

1 LEWIS N. LEVY, Bar No. 105975
2 DANIEL R. BARTH, Bar No. 274009
3 Levy, Ford & Wallach
4 3619 Motor Avenue
5 Los Angeles, CA 90034
6 Telephone: (213) 380-3140
7 Facsimile: (213) 480-3284
8 Email: LLevy@lflawyers.com
9 DBarth@lflawyers.com

10 JEFFREY R. FREUND (*pro hac vice application forthcoming*)
11 ROBERT ALEXANDER (*pro hac vice application forthcoming*)
12 ABIGAIL V. CARTER (*pro hac vice application forthcoming*)
13 PHILIP C. ANDONIAN, Bar No. 222243
14 Bredhoff & Kaiser, PLLC
15 805 Fifteenth St., N.W. Tenth Floor
16 Washington, D.C. 20005
17 Telephone: (202) 842-2600
18 Facsimile: (202) 842-1888
19 Email: jfreund@bredhoff.com
20 ralexander@bredhoff.com
21 acarter@bredhoff.com
22 pandonian@bredhoff.com

23 *Attorneys for Plaintiff*

24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA

26 AMERICAN FEDERATION OF
27 MUSICIANS OF THE UNITED
28 STATES AND CANADA

Plaintiff,
v.

29 COLUMBIA PICTURES
30 INDUSTRIES, INC., PARAMOUNT
31 PICTURES CORPORATION,
32 TWENTIETH CENTURY FOX FILM
33 CORPORATION, UNIVERSAL CITY
34 STUDIOS, LLC, WALT DISNEY
35 PICTURES, INC., AND WARNER
36 BROTHERS ENTERTAINMENT,
37 INC.,

Defendants.

CASE NO. 2:15-cv-03953

COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE CASE

1. This is an action under §301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, for violations of the Basic Theatrical Motion

1 Picture Agreement (hereinafter “Agreement”), a collective bargaining agreement
2 to which the Plaintiff American Federation of Musicians of the United States and
3 Canada (hereinafter “AFM”) and each Defendant is a party. That Agreement
4 prohibited Defendants from re-using or permitting the re-use of certain previously
5 recorded theatrical motion picture music sound tracks that had been created by
6 AFM musicians under that Agreement or a predecessor Agreement
7 (“Agreements”), except under certain circumstances. Moreover, the Agreement’s
8 exceptions that allowed limited re-use of previously recorded theatrical motion
9 picture music sound tracks required Defendants to make certain specified
10 payments for the benefit of the AFM musicians who created the original sound
11 tracks.

12 2. Notwithstanding these clear contractual obligations, Plaintiff has
13 now learned that each of the Defendants routinely (a) re-used and/or permitted
14 others to re-use previously recorded theatrical motion picture music sound tracks
15 in a manner prohibited by the agreement, and/or (b) re-used and/or permitted
16 others to re-use previously recorded theatrical sound tracks in a manner permitted
17 by the Agreement only if proper compensation was made for the benefit of the
18 appropriate AFM musicians, but did not make the payments required under the
19 Agreement.

20 3. The known re-use violations of the Agreement are only a small
21 fraction of the unreported, improper, and uncompensated re-use of theatrical
22 motion picture music sound tracks created by musicians under the Agreement.
23 Defendants’ violations have caused substantial losses to hundreds of musicians
24 who make their livelihood creating music for Defendants’ motion pictures. This
25 LMRA § 301 action seeks to recover appropriate breach of contract damages,
26 including but not limited to all payments owed by Defendants to and for the
27 benefit of musicians whose services were covered by the Agreement and/or
28 previous Agreements.

1 JURISDICTION AND VENUE

2 4. This Court has jurisdiction over this lawsuit and parties pursuant to
3 29 U.S.C. § 185 and 28 U.S.C. § 1331.

