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Garrison v. Warner Bros.

The world of motion pictures is "a never-never land of illusion," according to this class action complaint brought against the major studios, referring not to the movie magic that has made Hollywood famous but to the bookkeeping techniques that may be unique to Hollywood studios.

The suit was filed by the heirs of Jim Garrison, the late New Orleans District Attorney, who wrote "On the Trail of the Assassins," the book that inspired Oliver Stone's film, "JFK."

According to the Garrison estate, the film has earned over $150 million for Warner Bros., the studio that distributed the film, but has still not shown a "net profit" in which the Garrison estate is entitled to share.

This complaint goes into the history of Hollywood's allegedly "creative" bookkeeping practices, from the days of the nickelodeon through the "Golden Age" and the modern era where major stars have the clout to share in the gross revenue of a film, avoiding the studio's allegedly problematic definition of "net profit."

The parent company of Warner Bros., Time Warner Inc., is a part owner of Court TV.

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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
The Estate of Jim Garrison, in possession of JIM R. GARRISON, LYON H. GARRISON, VIRGINIA J. GARRISON, ELI2ABETH Z. GARRISON, and EBERHARD D. GARRISON, individually, and on behalf of all those similarly situated,
Plaintiffs,
v.
WARNER BROS., INC., a Delaware corporation, PARAMOUNT PICTURES CORP., a Delaware corporation, TWENTIETH CENTURY FOX FILM CORP., a Delaware corporation, UNIVERSAL CITY STUDIOS, a Delaware corporation, UNITED ARTISTS CORPORATION, a Delaware corporation, METRO-GOLDWYN-MAYER, INC., a Delaware corporation, SONY PICTURES ENTERTAINMENT, INC., a Delaware corporation, COLUMBIA PICTURES, INC., a Delaware corporation, THE WALT DISNEY COMPANY, a Delaware corporation, WALT DISNEY PRODUCTIONS, INC., a Delaware corporation, TOUCHSTONE PICTURES, INC., a Delaware corporation, HOLLYWOOD PICTURES, INC., a Delaware corporation, TRISTAR PICTURES, INC., a Delaware corporation, MOTION PICTURE ASSOCIATION OF AMERICA, an association, and DOE 1 through DOE 10, inclusive,
Defendants.

CASE NO. BC139282
CLASS ACTION
COMPLAINT FOR:
1. PRICE FIXING
2. BOYCOTT / CONCERTED REFUSAL TO DEAL
3. BREACH OF CONTRACT

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The above-named plaintiffs, on behalf of themselves and all others similarly situated, allege as follows:

I. INTRODUCTION

1. The world of motion pictures is a never-never land of illusion. In the making of a movie, millions of still pictures are strung and spliced together to artfully imitate life, but when each part is disassembled and seen separately each only reflects static, one dimensional and unreal world. This creating of illusions has extended throughout all the facets of the motion picture industry since the days Thomas Alva Edison created and marketed the shuttered lantern projector nearly 90 years ago. Of all the illusions practiced daily in the motion picture world, nothing is more unreal than the promises of "net profits" for movieland's profit participants, a scam that has endured nearly half century, enriching the few at the expense of all the multitudes of talent responsible for actually creating the motion pictures.

2. "Net profits" as defined in Hollywood contracts is an esoteric bookkeeping device that could not be practiced in any other multi-billion dollar industry. The practice, which delays

payment of profit sharing often forever, has earned the derisive title "Hollywood accounting." It could only be practiced in company town like Hollywood, where a few major studios control 90
percent of the movie world revenues, and that enormous economic leverage can be and is used to force the signing and compliance with contract terms no one would sign in any other business or under any other circumstances.

3. From its inception, the moviemaking business has been an uneasy mix of creative talent -- the writers, directors, producers and actors whose ideas and skills create the magic on the screen -- and the business side -- the financiers, marketers and distributors who sell the finished movie to the ticket-buying public. There has never been an equitable accommodation of all creative talents' rights to the profits.

4. "Hollywood accounting" has resulted in a talent caste system where the so-called stars with big, well-established reputations, most often actors or actresses and an occasional producer and director -- writers almost never -- are given contracts that provide participation in the gross income of motion picture. For creative talent that is less well-established, participation in the "net profits" is used to persuade the creative talent to accept smaller upfront fees with the promise of more later, for their creative work. Yet even the most successful motion pictures seldom, if ever, produce any net profit for creative talent. This law suit then is about the rights of all the moviemaking world's creative talent ("Talent") to participate equitably and in a timely manner in the often huge cash flow that motion pictures generate.

5. This is a class action on behalf of Talent and is brought under the laws of the State of California because of the movie studios' adoption of unconscionable contract terms as part of their standard form contracts, and their refusal to deal with Talent that will not submit to these one-sided terms. This is the result of an illegal conspiracy among the major studios that suppresses competition, fixes prices, and violates the laws of the State of California.

II. THE PARTIES

A. PLAINTIFFS

6. Jim Garrison was the author of the book On The Trail of the Assassin. Mr. Garrison is deceased, and is represented in this action by his estate. During his lifetime, Mr. Garrison was resident and former District Attorney of New Orleans, Louisiana, where his estate is administered by his heirs, plaintiffs Jim R. Garrison, Virginia J. Garrison, Lyon H. Garrison, Elizabeth Z. Garrison, and Eberhard D. Garrison.

