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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 AMERICAN FEDERATION OF
16 MUSICIANS OF THE UNITED
STATES AND CANADA

17 Plaintiff,
18 v.

19 WARNER BROTHERS
20 ENTERTAINMENT, INC.,
PARAMOUNT PICTURES, INC., and
METRO-GOLDWYN-MAYER
21 PICTURES, INC.

22 Defendants.

CASE NO. 2:15-CV-3069

COMPLAINT

JURY TRIAL DEMANDED

23 NATURE OF THE CASE

24 1. This is an action under §301 of the Labor Management
25 Relations Act (“LMRA”), 29 U.S.C. § 185, for violations of a collective bargaining
26 agreement to which the Plaintiff American Federation of Musicians of the United
27 States and Canada (hereinafter “AFM”) and the Defendants Warner Brothers
28 Entertainment, Inc. (hereinafter “Warner Brothers”), Paramount Pictures

1 Corporation (hereinafter “Paramount”), and Metro-Goldwyn-Mayer Pictures, Inc.
2 (hereinafter “MGM”) (collectively “Defendants”) are parties. The AFM brings
3 this § 301 action to remedy Defendants’ violations of their respective obligations
4 to employ AFM members under the terms of the collective bargaining agreement
5 in recording music in connection with the production of theatrical motion pictures
6 (referred to as “scoring”) titled (1) *Interstellar*, (2) *Journey 2: The Mysterious*
7 *Island*, (3) *Robocop*, and (4) *Carrie*, all of which were produced by one or more of
8 the Defendants in the United States or Canada, but were scored, in violation of the
9 agreement, outside the United States or Canada. This action seeks to recover
10 appropriate breach of contract damages, including but not limited to musician
11 wages payable pursuant to the agreement, to compel Defendants to make the
12 contributions due under the agreement to certain separate musician funds that are
13 maintained under that agreement for the benefit of AFM musicians, and to obtain a
14 court declaration of the AFM’s and its members’ rights and of the Defendants’
15 duties with respect to the collective bargaining agreement in relation to each
16 Defendant’s violation of that agreement.

17 JURISDICTION AND VENUE

18 2. This Court has jurisdiction over this lawsuit and parties
19 pursuant to 29 U.S.C. § 185 and 28 U.S.C. § 1331.

20 3. Venue lies in this District pursuant to 29 U.S.C. § 185(a) and 28
21 U.S.C. § 1391(b).

22 PARTIES

23 4. The Plaintiff AFM is a labor organization that represents
24 approximately 80,000 professional musicians in the United States and Canada,
25 including many hundreds of studio recording musicians who work to score motion
26 pictures produced in this District and throughout the United States and Canada.
27 The AFM is “a labor organization representing employees in an industry affecting
28 commerce” within the meaning of the federal statute, 29 U.S.C. § 185, authorizing

1 “[s]uits for violation of contracts” between such a labor organization and “an
2 employer.”

3 5. The Defendant Warner Brothers produces theatrical motion
4 pictures through its motion picture units, including Warner Brothers Pictures and
5 New Line Cinema, and employs in the United States and Canada professional
6 musicians represented by the AFM in their production. Warner Brothers maintains
7 its headquarters at 4000 Warner Boulevard, Burbank, CA 91522, and engages in
8 business on a regular basis in the Central District of California.

9 6. The Defendant Paramount produces theatrical motion pictures
10 and employs in the United States and Canada professional musicians represented
11 by the AFM in their production. Paramount maintains its headquarters at 5555
12 Melrose Avenue, Los Angeles, CA 90038, and engages in business on a regular
13 basis in the Central District of California.

14 7. The Defendant MGM produces theatrical motion pictures and
15 employs in the United States and Canada professional musicians represented by the
16 AFM in their production. MGM maintains its headquarters at 245 N Beverly
17 Drive, Beverly Hills, CA 90210, and engages in business on a regular basis in the
18 Central District of California.

19 8. Each of the Defendants is “an employer” within the meaning of
20 the federal statute, 29 U.S.C. § 185, authorizing “[s]uits for violation of contracts”
21 between such an employer and “a labor organization representing employees in an
22 industry affecting commerce.”

23 FACTS

24 9. At all times relevant to this lawsuit, the AFM and each of the
25 Defendants were parties to a collective bargaining agreement, titled “Basic
26 Theatrical Motion Picture Agreement of 2010” (hereinafter “Agreement”). The
27 Agreement is a contract between Defendants as employers and the AFM as a labor
28 organization representing employee musicians within the meaning of 29 U.S.C.

1 §185. Each of the Defendants is a “Producer” as to certain theatrical motion
2 pictures within the terms of the Agreement. When executed, the terms of the
3 Agreement were effective for the period April 14, 2010 through February 23, 2013,
4 and were subsequently extended through April 4, 2015.