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

6 PARTIES

7 6. The Plaintiff AFM is a labor organization that represents
8 approximately 80,000 professional musicians in the United States and Canada,
9 including many hundreds of musicians who work to create the music sound track
10 for motion pictures produced in this District and throughout the United States and
11 Canada. The AFM is “a labor organization representing employees in an industry
12 affecting commerce” within the meaning of the federal statute, 29 U.S.C. § 185,
13 authorizing “[s]uits for violation of contracts” between such a labor organization
14 and “an employer.”

15 7. The Defendant Columbia Pictures Industries, Inc. (hereinafter
16 “Columbia”) produces theatrical motion pictures and employs in the United States
17 and Canada professional musicians represented by the AFM in their productions.
18 Columbia maintains its headquarters at 10202 Washington Boulevard, Culver
19 City, CA 90232, and engages in business on a regular basis in the Central District
20 of California.

21 8. The Defendant Paramount Pictures Corporation (hereinafter
22 “Paramount”) produces theatrical motion pictures and employs in the United
23 States and Canada professional musicians represented by the AFM in their
24 productions. Paramount maintains its headquarters at 5555 Melrose Avenue, Los
25 Angeles, CA 90038, and engages in business on a regular basis in the Central
26 District of California.

27 9. The Defendant Twentieth Century Fox Film Corporation
28 (hereinafter “Fox”) produces theatrical motion pictures and employs in the United

1 States and Canada professional musicians represented by the AFM in their
2 productions. Fox maintains its headquarters at 10201 W. Pico Boulevard, Los
3 Angeles, CA 90064, and engages in business on a regular basis in the Central
4 District of California.

5 10. The Defendant Universal City Studios LLC (hereinafter
6 “Universal”) produces theatrical motion pictures and employs in the United States
7 and Canada professional musicians represented by the AFM in their productions.
8 Universal maintains its headquarters at 100 Universal City Plaza, Universal City,
9 CA 91608, and engages in business on a regular basis in the Central District of
10 California.

11 11. The Defendant Walt Disney Pictures, Inc. (hereinafter “Disney”) produces theatrical motion pictures and employs in the United States and Canada
12 professional musicians represented by the AFM in their productions. Disney
13 maintains its headquarters at 500 S. Buena Vista Street, Burbank, CA 91521, and
14 engages in business on a regular basis in the Central District of California.

15 12. The Defendant Warner Brothers Entertainment, Inc. (hereinafter
16 “Warner Brothers”) produces theatrical motion pictures through its motion picture
17 units, including Warner Brothers Pictures and New Line Cinema, and employs in
18 the United States and Canada professional musicians represented by the AFM in
19 their productions. Warner Brothers maintains its headquarters at 4000 Warner
20 Boulevard, Burbank, CA 91522, and engages in business on a regular basis in the
21 Central District of California.

22 13. Each of the Defendants is “an employer” within the meaning of the
23 federal statute, 29 U.S.C. § 185, authorizing “[s]uits for violation of contracts”
24 between such an employer and “a labor organization representing employees in an
25 industry affecting commerce.”
26

27
28

1 FACTS

2 14. At all times relevant to this lawsuit, the AFM and each of the
3 Defendants were parties to one or more of the Agreements, each of which is a
4 contract between Defendants as employers and the AFM as a labor organization
5 representing employee musicians within the meaning of 29 U.S.C. §185. Each of
6 the Defendants is a “Producer” as to certain theatrical motion pictures within the
7 terms of the Agreements. The contractual violations alleged in this Complaint all
8 occurred during the term of the 2010 Agreement, which was effective initially for
9 the period April 14, 2010 through February 23, 2013, and was subsequently
10 extended through April 4, 2015.

11 15. The Agreements set out wage and benefit terms for various defined
12 categories of musicians who work to prepare, perform and record (collectively,
13 “create”) original music sound tracks for theatrical motion pictures and whose
14 services were covered by the Agreements (“Musicians”). The Agreements govern
15 work by Musicians “employed by the Producer in the State of California or
16 elsewhere in the United States and Canada whose services are rendered in
17 connection with the production of theatrical motion pictures.” Pursuant to the
18 Agreements, under which music sound track is created for use in a specific
19 theatrical motion picture, Musicians created the “music sound track” for hundreds
20 of theatrical motion pictures produced in the United States and Canada. Under the
21 2010 Agreement, and all previous Agreements since 1960, the Producers agreed
22 that “all music sound track already recorded, or which will be recorded prior to
23 the expiration of this Agreement, will not be used at any time for any purpose
24 whatsoever except to accompany the picture for which the music sound track was
25 originally prepared....”