7. The members of the plaintiff class have all either written a book, story or script upon which a motion picture was based, or acted in, directed or produced a motion picture, and, in compensation for those activities, each of the plaintiffs have entered into standard net profit contracts with one or more of the defendants. The representative plaintiffs and Mr. Garrison have engaged in the following transactions with defendants:

Jim Garrison, during his lifetime, entered into a standard net profit contract dated "As Of January 20, 1989" with Oliver Stone, giving Mr. Stone an option to purchase the motion picture, television and allied rights to Mr. Garrison's best-selling book "On The Trail Of The Assassins." A true and correct copy of that agreement with the standard net profits clause, is attached hereto as Exhibit "B". Oliver Stone assigned his rights in that contract to defendant WARNER BROS and they accepted said contract. This book was an account of Mr. Garrison's prosecution of an alleged conspiracy in the assassination of President John F. Kennedy. Warner Brothers made this book into a movie entitled "JFK," which has grossed over $150 million to date, and is continuing to earn profits. In spite of the movie's huge financial success, Mr. Garrison and/or his estate have received no payment at all from WARNER BROS. pursuant to the "net profits" clause of the contract as attached. He and now his estate are similar to all the other class members set out hereinafter.

B. DEFENDANTS

8. Defendant WARNER BROS., INC. ("WARNER BROS.") is a Delaware corporation with its principal place of business in Burbank, California.

9. Defendant PARAMOUNT PICTURES CORPORATION ("PARAMOUNT") is a Delaware corporation with its principal place of business in Hollywood, California.

10. Defendant TWENTIETH CENTURY FOX FILM CORPORATION ("FOX") is a Delaware corporation with its principal place of business in Beverly Hills, California.

11. Defendant UNIVERSAL CITY STUDIOS, INC. ("UNIVERSAL") is Delaware corporation with its principal place of business in Universal City, California.

12. Defendant UNITED ARTISTS CORPORATION ("UA") is a Delaware corporation regularly transacting business in the county of Los Angeles, California.

13. Defendant METRO-GOLDWYN-MAYER, INC. ("MGM") is a Delaware corporation with its principal place of business in Santa Monica, California.

14. Defendant SONY PICTURES ENTERTAINMENT, INC. ("SONY") is Delaware corporation with its principal place of business in Culver City, California.

15. Defendant TRISTAR PICTURES, INC. ("TRISTAR") is a Delaware corporation with its principal place of business in Culver City, California.

16. Defendant COLUMBIA PICTURES, INC. ("COLUMBIA") is a Delaware corporation with its principal place of business in Culver City, California. (Hereinafter SONY, TRISTAR, and

COLUMBIA will be collectively referred to as "SONY").

17. Defendant THE WALT DISNEY COMPANY ("DISNEY") is a Delaware corporation with its principal place of business in Burbank, California.

18. Defendant WALT DISNEY PICTURES, INC. ("DISNEY PICTURES") is a Delaware corporation with its principal place of business in Burbank, California.

19. Defendant TOUCHSTONE PICTURES, INC. ("TOUCHSTONE") is Delaware corporation with its principal place of business in Burbank, California.

20. Defendant HOLLYWOOD PICTURES, INC. ("HOLLYWOOD PICTURES") is a Delaware corporation with its principal place of business in Burbank, California. (Hereinafter defendants DISNEY, DISNEY PICTURES, HOLLYWOOD PICTURES AND TOUCHSTONE will be collectively referred to as "DISNEY").

21. Defendant MOTION PICTURE ASSOCIATION OF AMERICA ("MPAA") is an association of defendants with its principal place of business in Sherman Oaks, California.

22. Defendants WARNER BROS., PARAMOUNT, FOX, UNIVERSAL, UA, MGM, SONY, DISNEY and COLUMBIA, directly and through their corporate affiliates, were at all times relevant to this Complaint in the business of producing motion pictures and distributing them throughout the United States and the world.

C. DOE DEFENDANTS

23. The true names and capacities, whether individual, corporate, associate or otherwise of the defendants Doe 1 through Doe 10, inclusive are unknown to plaintiff who therefore sues said defendants by such fictitious names pursuant to Code of Civil Procedure 474; plaintiff further alleges that each of said fictitious defendants is in some manner responsible for the acts- and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when same are ascertained, as well as the manner in which each fictitious defendant is responsible.

D. UNNAMED CO-CONSPIRATORS

24. Various other co-conspirators, persons, firms and corporations, who are not named as defendants in this Complaint, conspired with the named defendants to violate the laws of California as alleged in this Complaint, and made statements and performed acts in furtherance of the conspiracy.

E. ACTS OF ALL

25. At all times relevant to this Complaint, each of the defendants was an agent, employee, joint venturer, co-conspirator and/or partner of each of the remaining defendants, and was at all times acting within the course and scope of such agency,

employment, and/or partnership. Each defendant has ratified, approved, and authorized the acts of each of the remaining defendants with full knowledge of those acts.

III. DEFINITIONS

26. For purposes of this Complaint, the following terms shall have the following defined meanings:

27. "Talent" shall mean directors, producers, actors, and authors of books, stories and scripts and all other creative personnel whose efforts are necessary to produce motion pictures throughout the world. The word Talent as used in the motion picture industry is well known and commonly understood, and the words have the same meaning here.

28. "Standard net profits contracts" shall mean the standard form contracts with riders attached which are drafted and utilized by defendants to entice various Talent to render their services in the making of motion pictures and which purport to entitle Talent to a share of the net profits of a motion picture to which the Talent contributes. Representative examples of standard net profits contracts used by the defendants are attached hereto as Exhibits C 1-8.

