million unpaid loan balance and all other amounts due. Nevertheless, the borrower and one of its guarantors have failed to repay the loan. The lender brings this action to enforce its contractual right to immediate repayment of the full outstanding balance of the loan plus accrued interest and expenses.

PARTIES

2. Plaintiff AI International Holdings (BVI) Limited (“AI International”) is an entity formed under the laws of the British Virgin Islands with a business address at 730 Fifth Avenue, New York, New York 10019. AI International is the Lender under a Secured Full Recourse Promissory Note dated as of September 29, 2016 (as amended, the “Note”). The Note is attached hereto as Exhibit A.

3. Defendant TWC Borrower 2016, LLC (“TWC Borrower”) is a limited liability company formed under Delaware law with a business address at 99 Hudson Street, New York, New York 10013. TWC Borrower is an affiliate of Defendant The Weinstein Company Holdings LLC. TWC Borrower is the Borrower under the Note.

4. Defendant The Weinstein Company Holdings LLC (“Weinstein Holdco”) is a limited liability company formed under Delaware law with a business address at 99 Hudson Street, New York, New York 10013. Weinstein Holdco is a guarantor of TWC Borrower’s obligations under the Note.

5. Defendant Harvey Weinstein (“Weinstein”) is an individual who founded and, until recently, served as the co-chairman of Weinstein Holdco. Weinstein is a guarantor of TWC Borrower’s obligations under the Note.

JURISDICTION AND VENUE

6. This Court has specific personal jurisdiction over TWC Borrower, Weinstein Holdco, and Weinstein pursuant to CPLR § 301(a)(1).

7. This Court also has personal jurisdiction over TWC Borrower, Weinstein Holdco, and Weinstein pursuant to N.Y. Gen. Oblig. Law § 5-1402, because this action concerns agreements that (a) arise out of a transaction covering more than \$1 million; (b) contain a New

York choice-of-law clause pursuant to General Obligations Law § 5-1401; and (c) contain a provision whereby the parties agreed to submit to the jurisdiction of the courts of this state.

8. Specifically, the Note concerns a principal amount of \$45 million.

9. Section 10(a) of the Note contains a New York choice-of-law clause, which provides: “This Note shall be governed by, and construed in accordance with, the internal laws of the State of New York.”

10. Section 10(b) of the Note further provides that the parties will submit to jurisdiction in New York: “Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the City and County of New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Note or any other Loan Document to which each is a party, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of such action or proceeding may be heard and determined in such state courts or, to the fullest extent permitted by applicable law, in such federal courts.”

11. Section 10(d) of the Note further provides: “Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11. Nothing in this Note will affect the right of any party hereto to serve process in any other manner permitted by applicable law.”

12. Section 9 of the Guarantee, dated as of September 29, 2016, by The Weinstein Company Holdings LLC (the “Weinstein Holdco Guarantee”) contains a New York choice-of-law provision providing for jurisdiction in New York. The clause provides, in part: “This Guarantee

shall be deemed to be a contract made under and governed by the internal laws of the State of New York without regard to conflicts of law principles that would compel the application of the laws of another jurisdiction. The parties agree that any action brought by either party under or in relation to this Guarantee, including without limitation to interpret or enforce any provision hereof, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the State of New York. The parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in a federal or state court in the State of New York.” The Weinstein Holdco Guarantee is attached hereto as Exhibit B.

13. Section 8 of the Guarantee, dated as of September 29, 2016, by Harvey Weinstein (the “Weinstein Guarantee”) also contains a New York choice-of-law provision providing for jurisdiction in New York: “This Guarantee shall be deemed to be a contract made under and governed by the internal laws of the State of New York without regard to conflicts of law principles that that would compel the application of the laws of another jurisdiction. The parties agree that any action brought by either party under or in relation to this Guarantee, including without limitation to interpret or enforce any provision hereof, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the State of New York. The parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in a federal or state court in the State of New York.” The Weinstein Guarantee is attached hereto as Exhibit C.

14. Venue in New York County is proper pursuant to CPLR § 501, Section 10(c) of the Note, Section 9 of the Weinstein Holdco Guarantee, and Section 8 of the Weinstein Guarantee.

15. Specifically, Section 10(c) of the Note provides: “Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Note or any other Loan Document in any court referred to in subsection (b) of this Section 10. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable laws, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.”

16. Section 10(b) of the Note further provides that the parties will “unconditionally submit[] . . . to the nonexclusive jurisdiction of the courts of the State of New York sitting in the City and County of New York County.”

17. Section 9 of the Weinstein Holdco Guarantee and Section 8 of the Weinstein Guarantee each respectively provide that neither Weinstein Holdco nor Weinstein shall object to venue in a New York state or federal court.