26 16. The 2010 Agreement, however, did permit for limited exceptions
27 to the blanket prohibition on the re-use of a Producer’s previously recorded music
28 sound tracks set out in Paragraph 15, above:

1 (a) First, the 2010 Agreement allowed the “use of up to two (2)
2 minutes of music sound track from a motion picture without the accompanying
3 footage (other than in new media)” – what is referred to hereinafter as an “un-
4 synced clip” – if that usage does not fall within certain other exceptions not
5 relevant here, and if the Producer pays “the following aggregate one-time-only
6 sum for each motion picture to the musician or musicians determined by the
7 Federation to be entitled to such compensation and prorated among such
8 musicians as determined by the Federation: (i) one (1) minute or less of sound
9 track - \$1,500; (ii) for each thirty (30) seconds or portion thereof in excess of one
10 (1) minute - \$750.”

11 (b) Second, the 2010 Agreement allowed the “use of any other music
12 sound track with the accompanying footage from a motion picture not covered
13 under subparagraph (e)(1) above (other than in new media)” – what is referred to
14 hereinafter as a “synced clip” – if that usage does not fall within certain other
15 exceptions outlined in the 2010 Agreement, and if the Producer pays “the
16 following aggregate one-time-only sum for each motion picture to the musician or
17 musicians determined by the Federation to be entitled to such compensation and
18 prorated among such musicians as determined by the Federation: (i) one (1)
19 minute or less of sound track - \$750; (ii) for each thirty (30) seconds or portion
20 thereof in excess of one (1) minute - \$375.”

21 17. The 2010 Agreement restricts both a Producer’s use of clips in its
22 own theatrical motion pictures and its licensing of clips to other entities for their
23 use in another theatrical motion picture or in a television program (also known as
24 a “television motion picture” or a “program”) produced under a separate collective
25 bargaining agreement, known as the Basic Television Motion Picture Agreement.
26 If a Producer licenses music sound track under the 2010 Agreement, “[t]he actual
27 production company which produces the program or motion picture containing the
28 excerpted portion of the music sound track requiring payment is obligated to make

1 the payment required under this Article, provided the company is a signatory to
2 this Agreement.”

3 18. In the event the licensee is not a signatory to the Agreement, the
4 Producer of the motion picture from which music sound track was taken “shall
5 otherwise remain liable for the payment due.”

6 19. The 2010 Agreement prohibited altogether un-synced clips that
7 were recorded during the term of the 2010 Agreement, or during the term of any
8 post-1960 Agreement, to be used in amounts longer than two minutes in any
9 subsequent theatrical or television motion picture.

10 20. Each of the Defendants was a signatory Producer to the 2010
11 Agreement, as well as to the relevant prior Agreements. As such, each of the
12 Defendants was prohibited, with respect to themselves and with respect to any
13 non-signatory to whom any Defendant licensed music sound track, from the re-use
14 of un-synced clips longer than two minutes in length, and obligated to make
15 certain payments to and for the benefit of AFM members pursuant to the terms of
16 the 2010 Agreement for the use of synced clips, and/or un-synced clips up to two
17 minutes in length.

18 CLAIMS FOR RELIEF

19 **COUNT ONE**

20 Breach of Contract – 29 U.S.C. § 185
21 (Against Fox)

22 21. The allegations in Paragraphs 1 through 20 above are re-alleged
23 and incorporated herein by reference.

24 22. The music sound tracks for theatrical motion pictures *Titanic*, *Thin*
25 *Red Line*, *Die Hard*, *The Taking of Pelham 123*, and *American Anthem* were
26 created by musicians whose services were covered by a post-1960 Agreement.