IV CLASS ALLEGATIONS

29. Plaintiffs bring this action both on behalf of themselves and as a class action on behalf of all Talent (except the defendants and their respective affiliates and co-conspirators) who have entered into standard net profit contracts with one or more of the defendants or their affiliates during the period January 1, 1988 to the present. They are easily ascertainable and are within the knowledge of each defendant named herein.

30. All members of the class were injured in their business or property by reason of the defendants' unlawful conduct as set forth in the Complaint.

31. The defendants entered into standard net profit contracts with numerous Talent purporting to entitle the Talent to share in the "net profits" of motion pictures with which the Talent were connected, making the members of the class so numerous that joinder of all members is impracticable. Since the class members may be identified from records regularly maintained by the defendants and their employees and agents, the number and identity of class members can be easily ascertained through the defendants' own records.

32. Plaintiffs' claims are typical of the claims of each class member. They, like all other class members, sustained damages arising from defendants' violation of the California Laws. Plaintiffs and the members of the class were similarly or identically harmed by the same systematic and pervasive pattern of anticompetitive conduct engaged in by the defendants.

33. Plaintiffs will fairly and adequately represent and protect the interests of the members of the class, and have retained counsel who are both competent and experienced in antitrust and class litigation. There are no material conflicts

between the claims of the representative plaintiffs and the members of the class that would make class certification inappropriate. Counsel for the class will vigorously assert the claims of all class members.

34. In this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, since joinder of all class members is impracticable. Furthermore, as the damages suffered by individual members of the
class may be relatively small, the expense and burden of individual actions makes it impossible for the class members to individually redress the wrongs they have suffered. There will be no difficulty in managing this case as a class action.

35. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting solely individual members of the class. Among the questions of law and fact common to the class are:

(a) Whether the defendants entered into a conspiracy, contract or combination to fix, lower, maintain or stabilize the prices they paid to Talent for their participation in the making of motion pictures, in violation of State law.

(b) Whether the defendants entered into a conspiracy, contract or combination to refuse to deal with Talent who would not accept the defendants' standardized contract terms and prices relating to their share of a motion picture's "net profits" for their participation in the making of motion pictures, in violation of State law.

(c) Whether the plaintiffs and the other members of the class were injured in their business or property by reason of the defendants' unlawful conduct.

(d) The appropriate class-wide measure of damages.

V. BACKGROUND OF THE INDUSTRY

A. HISTORY OF THE INDUSTRY

36. In the late 1890s, the motion picture first developed from the union of still photography with the persistence-of-vision toy, which made drawn figures appear to move. The early films were mostly of still figures and had very little public appeal.

37. On June 19, 1905, the United States public watched The Great Train Robbery, a short silent film, in a theater that was solely devoted to motion pictures. Prior to then, movies had always been shown along with some sort of live entertainment. By 1908 an estimated 10 million Americans were paying their nickels and dimes to see such films.

38. Motion pictures were so popular that thousands of motion picture theaters called nickelodeons sprang up throughout the country. This new industry was very profitable for the founders of the movie picture industry. Young entrepreneurs such as William Fox and Marcus Loewe saw their theaters, which initially cost about $1,600 each, grow into enterprises worth fortunes within a few years. Soon the demand arose for Talent to make the movies to fill the demand of the consuming public.

B. ECONOMIC LEVERAGE OVER TALENT

39. The motion picture industry has a long history of abusing Talent, and in particular of using economic power to deny Talent the rights and earnings to which they are entitled.

40. The early movie studios, for example, as well as their current successors, made every effort to insure that the salaries of the Talent were kept as low as possible. The movie studios began a course of conduct designed to stop Talent from reaping the rewards from a competitive movie system by exerting monopoly power.

41. In the beginning, the names of the actors and actresses in films were kept anonymous so as to keep them from acquiring their own place in a competitive market. As the public's demand for motion pictures increased, however, so did the public's preference for certain actors and actresses. In order to combat fear that public recognition would result in a demand by the players for higher salaries, producers went to great lengths to keep the identity of the actors anonymous by various different means, including demanding the use of pseudonyms. It was not until fan magazines began running stories about the identity of the movie stars that the producers began promoting the names of their actors.

42. Hollywood then embraced the star concept and between 1910 and 1948, movies companies established the star system as a potent business strategy to provide increasing returns on production investments. In 1918, America's two favorite stars, Charlie Chaplin and Mary Pickford, both signed contracts for over $1 million. However, most Talent did not have as much power as Mr. Chaplin and Miss Pickford and earned substantially less.

43. By the 1930s and 1940s, even the major movie stars suffered dramatic reductions in independence and incomes. Due to the advent of talking movies, which destroyed the careers of many silent stars who could not make the transition to sound, and the economic depression of the 1930s, movies studios exercised tremendous control over the actors. An increasing concentration of monopoly power in the hands of the major movie companies left the movie stars at the mercy of studio bosses. While in the 1920s, stars had often received a percentage of net movie profits and substantial artistic control, Talent in the 1930s and 1940s were forced into seven year exclusive contracts which took away net profits and forced the Talent into limited maximum salaries. Talent who objected to an assigned movie role risked being suspended without pay for rejecting a role.

44. This star system allowed movie studios to greatly profit from their movie stars by lending them out to other studios for huge profits. For example, MGM lent out Clark Gable for the making of Gone With the Wind and contributed money towards production costs in exchange for the distribution rights and a sliding scale percentage of the gross profits starting at 50%. Gable, one of the biggest stars of the era did not want to do the movie, but his contract did not give him the right to turn down parts. Gable received his standard salary per week for playing the part although MGM gave him a small bonus in an act of

generosity. By 1967, MGM had earned $75 million in rentals for the movie. This practice highlights the transition of Talent from artist to commodity in the eyes of the movie studios.