FACTUAL BACKGROUND

18. TWC Borrower issued the Note to AI International on or about September 29, 2016. The Note was issued based on AI International’s loan of \$45 million to TWC Borrower and its affiliates. The original principal amount of the loan was \$45 million.

19. Weinstein Holdco issued the Weinstein Holdco Guarantee on or about September 29, 2016. Weinstein issued the Weinstein Guarantee on or about September 29, 2016. Both guarantees provided material inducements to AI International to enter into the Note.

20. Under Section 2(a) of the Note, TWC Borrower is obligated to pay “the unpaid Principal Amount together with accrued and unpaid interest thereon and all other unpaid amounts owing hereunder on the Maturity Date.” The current unpaid Principal Amount is \$43,459,176.23.

The Maturity Date under the Note, as amended, is the earlier of June 29, 2018 or the date on which a change of control occurs.

21. As guarantors, Weinstein Holdco and Weinstein agreed to “absolutely, unconditionally and irrevocably guarantee[] to [AI International] the due and punctual payment, performance and discharge of any and all of the covenants and obligations of . . . the Borrower . . . under the Note in accordance with the terms thereof, including, but not limited to, the obligation to repay principal and interest under the Note. . . .” Both guarantors expressly acknowledged that AI International “may, in its sole discretion, bring and prosecute a separate action or actions against the Guarantor in respect of the Obligations, regardless of whether any such action is brought against the Borrower or any other guarantor of the Obligations or whether the Borrower or any other Guarantor is joined as a party in any such action or actions.”

22. Under Section 2(f) of the Note, “At any time during the continuance of any Default, Lender, by written notice to Borrower, may declare the Principal Amount together with accrued and unpaid interest thereon and all other unpaid amounts owing hereunder immediately due and payable. . . .”

23. Under Section 2(e)(i) of the Note, a Default includes a “fail[ure] to make any payment of the Principal Amount or interest thereon when due” where “such failure [has] continued for a period of five (5) business days after written notice thereof shall have been given by Lender to Borrower.”

24. Under Section 2(e)(vii) of the Note, a Default also includes “the occurrence of a Material Adverse Change.” A Material Adverse Change shall mean, among other things, “(a) a material adverse effect upon the business, financial condition or results of operations of Weinstein TV, WGFC and Weinstein Holdco (individually or in the aggregate), [or] (b) a material

impairment of the ability of any Loan Party to perform their respective obligations under the Loan Documents. . . .”

25. Weinstein was fired, effectively immediately, from his post as co-chairman of Weinstein Holdco on October 8, 2017, following published accounts in which several women accused him of sexual harassment and rape. On October 17, 2017, the board of directors of Weinstein Holdco met and ratified Weinstein’s termination. Weinstein has denied any non-consensual sexual activity.

26. Weinstein’s termination and the events leading to and surrounding that termination have left the business of Weinstein Holdco and its affiliates in shambles. The alleged activities leading to Weinstein’s termination have put Weinstein Holdco’s finances, and indeed its very existence, at severe risk, with at least one industry observer suggesting that “[f]or all intents and purposes, there is no Weinstein Company apart from Mr. Weinstein” and that, without him, “this studio, already struggling at the box office and hobbled by an exodus of senior staff members in recent years, is in serious trouble.”

27. Among other things, Weinstein’s alleged activities have left Weinstein Holdco exposed to potentially massive liabilities and have severely, if not fatally, damaged its standing in the marketplace. Published reports indicate that members of Weinstein Holdco’s board of directors were aware of settlements paid by Weinstein since at least 2015. At least one media source has reported that the directors approved a 2015 contract that contemplated future sexual harassment or assault allegations against Weinstein, and his opportunity to cure allegations of such conduct by paying a modest fine to the company. Weinstein Holdco faces lawsuits and an investigation launched by the New York Attorney General—an investigation that Weinstein has stated may result in Weinstein Holdco being exposed to additional liability. Weinstein Holdco

now faces lawsuits by women claiming millions of dollars in damages based on Weinstein's alleged conduct—including at least one lawsuit in which the plaintiff claims that the company's board had actual knowledge of Weinstein's alleged misconduct. Weinstein himself has sued Weinstein Holdco, noting among other things that the company's co-founder, his brother Robert Weinstein, is also accused of "similar improper conduct."

28. Weinstein Holdco is publicly reported to have experienced an exodus of business partners, board members, and creative talent. Indeed, at least four board members have resigned as a direct result of the scandal. A special committee formed by the remaining board members has retained its own counsel to conduct a purportedly independent investigation into asserted or actual misconduct by Weinstein while he was employed at Weinstein Holdco—an investigation that Weinstein himself has characterized as intended to determine the extent of the company's liability because of the allegations against him. Weinstein's name has reportedly been dropped as producer from Weinstein Holdco's current slate of television shows, and the company's network partners are reported to have begun dropping the company's title card from the shows—a clear indication of the growing cost of the scandal. Amazon is reported to have pulled the plug on a major television deal, and Weinstein Holdco's ability to move forward with new projects has significantly diminished.