27 23. Defendant Fox was the Producer of the theatrical motion pictures
28 *Thin Red Line*, *This Means War*, *Die Hard*, *Knight & Day*, and *The Sitter* during
the term of the 2010 Agreement or an earlier, post-1960 Agreement.

1 24. Fox used the following un-synced clip, which it was prohibited
2 from using under the 2010 Agreement:

- 3 (i) 2 minutes and 7 seconds of music sound track from the
4 theatrical motion picture *The Taking of Pelham 123* was
5 used in the theatrical motion picture *Knight & Day*.

6 25. Fox used the following clips for which it was required to make
7 payments to and for the benefit of AFM members under the 2010 Agreement:

- 8 (i) 1 minute and 10 seconds un-synced clip of the music sound
9 track from the theatrical motion picture *Titanic* was used in
10 the theatrical motion picture *This Means War*;

- 11 (ii) 4 seconds synced clip of the music sound track from the
12 theatrical motion picture *Titanic* was used in the theatrical
13 motion picture *This Means War*;

- 14 (iii) 1 minute and 30 seconds un-synced clip of the music sound
15 track from the theatrical motion picture *American Anthem*
16 was used in the theatrical motion picture *The Sitter*.

17 26. Fox licensed the use of music sound track from theatrical motion
18 pictures for which it was the Producer to certain non-signatories to the 2010
19 Agreement who, in turn, used a portion of the music sound track as follows:

- 20 (i) 4 minutes and 54 seconds un-synced clip of the music
21 sound track from the theatrical motion picture *Thin Red*
22 *Line* was licensed to and used by DeAnna Cooper in the
23 theatrical motion picture *The Painter*;

- 24 (ii) 47 seconds un-synced clip of the music sound track, and 3
25 seconds synced of music sound track, from the theatrical
26 motion picture *Die Hard* was licensed to and used by
27 Universal Network Television in Season 8, Episode 9
28

1 (titled “Dwight Christmas”) of the television motion
2 picture *The Office*.

3 27. Fox failed to make the payments required by the 2010 Agreement
4 for the use of the clips identified in Paragraphs 25 and 26(ii) above. Fox violated
5 the 2010 Agreement by using or permitting a non-signatory to use the clip
6 identified in Paragraph 24 and 26(i) above in a manner prohibited by the 2010
7 Agreement.

8 28. In addition to the clips identified in Paragraphs 24-25 above, Fox
9 previously represented that it had used an additional 12 clips from music sound
10 tracks produced under the 2010 Agreement or another post-1960 Agreement in
11 motion pictures it produced and released between April 1, 2010 and November 20,
12 2013, of which one or more such music sound tracks were created by AFM
13 musicians under a post-1960 Agreement. AFM has not received payments for the
14 use of any of those 12 clips. Fox’s re-use of one or more of these 12 clips violated
15 one or more of the provisions of the 2010 Agreement set forth in Paragraphs 16-
16 19 above.

17 29. On information and belief, Fox re-used additional music sound
18 tracks from theatrical motion pictures in other motion pictures in the same manner
19 as the re-use examples set out in Paragraphs 24 and 25, but has failed to report or
20 make appropriate payments for such re-use and/or has used the clip in a manner
21 prohibited by the 2010 Agreement.

22 30. In addition to the clips identified in Paragraph 26, Fox previously
23 represented that it had licensed 111 additional clips from its music sound tracks
24 produced under the 2010 Agreement or another post-1960 Agreement to entities
25 not listed as signatories to the 2010 Agreement for use in a motion picture
26 between April 1, 2010 and November 20, 2013. AFM has not received payments
27 for the use of any of those 111 clips.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (i) 18 seconds un-synced clip of the music sound track from the theatrical motion picture *Jaws* was used in the theatrical motion picture *Little Fockers*;
- (ii) 33 seconds un-synced clip of the music sound track from the theatrical motion picture *Cast Away* was used in the theatrical motion picture *Bridesmaids*;
- (iii) 30 seconds un-synced clip of the music sound track from the theatrical motion picture *Bourne Identity* was used in Season 7, Episode 17 (titled “Threat Level Midnight”) of the television motion picture *The Office*;
- (iv) 16 seconds un-synced clip of the music sound track from the theatrical motion picture *The Breakfast Club* was used in Season 4, Episode 12 (titled “A Womb with a View”) of the television motion picture *In Plain Sight*.