45. The first profit participation contract on behalf of Talent was negotiated with Metro Goldwyn Mayer in 1934 on behalf of the Marx Brothers for two movies: "A Day At The Races" and "A Night At The Opera." That contract was a simple straightforward one that netted the brothers 15 percent of all the money the studio received for those movies.

46. Between 1947 and 1953 admissions to movie theaters dropped dramatically. Talent, including many movie stars, suddenly became expendable, and were released from studio contracts to reduce overhead. While some popular stars used this freedom to their economic advantage, the less popular Talent found their incomes and marketability declining rapidly.

47. For some Talent, the results were tragic. In the 1950s, for example, Talent who refused to cooperate with the witch hunts of the House Un-American Activities Committee found themselves blacklisted from the movie industry. However, the studios were not above crediting others for the work that was done by blacklisted artists and reaping the rewards of the blacklisted Talent, further proof of their tremendous economic power.

48. The modern-era of net profit participation in contracts began in 1950 when Jimmy Stewart's agent, Lew Wasserman, was able to negotiate such a provision with Universal for the movie "Harvey." Although such contracts had been executed in the early history of film, this contract was the first one negotiated in the post-war years when the studios were no longer the great forces they had been in the past and the star system was beginning to fall apart.

49. Over the years, the movie industry has refined its use of creative accounting in dealing with Talent. For example, during the 1950s the major studios would put together large numbers of films and sell them as a package in foreign countries. The package might include one or two big hits, but most of the films would be grade B or lower. The hits would play all over the foreign country, while the other movies would not even be shown. But when it came time to divide up the profits, each of the films in the package would get an equal portion. The result was that the net profits participants in the "hits" got little or nothing because their profits were artificially allocated to the unsuccessful films. The participants in the unsuccessful films typically also got nothing. The studios, on the other hand, got the same amount of total return -- they just put the money in different columns on their books, offsetting profits, wherever earned, against losses, wherever earned, to make everything come out as close as possible to "zero"

50. In the 1970s, the Securities & Exchange Commission and the Internal Revenue Service investigated alleged tax

improprieties of PARAMOUNT and its then parent corporation, Gulf
Western. There were serious questions of the accuracy of the conglomerate's financial reports and other financial improprieties such as expenses assigned to making movies. One company auditor alleged that Gulf & Western altered profit statements to withhold revenues that should have been reported. In 1981, Gulf & Western signed a consent decree with the government to refrain from such practices in the future.

C. HOLLYWOOD ACCOUNTING PROCEDURES

51. Under the net profit definition used by most of the moviemaking studios, payment of profit participation is delayed by a process of adding fees and costs associated with distribution, production, prints, promotion, advertising and whatever other overhead expenses they wish. Some studio executives admit that they do everything possible to delay payment of net profits, if any survive the interminable deductions.

52. "It is to our benefit to delay paying on profits for as long as possible. We earn interest on the float and the money allows us to finance other ventures," according to a studio executive (referred to as a bean counter) quoted in the June 5, 1995 issue of Variety, the entertainment world's leading trade publication.

53. Attached or included in the standard contracts are certain riders that break out the charges and expenses that the studios deduct from gross revenues. Though the amounts of the charges allocated in the net profit contract riders may vary from contract to contract, there are nine categories that are universally included:

(a) Distribut~ion Fees -- this is a set fee that is used by the studios as being necessary to underwrite the costs of maintaining distribution offices and facilities. These are flat rates that range from 30 to 40 percent of a movie's gross receipts (30 percent for domestic distribution, 35 percent for the United Kingdom and 40 percent for foreign distribution).

(b) Distribution Costs -- in addition to the fees that are levied, the actual costs of distribution are also allocated against the income side.

(c) Advertising -- this is the cost of advertising and promotion of the film. This can include all sorts of expense; for example, if a convention is attended by a studio's promotion executives assigned to the picture, those costs can be allocated to the film's expenses under this category. An arbitrary overhead fee, usually a flat 10 percent is added in this category.

(d) Prints -- this is the cost of printing copies of the movie, sometimes thousands of copies are printed, and distributed free to friends of the studio and others on the favored lists.

(e) Production Costs -- these are billed as direct expenses whether there are any out-of-pocket costs or not; these can and do usually include use of studio facilities, cameras, vehicles or other equipment based on a rate card set up for each piece of equipment in the studio inventory. Money paid to Talent receiving gross receipts participation, which can be in the millions of dollars, is also counted as a production cost. Over and above all of this, an overhead charge of 15 percent is also added to the production costs which results in double billing for most equipment.

(f) Over-Budget Penalty -- for each dollar the film exceeds its budget, an additional $1 ($2 total) is charged as a cost of the film as defined in the Talent net profit contract regardless of whether or not Talent has any direct responsibility for the overage and sometimes whether or not there was an over-budget allocation.

(g) Taxes -- these are allocated as offsets against income, whether the studio actually pays the taxes or not. As an example, Japan charges a tax of 10 percent for any income taken from Japan to the U.S., but when U.S. taxes are paid, this is a credit against federal taxes.

(h) Political Lobbying Expenses -- allocated as expenses against Talent's profit participants are dues paid to trade organizations such as the Motion Picture Association of America, which works as the studios' lobbying group.

(i) Interest -- this is charged from the day production starts and is levied against all budgeted production and promotion costs generally at the rate of 125 percent of the prime rate. Accordingly, over and above charges of every conceivable type - an additional interest is tacked on.