5 10. The Agreement set out wage and benefit terms for various
6 defined categories of AFM members, including, *inter alia*, instrumental and
7 orchestral musicians who work to score theatrical motion pictures (“Musicians”).
8 The Agreement governed all work by Musicians “employed by the Producer in the
9 State of California or elsewhere in the United States and Canada and whose
10 services are rendered in connection with the production of theatrical motions
11 pictures.” Services “rendered in connection with the production of theatrical
12 motion pictures” include, but are not limited to, recording of music for use in
13 connection with the production, known as “scoring.”

14 11. The Agreement required that “[a]ll theatrical motion pictures
15 produced by the Producer in the United States or Canada, if scored, shall be scored
16 in the United States or Canada,” unless excused by the AFM under circumstances
17 not present here.

18 12. With respect to a motion picture that is required to be scored in
19 the United States or Canada under the terms of the Agreement, Producers were
20 required to employ Musicians under the terms of the Agreement, and were
21 required, among other things, to provide compensation in accordance with the
22 compensation terms specified in the Agreement. A Producer’s compensation
23 obligations under the Agreement include, but are not limited to: (i) the obligation
24 to make specified minimum wage and other payments; (ii) the obligation to make a
25 specified level of contributions to the American Federation of Musicians and
26 Employers’ Pension Fund, and various health benefit funds; and (iii) if appropriate,
27 make contributions to the Film Musicians Secondary Markets Fund for the benefit
28 of Musicians.

1 13. When a motion picture is required to be scored pursuant to the
2 terms of the Agreement in the United States or Canada, and when Producers
3 employed Musicians pursuant to the terms of the Agreement to perform work
4 covered by the Agreement, each Musician’s total hours of service and total wages
5 paid for covered work must be reported to the AFM. The reporting process
6 includes, but is not limited to, submitting standardized documents known as “B
7 forms,” which records the work performed by the Musicians, their wages, and their
8 benefits contributions.

9 14. During the term of the Agreement, including its extension, the
10 following were among the theatrical motion pictures produced in the United States
11 and/or Canada by one or more of the Defendants: (1) *Interstellar*; (2) *Journey 2:
12 The Mysterious Island*; (3) *Robocop*; and (4) *Carrie* (collectively “the Pictures”).

13 15. Warner Brothers was a Producer subject to the terms of the
14 Agreement regarding the motion pictures *Interstellar* and *Journey 2: The
15 Mysterious Island*; MGM was a Producer subject to the terms of the Agreement
16 regarding the motion pictures *Robocop* and *Carrie*; and Paramount was a Producer
17 subject to the terms of the Agreement regarding *Interstellar* and *Robocop*.

18 16. Each of the Pictures was scored under the meaning of the
19 Agreement.

20 17. Each of the Pictures was scored outside of the United States or
21 Canada in violation of the Agreement. On information and belief, *Interstellar*,
22 *Carrie*, and *Robocop* were each scored in Great Britain, and *Journey 2: The
23 Mysterious Island* was scored in Papua New Guinea and Australia.

24 18. The Defendants did not comply with the compensation terms
25 required by the Agreement and in the scoring of the motion pictures employed
26 persons who were not Musicians under the terms of the Agreement outside of the
27 United States or Canada, in violation of the Agreement.

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CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgment
(Against all Defendants)

19. The allegations in Paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

20. Each of the Defendants was a “Producer” under the terms of the Agreement in connection with the production and scoring of one or more of the Pictures.

21. Each of the Pictures was produced in the United States and/or Canada within the terms of the Agreement and during the effective term of the Agreement and its extension. Pursuant to the Agreement, each of the Pictures was required to be scored in the United States or Canada with Musicians represented by Plaintiff, and Musicians represented by Plaintiff were entitled to the compensation set out in the Agreement.

22. Each of the Defendants employed musicians to score each of the Pictures as to which it was a Producer outside of the United States or Canada.

23. Each of the Defendants scored each of the Pictures as to which it was a Producer outside of the United States or Canada, in breach of the express terms of the Agreement.

24. Accordingly, the AFM is entitled to a declaration (1) that each Defendant was a Producer subject to the terms of the Agreement with respect to those motion pictures it is identified as a producer of in paragraph 15; (2) that each Defendant breached the Agreement when it scored the motion pictures as to which it was a Producer outside of the United States or Canada, and (3) that each Defendant breached the Agreement when it failed to employ AFM Musicians under the terms of the Agreement to score the motion pictures produced in the United States or Canada as to which it was a Producer.

COUNT TWO

Breach of Contract – 29 U.S.C. § 185
(Against Warner Brothers)

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3 25. The allegations in Paragraphs 1 through 24 above are re-alleged
4 and incorporated herein by reference.

5 26. Defendant Warner Brothers was a Producer under the terms of
6 the Agreement of the theatrical motion pictures *Interstellar* and *Journey 2: The*
7 *Mysterious Island*.

8 27. *Interstellar* and *Journey 2: The Mysterious Island* were
9 produced in the United States.