38. Universal licensed the use of music sound track from theatrical motion pictures for which it was the Producer to certain non-signatories to the 2010 Agreement who, in turn, used a portion of the music sound track as follows:

- (i) 2 minutes and 32 seconds un-synced clip of the music sound track from the theatrical motion picture *Car Wash* was licensed to and used by ABC Network in Season 3, Episode 3 (titled “Hunting Season”) of the television motion picture *Scandal*;
- (ii) 2 minutes and 8 seconds un-synced clip of the music sound track from the from the theatrical motion picture *Cat People* was licensed to and used by Adam Kimmel/Project Kimmel LLC in the theatrical motion picture *Dressed for Dinner*.

1 39. Universal failed to make the payments required by the 2010
2 Agreement for the use of the clips identified in Paragraph 37 above. Universal
3 violated the 2010 Agreement by using or permitting a non-signatory to use the
4 clips identified in Paragraphs 36 and 38 above in a manner prohibited by the 2010
5 Agreement.

6 40. In addition to the clips identified in Paragraphs 36 and 37 above,
7 Universal previously represented that it had used an additional 32 clips from
8 music sound tracks produced under the 2010 Agreement or another post-1960
9 Agreement in motion pictures it produced and released between April 1, 2010 and
10 November 20, 2013, of which one or more such music sound tracks were created
11 by AFM musicians under a post-1960 Agreement. AFM has not received
12 payment for the use of any of those 32 clips. Universal's re-use of one or more of
13 these 32 clips violated one or more of the provisions of the 2010 Agreement set
14 forth in Paragraphs 16-19 above.

15 41. On information and belief, Universal re-used additional music
16 sound tracks from theatrical motion pictures in other motion pictures in the same
17 manner as the re-use examples set out in Paragraphs 36-37, but has failed to report
18 or make appropriate payments for such re-use and/or has re-used the clip in a
19 manner prohibited by the 2010 Agreement.

20 42. In addition to the clips identified in Paragraph 38, Universal
21 previously represented that it had licensed an additional 43 clips from its music
22 sound tracks produced under the 2010 Agreement or another post-1960
23 Agreement to entities not identified as signatories to the 2010 Agreement for use
24 in a motion picture between April 1, 2010 and November 20, 2013. AFM
25 received payment for the use of only one of these 43 clips.

26 43. On information and belief, in addition to the examples identified in
27 Paragraph 38 above, Universal licensed music sound tracks from its theatrical
28 motion pictures to non-signatories to the 2010 Agreement who used portions of

1 such music sound tracks in subsequent motion pictures in the same manner as the
2 re-use examples set out in Paragraph 38 or in a manner that violated one or more
3 of the provisions of the 2010 Agreement set forth in Paragraphs 16 and 18 and has
4 failed to report or make appropriate payments for such re-use.

5 44. Universal's actions set forth in Paragraphs 36-43 above constitute
6 violations of the 2010 Agreement that have caused financial injuries to musicians
7 represented by the AFM.

8 **COUNT THREE**

9 Breach of Contract – 29 U.S.C. § 185
10 (Against Disney)

11 45. The allegations in Paragraphs 1 through 20 above are re-alleged
12 and incorporated herein by reference.

13 46. The music sound tracks for theatrical motion pictures *The Muppet*
14 *Movie* and *Beauty and the Beast* were created by musicians whose services were
15 covered by a post-1960 Agreement. Defendant Disney was the Producer of these
16 theatrical motion pictures.

17 47. Disney used the following clips for which it was required to make
18 payments to and for the benefit of AFM members under the 2010 Agreement:

- 19 (i) 1 minute and 58 seconds un-synced clip of the music
20 sound track from the theatrical motion picture *Beauty and*
21 *the Beast* was used in episode 207 of the television motion
22 picture *The Neighbors*;
23 (ii) 1 minute and 51 seconds un-synced clip of the music
24 sound track from the theatrical motion picture *The Muppet*
25 *Movie* was used in episode 112 of the television motion
26 picture *The Neighbors*.