54. The most glaring example of the continuing conspiracy among the defendants is the handling of video revenue from a movie, a source of income that often surpasses 50 percent of the total income. The first studio to license a movie's video rights and then to negotiate a net profit contract for the video income was 20th Century Fox. In that contract, Fox artificially allocated only 20 percent of the video income as revenues to be reported to profit participants, thus preventing Talent from participating in 80 percent of the income received from the film's video contracts. That 20 percent share has become the agreed upon standard for all of the other studios as well from that day forward, and only the star category actors, a few directors and seldom if ever a producer or writer are able to negotiate a higher percentage.

55. At least one court has already ruled that standard net profit contracts are contracts of adhesion; that the studios

refuse to negotiate in good faith over the definition of net profits, and that the existing definition was unconscionable because it subtracted numerous costs that were inflated or unjustified .

D . COERCIVE EFFECTS ON TALENT

56 . The net profit riders attached to Talent's service contracts, which display a startling similarity from studio to studio, usually differ only in exactly the amount of overhead costs that may be added to a film's expenses before those profits can be calculated. This iS done through the use of the standard form contract. The studios simply refuse to deal with most creative talent who will not accept these form contracts, which are offered on a "take it or leave it" basis.

57. One of the most recent examples of the effect of the studio practices upon Talent involved the motion picture "Forrest Gump," which had enjoyed the fourth highest gross income in the history of the industry. Winston Groom, author of the book was adapted to the screen, was told that despite a worldwide gross of $660 million as of December of 1994, there had been no net profit. The movie's producer, Steve Tisch, and the movie's screenwriter Eric Roth, likewise had been coerced into signing contracts with smaller upfront fees with promises of net profit participation; neither had been paid any share of the profits from the picture. This was despite the fact that "Forrest Gump" had been chiefly responsible for its studio, Paramount Pictures, increasing the studio's 1994 box office gross income by 60 percent over the previous year, and boosting it from sixth to third place in market share of the movie business.

58. Even when Talent has a famous name like syndicated columnist Art Buchwald, the court system has been the only recourse. It took Buchwald seven years of litigation to obtain share of profits from "Coming to America," a movie based on an idea and treatment Buchwald had submitted to moviemakers a decade earlier. A settlement finally came for Buchwald.

59. In a coincidental demonstration of the practice's pervasiveness, on Sept. 12, 1995, the day a settlement with Buchwald was announced, another writer made public a Complaint that Paramount had not been paid him any share of profits from "Indecent Proposal," the movie starring Robert Redford and Demi Moore that had grossed $250 million worldwide. Jack Englehard, whose book was adapted for the movie, said Paramount had told him
that "Indecent Proposal" still showed a deficit of $37.5 million despite grossing a quarter of a billion dollars.

60. The net profit issue is not limited to one studio; it is an industry-wide system used with little variation from studio to studio. Warner Bros. Inc., the studio that held the largest movie market share four out of the five years of 1989 through 1993, was accused of failing to pay any net profits to two executive producers who worked for 10 years and helped create the hugely popular "Batman" movie that starred Jack Nicholson and Michael Keaton. Benjamin Melniker and Michael Udslan, the complaining producers, were told by Warner Bros. that despite a

worldwide gross of $411 million that there had been no net profits .

E. PRIOR VIOLATIONS OF ANTITRUST LAW - COMMON DESIGN PLAN AND SCHEME

61. The motion picture industry has a long history of violating the antitrust laws with a similar course and conduct to the acts alleged in the present case. In the 1920s, for example, ten producers and distributors of motion pictures who controlled 6 0 percent of the motion picture market agreed among themselves that they would only contract with motion picture exhibitors according to the terms of a standard form contract where most of the provisions are favorable to the studios. The United states Government took legal action against the studios, and a court ordered the studios to cease such activities. The matter was appealed to the United states Supreme Court, which in the landmark case of Paramount Famous Lasky Corp. v. United States 282 U.S. 30 (1930) ruled that the studios were engaged in a conspiracy that violated the antitrust laws of the United states.

62. In spite of the warning from both the Justice Department and the Supreme Court, the motion picture industry continued to violate the antitrust laws. In the 1940s, for example, various producers and distributors of motion pictures entered into a wide variety of conspiracies in restraint of competition, including a conspiracy to fix minimum prices the public had to pay for admission to movie theaters, and a conspiracy to include the same minimum admission price requirements in all of their standard form contracts with movie theaters. The producers and distributors also used standard distribution contracts that discriminated in numerous ways against small independent theaters in favor of large theaters affiliated with the studios and with large groups of theaters. Once again the United states Government had to take legal action, and once again the United states Supreme court in United states v. Paramount Pictures, Inc., et al. 334 U.S. 131 (1948) declared most of the challenged acts and practices illegal under the antitrust laws. The Supreme court noted that the defendants had "marked proclivity for unlawful conduct" and ordered them to bear the burden of showing that certain future actions came within the law. In spite of these stern warnings from the highest court in the land, the movie industry continues to act in violation of the laws by continuing a common design, plan and scheme to take advantage of the plaintiffs.

F. FRAUDULENT CONCEALMENT

63. Throughout the period set forth in this Complaint, the defendants have fraudulently concealed their unlawful contract, combination and conspiracy from the plaintiffs and the members of the class.

64. In order to fraudulently conceal their contract, combination and conspiracy from the plaintiffs and the members of the class, defendants engaged, among other things, in the following affirmative conduct throughout the period relevant of this Complaint:

(a) defendants secretly discussed and agreed among

themselves, among other things, on the terms of their respective contracts with Talent, and therefore on the prices to be paid to Talent for their ideas and labor, and on their concerted refusal to deal with Talent who would not submit to these unfair terms.