10 28. *Interstellar* was scored outside of the United States or Canada,
11 in Great Britain. With respect to such work, proper compensation and associated
12 payments required under the Agreement were not made to or for the benefit of
13 AFM members, and the AFM and its affiliates were not provided B Forms
14 reflecting the number of sessions performed, the musicians used, and the payments
15 made or due.

16 29. *Journey 2: The Mysterious Island* was scored outside of the
17 United States or Canada, in Papua New Guinea and Australia. With respect to
18 such work, proper compensation and associated payments required under the
19 Agreement were not made to or for the benefit of AFM members, and the AFM
20 and its affiliates were not provided B Forms reflecting the number of sessions
21 performed, the musicians used, and the payments made or due.

22 30. By scoring *Interstellar* and *Journey 2: The Mysterious Island*
23 outside the United States or Canada, Warner Brothers violated and breached the
24 terms of the Agreement.

25 31. Warner Brothers's violations and breaches of the Agreement
26 have caused financial injuries to the AFM and its members, in an amount to be
27 proven at trial.

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COUNT THREE

Breach of Contract – 29 U.S.C. § 185
(Against Paramount)

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3 32. The allegations in Paragraphs 1 through 31 above are re-alleged
4 and incorporated herein by reference.

5 33. Defendant Paramount was a Producer under the terms of the
6 Agreement of the theatrical motion pictures *Interstellar* and *Robocop*.

7 34. *Interstellar* was produced in the United States and *Robocop* was
8 produced in the United States and Canada.

9 35. *Interstellar* was scored outside of the United States or Canada,
10 in Great Britain. With respect to such work, proper compensation and associated
11 payments required under the Agreement were not made to or for the benefit of
12 AFM members, and the AFM and its affiliates were not provided B Forms
13 reflecting the number of sessions performed, the musicians used, and the payments
14 made or due.

15 36. *Robocop* was scored outside of the United States or Canada, in
16 Great Britain. With respect to such work, proper compensation and associated
17 payments required under the Agreement were not made to or for the benefit of
18 AFM members, and the AFM and its affiliates were not provided B Forms
19 reflecting the number of sessions performed, the musicians used, and the payments
20 made or due.

21 37. By scoring *Interstellar* and *Robocop* outside the United States
22 or Canada, Paramount violated and breached the terms of the Agreement.

23 38. Paramount's violations and breaches of the Agreement have
24 caused financial injuries to the AFM and its members, in an amount to be proven at
25 trial.

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COUNT FOUR

Breach of Contract – 29 U.S.C. § 185
(Against MGM)

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3 39. The allegations in Paragraphs 1 through 38 above are re-alleged
4 and incorporated herein by reference.

5 40. Defendant MGM was a Producer under the terms of the
6 Agreement of the theatrical motion pictures *Carrie* and *Robocop*.

7 41. *Carrie* was produced in Canada and *Robocop* was produced in
8 the United States and Canada.

9 42. *Carrie* was scored outside of the United States or Canada, in
10 Great Britain. With respect to such work, proper compensation and associated
11 payments required under the Agreement were not made to or for the benefit of
12 AFM members, and the AFM and its affiliates were not provided B Forms
13 reflecting the number of sessions performed, the musicians used, and the payments
14 made or due.

15 43. *Robocop* was scored outside of the United States or Canada, in
16 Great Britain. With respect to such work, proper compensation and associated
17 payments required under the Agreement were not made to or for the benefit of
18 AFM members, and the AFM and its affiliates were not provided B Forms
19 reflecting the number of sessions performed, the musicians used, and the payments
20 made or due.

21 44. By scoring *Carrie* and *Robocop* outside the United States or
22 Canada, MGM violated and breached the terms of the Agreement.

23 45. MGM's violations and breaches of the Agreement have caused
24 financial injuries to the AFM and its members, in an amount to be proven at trial.

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PRAYER FOR RELIEF

WHEREFORE, the AFM respectfully requests that this Court:

- (1) Issue the declaratory judgment requested in COUNT ONE;
- (2) Award the AFM damages for all losses suffered by the AFM and its members as a result of Defendants’ breaches of the Agreement as set out in COUNT TWO, COUNT THREE, AND COUNT FOUR;
- (3) Order each Defendant to make appropriate contributions to the American Federation of Musicians and Employers’ Pension Fund, various health benefit funds, and to the Film Musicians Secondary Markets Fund for the benefit of Musicians that would have been made if Defendants had not breached the Agreement as set forth in COUNT TWO, COUNT THREE, and COUNT FOUR;
- (4) Order each of the Defendants to make such other payments as may have been required if the motion pictures had been scored under the terms of the Agreement in the United States or Canada;
- (5) Award the Plaintiff pre-judgment interest as required by law; and
- (6) Order such other and further relief as this Court may deem appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

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DATED: April 24, 2015

Respectfully submitted,

/S/ Lewis N. Levy

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