29. Since Weinstein's dismissal, and as a result of the facts and circumstances surrounding that dismissal, Weinstein Holdco has been desperately seeking tens of millions of dollars in emergency loans needed to keep the company afloat. Meanwhile, Weinstein Holdco is publicly reported to have been unsuccessfully trying to sell itself. On October 16, 2017, Weinstein Holdco announced that it had entered into what it called a "preliminary agreement" with a private equity firm "to provide an immediate capital infusion" and that it also had entered a "negotiating

period” with that firm “for a potential sale of all or a significant portion of the Company’s assets.” It was later reported, however, that this deal has collapsed and that the private equity firm will not provide the desperately needed capital infusion.

30. Industry observers are reported to believe that a bankruptcy filing is increasingly likely as Weinstein Holdco’s finances deteriorate even further. *Variety* has quoted a veteran entertainment banker as stating, “The company is in complete turmoil. . . . Whatever survives is not going to be the same business and it’s not going to be the same management team.” A knowledgeable observer has been quoted publicly as stating that Weinstein Holdco “apparently does not have the liquidity necessary to release finished pictures, let alone produce new movies or TV series,” and “[b]ecause [Weinstein Holdco] requires additional risk capital to acquire, produce and release product and remain a going concern, I am certain [Weinstein Holdco]) will file a Chapter 11 petition within the next three months. . . . A sophisticated investor . . . will not invest equity or buy the assets without the comfort of a bankruptcy court order blessing the deal and shielding those assets from claims made by others, including claims arising from Harvey’s actions.” These sentiments have been echoed by other knowledgeable investment bankers, including one who has been quoted as saying, “Nobody will touch this company with a 10-foot pole. . . . Pretty soon it’s going to be on life support, and they’re going to have to make the decision of whether to pull the plug.” And the principal of the private equity firm that had previously agreed to provide Weinstein Holdco with a financial lifeline was recently quoted as saying, “You have a patient that’s dying on the table.”

31. Weinstein’s termination and the facts and circumstances leading to and surrounding that dismissal, as set forth in paragraphs 18 to 30 above, constitute a Material Adverse Change as defined in the Note.

32. On October 10, 2017, AI International provided TWC Borrower, Weinstein Holdco, and Weinstein with a notice of Default (the “First Notice of Default”) under Section 2(e)(vii) of the Note based on the occurrence of a Material Adverse Change, effective as of October 8, 2017, “and resulting from the dismissal of Harvey Weinstein as co-chairman of the Weinstein Company Holdings LLC and the facts and circumstances leading to that dismissal.” AI International’s notice declared “the Principal Amount, together with accrued and unpaid interest thereon, and all other unpaid amounts owing under the Note immediately due and payable.” AI International expressly reserved all of its rights with respect to potential additional Defaults.

33. On October 14, 2017, TWC Borrower failed to pay an interest payment due under the Note (“Second Trigger Interest Payment”), in violation of Section 2(b) of the Note, as amended.

34. On October 19, 2017, AI International delivered a Control Order pursuant to Section 4 of the Special Deposit Account Control Agreement, dated October 12, 2016 (the “Control Agreement”), established in connection with the Note, to the bank at which the Special Deposit Account is maintained. The Control Order, among other things, instructed the depository bank to transfer all funds in the Special Deposit Account to a designated account of AI International. To date, the depository bank has not transferred any funds in response to the Control Order or otherwise. Indeed, the depository bank has advised AI International that the Special Deposit Account contains no funds available for transfer.

35. On October 20, 2017, AI International exercised its rights under Section 6(e) of the Note to demand information from various Loan Parties under the Note (including TWC Borrower and Weinstein Holdco). To date, no Loan Party has complied with AI International’s demand for information.

36. On October 20, 2017, AI International exercised its rights under Sections 4.1(c) and (d) of the Pledge and Security Agreement, dated as of September 29, 2016 (the “Security Agreement”), entered into in connection with the Note, to demand supplemental information from an affiliate of Weinstein Holdco concerning the assets that provide security for the repayment of the Note. To date, AI International has received no information in response to this demand.

37. On October 20, 2017, AI International formally provided notice of the First Notice of Default to Weinstein Holdco and demanded immediate payment of the Guaranteed Amount, pursuant to correspondence titled “Guarantee—Notice of Demand of Payment in Full.”

38. On October 23, 2017, AI International formally provided notice of the First Notice of Default to Weinstein, pursuant to correspondence titled “Guarantee—Reservation of Rights.”