(b) defendants used communications which they believed to be safe from detection and avoided communication which they believed to be subject to detection.

(c) defendants used different wording in drafting their standard net profit contracts, while adhering to the same substantive terms that the defendants had secretly agreed upon, in order to conceal their unlawful agreements.

(d) In recent months, studio legal departments have reacted to court decisions on Talent contracts by attempting to place a new face on the old, discredited system. Studio lawyers have been replacing the term "net profit" with some euphemisms ' like "net proceeds" or other terms designed to hide the fact that the unconscionable practice continues.

65. Because of the active and fraudulent concealment of the conspiracy and the illegal acts in furtherance of that conspiracy that are outlined above, plaintiffs did not know and could not have discovered the antitrust violations alleged in this Complaint until shortly before they initiated this litigation. Therefore, the running of any statute of limitations has been suspended with respect to the claims alleged in this Complaint.

G. MARKET POWER

66. The movie industry is highly concentrated, with only a few major American studios accounting for over 90% of dollar volume of the revenue from the motion pictures made in the United states. The major studios are all located in the same area of Southern California, in and around Los Angeles. Defendants have been able to exercise their market power in dealings with Talent.

H. THE STANDARD FORM CONTRACTS

67. Beginning at least as early as January 1, 1988, the exact date being unknown to the plaintiffs, and continuing to the present, pursuant to a conspiracy among themselves and their co-conspirators, the defendants have developed and used standard form contracts for purchasing intellectual property and labor from Talent.

68. Virtually all of these standard form contracts contain provisions for the Talent to receive a percentage of the "net profits" of the motion pictures to which they contribute . Although the contracts use different wording in defining "net profits," the substantive provisions of the contracts, and the substantive definitions of "net profits" contained in each of them, are virtually identical. Among other things, these standard net profit contracts contain nearly identical provisions concerning the deduction of numerous different types of "costs" from a motion picture's profits before the Talent can receive any distributions under the contract. The use of nearly identical net profit definitions by all of the major studios in their form contracts is the result of an illegal agreement among the defendants to use this definition. Attached hereto as Exhibit B is a chart summarizing the net profit definitions of the standard net profit contracts used by each of the defendants.

69. In many instances, the "costs" that are deducted to determine "net profits" are grossly inflated and bear no relation to reality. AS a result, no matter how successful the motion picture, there are almost never any "net profits" to be shared with Talent as promised by the contracts. Thus, the true purpose of the defendants' conspiracy is to reduce the price they must pay for the Talent they need to make motion pictures.

70. A small handful of extremely well-known Talent with extremely strong bargaining power can negotiate gross profits clauses to replace the net profits clauses of their contracts with the studios. For the vast majority of Talent, however, the contracts are offered on a take it or leave it basis, and are not subject to negotiation. This is the result of an agreement among the defendants and their co-conspirators to refuse to deal with Talent, except for a small number of extremely well-known Talent, who will not accept the standard net profit contract.

71. From the beginning of the conspiracy to the present, the defendants have continued to discuss and agree upon a common
and grossly unfair definition of "net profits," or some euphemistic word with the same meaning, to include that common definition in all of their standard net profit contracts, and to collectively refuse to deal with any Talent (except a handful of very famous Talent) who will not submit to the oppressive "net profits" clause of the studios ' form contracts . AS a result of defendants' ongoing conspiracy, the price paid to Talent for their ideas and services has been kept artificially low, and the Talent has been deprived of their rightful share of the profits of the motion pictures that they made possible.

VI. EFFECTS AND RESULTING INJURY TO PLAINTIFFS AND THE CLASS

72. The defendants' illegal combination and conspiracy had the following effects, among others:

(a) Monies paid to plaintiffs and other members of the class for their ideas, labor, and intellectual property were fixed, lowered and maintained at artificial and non-competitive levels .

(b) Talent was deprived of free and open competition for their ideas, labor, and intellectual property.

(c) Competition for Talent among the defendants and their co-conspirators was restrained.

73. During the period covered by this Complaint, plaintiffs and other members of the class sold millions of dollars worth of ideas, labor, and intellectual property to the defendants. By reason of the actions described in this Complaint, plaintiffs and the class members received less for their ideas, labor, and intellectual property than they would have been paid in the absence of the illegal combination and conspiracy and, as a result, have been injured in their business and property and have suffered damages in an amount presently undetermined.

FIRST CAUSE OF ACTION
(Price Fixing)

(Business & Professions Code Section 16720 et seq.)

74. All foregoing paragraphs of this Complaint are incorporated herein by reference.

75. As set forth above, defendants conspired to fix, depress, maintain and stabilize prices paid to Talent for their ideas, labor, and intellectual property to be used in the making of motion pictures in the United States, in violation of Business & Professions Code Section 16720 et seq. (the Cartwright Act).

76. Plaintiffs and the class have been injured in their business or property by the defendants' antitrust violations as alleged in this Complaint.

77 . Plaintiffs and the other members of the class are entitled to recover three times the amount of their actual pursuant to Business & Professions Code 16750(a). damages.

78. Plaintiffs and the class are entitled to recover reasonable attorneys+ fees and litigation, pursuant to Business Professions Code 16750(a).

79. Plaintiffs and the class are entitled to recover pre judgment interest on their actual damages from the date of service of this Complaint until the date of entry of judgment in this case, pursuant to Business & Professions Code Sections 16750(a) and 16761.

WHEREFORE plaintiffs and the other members of the class pray
for relief as set forth below.

SECOND CAUSE OF ACTION
(Boycott/Concerted Refusal to Deal)
(Business & Professions Code Section 16720 et seq.)

80. All foregoing paragraphs of this Complaint are incorporated herein by reference .

81 . As set forth above, defendants conspired and agreed among themselves to refuse to deal with any Talent, except for a small number of very famous Talent, who would not submit to the standardized net profits contract terms that the defendants jointly agreed to impose on Talent, in violation of Business & Professions Code Section 16720 et seq. (the Cartwright Act).

82. One purpose of this boycott and concerted refusal to deal except on particular agreed terms was to facilitate and enforce the defendants ' unlawful agreement to fix, depress, maintain and stabilize prices paid to Talent for their ideas, labor, and intellectual property to be used in the making of motion pictures in the United states, and to force adherence to the terms agreed upon among the defendants and their co-conspirators .

83. Plaintiffs and the class have been injured in their business or property by the defendants' antitrust violations as alleged in this Complaint.

84. Plaintiffs and the other members of the class are entitled to recover three times the amount of their actual damages, pursuant to Business & Professions Code 16750 (a) .

85 . Plaintiffs and the class are entitled to recover

reasonable attorneys' fees and litigation costs upon entry of judgment against any of the defendants, pursuant to Business Professions Code 16750(a).

86. Plaintiffs and the class are entitled to recover pre judgment interest on their actual damages from the date of service of this Complaint until the date of entry of judgment in this case, pursuant to Business & Professions Code 16750(a) and 16761.

WHEREFORE plaintiffs and the other members of the class pray
for relief as set forth below.

THIRD CAUSE OF ACTION
(For Breach of Contract)

87. All foregoing paragraphs of this Complaint are incorporated herein by reference.

88. By executing the standardized net profit contracts as hereinbefore described and of which representative Agreements are attached hereto as Exhibits Cl to 8, plaintiffs and defendants entered into valid and enforceable written contracts. These contracts are standardized throughout the industry and the substantive provisions of the contracts, and the substantive definitions of "net profits" contained in each of them, are virtually identical.

89. In each of the contracts, defendants agreed to pay plaintiffs a share of the "net profits" of the motion pictures with which the plaintiffs were connected.

90 . Plaintiffs have performed fully each and all of the conditions, covenants and obligations imposed upon them under the
terms of the Agreements, except to the extent excused therefrom.

91. By reason of the conduct described above, defendants have materially breached the Agreements in numerous respects. Such conduct includes, but is not limited to, failing to pay the net profits of the movie to plaintiffs, but instead in a manner common to all plaintiffs improperly inflating expenses and/or improperly deducting items as expenses.

92 . AS a direct and proximate result of defendants ' material breaches of the Agreements, plaintiffs have suffered monetary damages in an amount that is known by defendants who have concealed said amount from plaintiffs, but which amount exceeds the jurisdictional limits of this Court.

WHEREFORE plaintiffs and the other members of the class pray
for relief as set forth below.

FOURTH CAUSE OF ACTION
(For Breach of the Implied Covenant of Good Faith and Fair Dealing)

93. All foregoing paragraphs of this Complaint are incorporated herein by reference.

94. By executing the Agreements alleged herein, plaintiffs and defendants entered into written contracts. Plaintiffs thus

reposed trust and confidence in defendants to, among other things, deal with them fairly and in good faith, and not to wrongly deprive them of their contractual compensation, including but not limited to, the right to share in the profits of the movies. Defendants knew of and accepted such trust and confidence at the time they entered into the Agreements .

95. Plaintiffs have performed fully each and all of the conditions, covenants and obligations imposed upon them under the terms of the Agreements, except to the extent excused therefrom.

96. By virtue of the wrongful acts of defendants, and each of them, in failing to pay net profit proceeds to plaintiffs, defendants breached their duties of good faith and fair dealing.

97 . As a proximate result of defendants' actions, plaintiffs have suffered monetary damage in an amount within the jurisdiction of this Court, together with interest thereon.

98. At all times herein alleged, defendants acted willfully, wantonly, with oppression, fraud and/or malice, and with a conscious disregard of the rights of others, such that plaintiffs request that the trier of fact, in the exercise of its sound discretion, should award plaintiffs additional damages for the sake of example and in a sufficient amount to punish said defendants for their conduct, in an amount reasonably related to plaintiffs' actual damages and defendants' wealth and sufficiently large to be an example to others and to deter these defendants and others from engaging in similar conduct in the future.

FIFTH CAUSE OF ACTION
(Unjust enrichment)

99. All foregoing paragraphs of this Complaint are incorporated herein by reference.

100. As a result of the wrongful acts of defendants in failing to pay plaintiffs net profits proceeds, defendants have been unjustly enriched at the expense of plaintiffs by keeping monies which should have been paid over to plaintiffs.

101 . If defendants are allowed to keep these monies, they will unjustly benefit from their actions and the plaintiffs will unjustly suffer a loss.

102. By virtue of defendants' wrongful acts, and their resulting wrongful gain of the funds to which plaintiffs are entitled, defendants hold these funds as a constructive trustee for the benefit of plaintiffs.

WHEREFORE plaintiffs and the other members of the class pray for relief as set forth below.

SIXTH CAUSE OF ACTION
(Imposition of constructive trust and for an accounting)

103. All foregoing paragraphs of this Complaint are incorporated herein by reference.

104. Based upon the contracts entered into between plaintiffs and defendants, plaintiffs have an interest in funds

which, as alleged herein, should have been paid over to them. The specific amount of these funds is unknown to plaintiffs and cannot be ascertained without a full and complete accounting, the means of which are within the knowledge of the defendants. Plaintiffs are informed and believe and on that basis allege that the amounts owed exceed the minimal jurisdictional limits of this Court .