39. On November 1, 2017, AI International provided notice pursuant to Section 2(e)(i) of the Note that TWC Borrower failed to timely remit the Second Trigger Interest Payment. TWC Borrower has failed to provide payment within five business days of AI International’s notice, and such failure constitutes an additional Default under Section 2(e)(i) of the Note.

40. TWC Borrower, Weinstein Holdco, and Weinstein owe \$43,459,176.23 in unpaid Principal Amount and approximately \$481,000.00 in accrued interest to AI International that had not been repaid despite valid and legally enforceable demands for immediate payment. Under Section 2(b) of the Note, as amended, interest is currently accruing at a rate per annum equal to 14% of the Principal Amount, and that rate will increase to 15% on November 13, 2017.

41. AI International is entitled to attorney’s fees in this action because “Obligations” under the Note include, among other things, “the reasonable outside attorney’s fees and expenses of collecting or attempting to collect this Note.” In addition, under the Weinstein Holdco Guarantee and the Weinstein Guarantee, each of Weinstein Holdco and Weinstein have agreed to

pay “the reasonable outside attorney’s fees and expenses incurred by [AI International] in enforcing or attempting to enforce this Guarantee.”

COUNT 1

(Breach of Contract – TWC Borrower)

42. AI International repeats each of the allegations set forth in paragraphs 1 through 41 as if fully set forth herein.

43. The Note is a valid and enforceable contract.

44. AI International has fully performed all of its obligations under the Note.

45. AI International has delivered a First Notice of Default and has declared “the Principal Amount, together with accrued and unpaid interest thereon, and all other unpaid amounts owing under the Note immediately due and payable.”

46. Following the delivery of the First Notice of Default, TWC Borrower committed an additional default under the Note by failing to timely remit the Second Trigger Interest Payment within five business days of AI International’s notice that such payment had not been made.

47. TWC Borrower has failed to make repayment of the Principal Amount, together with accrued and unpaid interest thereon, and all other unpaid amounts owing under the Note.

48. TWC Borrower’s failure to repay the Principal Amount, together with accrued and unpaid interest thereon, and all other unpaid amounts owing under the Note, constitutes a breach of contract.

49. TWC Borrower currently owes AI International \$43,459,176.23 in unpaid Principal Amount and approximately \$481,000.00 in unpaid interest. Interest is currently accruing at a rate per annum equal to 14% of the Principal Amount, and that rate will increase to 15% on November 13, 2017.

50. In addition to recovering the Principal Amount and unpaid interest, AI International is expressly entitled under the Note to recover its attorney's fees and expenses in this lawsuit.

COUNT 2

(Breach of Contract – Weinstein Holdco and Weinstein)

51. AI International repeats each of the allegations set forth in paragraphs 1 through 50 as if fully set forth herein.

52. The Weinstein Holdco Guarantee and the Weinstein Guarantee are valid and enforceable contracts.

53. AI International has fully performed all of its obligations in respect of the Weinstein Holdco Guarantee and the Weinstein Guarantee.

54. AI International has delivered a First Notice of Default and has declared "the Principal Amount, together with accrued and unpaid interest thereon, and all other unpaid amounts owing under the Note immediately due and payable." TWC Borrower has failed to make repayment of those amounts.

55. As a result of TWC Borrower's failure to pay its Obligations under the Note, AI International is entitled to seek repayment from one or both of Weinstein Holdco or Weinstein.

56. Neither Weinstein Holdco nor Weinstein has repaid TWC's Obligations under the Note.

57. The failure of Weinstein Holdco and Weinstein to repay TWC's Obligations under the Note pursuant to the Weinstein Holdco Guarantee and the Weinstein Guarantee constitutes a breach of contract.

58. As the guarantors of the Obligations of TWC Borrower, Weinstein Holdco and Weinstein currently owe AI International \$43,459,176.23 in unpaid Principal Amount and

approximately \$481,000.00 in unpaid interest. Interest is currently accruing at a rate per annum equal to 14% of the Principal Amount, and that rate will increase to 15% on November 13, 2017.

59. In addition to recovering the Principal Amount and unpaid interest under the Note from Weinstein Holdco and Weinstein as guarantors of the Obligations of TWC Borrower, AI International is expressly entitled under the Weinstein Holdco Guarantee and the Weinstein Guarantee to recover its attorney's fees and expenses in this lawsuit.

WHEREFORE, AI International respectfully requests that the Court enter judgment in its favor and against TWC Borrower, Weinstein Holdco, and Weinstein:

- a. Awarding the Principal Amount of \$43,459,176.23, unpaid interest in an amount to be determined at trial, and all other amounts due under the Note;
- b. Awarding reasonable attorney's fees and expenses; and
- c. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 10, 2017

QUINN EMANUEL URQUHART &
SULLIVAN LLP

/s/ Richard I. Werder, Jr. _____

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