105 . Through the breach of their duties to plaintiffs and the wrongful acts which they committed as alleged herein, defendants have wrongfully appropriated and failed to pay to plaintiffs the funds to which plaintiffs are entitled. Plaintiffs have been damaged by their failure to receive the monies.

106. By virtue of defendants' wrongful acts, and their resulting wrongful gain of the funds to which the plaintiffs are entitled, defendants hold these funds as a constructive trustee for the benefit of plaintiffs.

WHEREFORE plaintiffs and the other members of the class pray for relief as set forth below.

SEVENTH CAUSE OF ACTION

(For Declaratory Relief)

107. All foregoing paragraphs of this Complaint are incorporated herein by reference.

108. An actual controversy has arisen and now exists between plaintiffs and defendants in that plaintiffs contend and defendants deny that:

(a) The Agreements entered into by plaintiffs are standardized contracts drafted by defendants, a party with superior bargaining strength, and imposed by defendants on plaintiffs who lacked effective bargaining power and who were given the opportunity only to accept or reject the contract, and the Agreements therefore constitute an unenforceable contract of adhesion.

(b) That certain provisions of the Agreements as more fully set forth herein were harsh, oppressive and unduly one-sided, and thus unconscionable at the time the Agreements were entered into and should not be enforced .

(c) The unconscionable provisions of the Agreements taken both in isolation and combined, include, but are not limited to, the following:

(1) charging a fixed percent overhead on operational allowances;

(2) charging a fixed percent advertising overhead not in proportion to actual costs;

(3) charging a fixed rate overhead not in proportion to actual costs;

(4) charging interest on negative cost balance without credit for distribution fees;

(5) charging interest on overhead; and

(6) charging an interest rate not in proportion to the actual cost of finance .

(d) The unconscionable provisions of the Agreements,

should be declared illegal and given no legal effect by the Court .

WHEREFORE plaintiffs and the other members of the class pray for relief as set forth below.

EIGHTH CAUSE OF ACTION

(For Violation of Business & Professions Code Section 17200 et seq.)

109. All foregoing paragraphs of this Complaint are incorporated herein by reference.

110. The wrongful conduct of defendants, and each of them, constitutes a violation of Business & Professions Code 17200 et seq., which prohibits unfair business practices , including unlawful, unfair or fraudulent business practices. This conduct includes, but is not limited to, unlawfully compelling Talent that lack bargaining power to enter into adhesive agreements containing standardized net profit definitions which are unconscionable in whole or in part.

111. Defendants' primary business involves the production and distribution of theatrical motion pictures, and the Agreements related to and occurred in the course of defendants ' business .

112. As a direct and proximate result of .defendants' unfair competition, defendants have acquired and continue to acquire labor, ideas, and intellectual property from plaintiffs.

113. Pursuant to California Business & Professions Code 17204, plaintiffs are entitled to restitution and/or other relief necessary to restore to plaintiffs any money or property, which were acquired by means of the unfair and unlawful conduct alleged herein .

WHEREFORE plaintiffs and the other members of the class pray for relief as set forth below.

NINTH CAUSE OF ACTION

(For Injunctive Relief)

114. All foregoing paragraphs of this Complaint are incorporated herein by reference.

115. Beginning in or around January, 1988 and continuing to the present time, as described herein above, Defendants have unlawfully and wrongfully engaged in a conspiracy to cheat Talent out of their rightful share of the profits of the motion pictures that they made possible by forcing them to enter into unconscionable contracts and refusing to deal with Talent who refused to agree to such contracts.

116. The Defendants' continuing wrongful conduct against Plaintiffs, unless and until enjoined and restrained by order of this Court, will cause great and irreparable harm to the Plaintiffs in that they will continue to be forced to accept unconscionable terms or will be unable to obtain employment in the motion picture industry.

117. Plaintiffs have no adequate remedy at law for the in juries that are threatened in that pecuniary compensation would not afford adequate relief and/or it would be extremely difficult to ascertain the amount of compensation that would

afford adequate relief.

WHEREFORE plaintiffs and the other members of the class pray
for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs and the class pray for relief as follows:

(a) That the unlawful combinations and conspiracies alleged in this Complaint be adjudged and decreed to be in unreasonable restraint of trade and commerce and in violation of Business & Professions Code Section 16720 et seq.

(b) That the defendants, and each of them, be enjoined from continuing the conspiracies, and all acts in furtherance of those conspiracies, as alleged in this Complaint, including but not limited to, the use of the standard net profit contracts and definitions and the refusal to deal with Talent who will not submit to those terms.

(c) That the plaintiffs and the class be awarded compensatory and general damages according to proof.

(d) That the plaintiffs and the class be awarded three times their actual damages.

(e) That the plaintiffs and the class be awarded pre judgment interest at the maximum legal rate.

(f) That the plaintiffs and the class be awarded their costs of this suit.

(g) That the plaintiffs and the class be awarded reasonable attorneys fees .

(h) That punitive damage be awarded according to proof.

(i) For a declaration that the terms of the Agreements set forth above are unconscionable as according to proof.

(j) For an order that defendants should hold the funds to which plaintiffs are entitled in trust for plaintiffs.

(k) For an accounting on each of the standard form contracts according to proof.

(l) That the plaintiffs and the class be awarded such other and further relief as the Court deems just and proper.

DATED: November , 1995.

By :

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