27 48. Disney failed to make the payments required by the Agreement for
28 the use of the clips identified in Paragraph 47 above.

1 49. In addition to the clips identified in Paragraph 47 above, Disney
2 previously represented that it had used an additional 7 clips from music sound
3 tracks produced under the 2010 Agreement or another post-1960 Agreement in
4 motion pictures it produced and released between April 1, 2010 and June 18,
5 2014, of which one or more such music sound tracks were created by AFM
6 musicians under a post-1960 Agreement. AFM received payment for the use of
7 only one of these 7 clips.

8 50. On information and belief, Disney re-used additional music sound
9 track from theatrical motion pictures in other motion picture productions in the
10 same manner as the re-use examples set out in Paragraph 47, but has failed to
11 report or make appropriate payments for such re-use.

12 51. Disney previously represented that it had licensed 42 clips from its
13 music sound tracks produced under the 2010 Agreement or another post-1960
14 Agreement to entities not identified as signatories to the 2010 Agreement for use
15 in a motion picture between April 1, 2010 and June 9, 2014. AFM received
16 payment for the use of only one of these 42 clips.

17 52. On information and belief, Disney licensed music sound tracks
18 from theatrical motion pictures to non-signatories to the 2010 Agreement who
19 used portions of such music sound tracks in subsequent motion pictures in a
20 manner that violated one or more of the provisions of the 2010 Agreement set
21 forth in Paragraphs 16-19 above.

22 53. Disney's actions set forth in Paragraphs 47-52 above constitute
23 violations of the 2010 Agreement that have caused financial injuries to musicians
24 represented by the AFM.

25 ///

26 ///

27 ///

28 ///

COUNT FOUR

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

1
2
3 54. The allegations in Paragraphs 1 through 20 above are re-alleged
4 and incorporated herein by reference.

5 55. The music sound tracks for theatrical motion pictures *Heartbreak*
6 *Ridge*, *Battle for the Planet of the Apes*, and *The Dirty Dozen* were created by
7 musicians whose services were covered by a post-1960 Agreement.

8 56. Defendant Warner Brothers was the Producer of the theatrical
9 motion pictures *J Edgar*, *Argo*, and *The Dirty Dozen* during the term of the 2010
10 Agreement or an earlier, post-1960 Agreement.

11 57. Warner Brothers used the following un-synced clips for which it
12 was required to make payments to and for the benefit of AFM members under the
13 2010 Agreement:

14 (i) 35 seconds of the music sound track from the theatrical
15 motion picture *Battle for the Planet of the Apes* was used
16 in the theatrical motion picture *Argo*.

17 (ii) 2 minutes of music sound track from the theatrical motion
18 picture *Heartbreak Ridge* was used in the theatrical motion
19 picture *J Edgar*.

20 58. Warner Brothers licensed the use of music sound tracks from
21 theatrical motion pictures for which it was the Producer to certain non-signatories
22 to the 2010 Agreement who, in turn, used a portion of the music sound track as
23 follows:

24 (i) 30 seconds un-synced clip of the music sound track from
25 the theatrical motion picture *The Dirty Dozen* was licensed
26 to and used by Janet Lopez/Neophonic obo Second in
27 Command, LLC, in Season 2, Episode 2 (titled “The
28 Choice”) of the television motion picture *VEEP*.

1 59. Warner Brothers failed to make the payments required by the 2010
2 Agreement for the use of the clips identified in Paragraphs 57 and 58 above.

3 60. In addition to the clips identified in Paragraph 57, Warner Brothers
4 previously represented that it had used an additional 7 clips from music sound
5 tracks produced under the 2010 Agreement or another post-1960 Agreement in
6 motion pictures it produced and released between April 1, 2010 and June 17,
7 2014, of which one or more such music sound tracks was created by AFM
8 musicians under a post-1960 Agreement. AFM has not received payment for the
9 use of any of those 7 clips. Warner Brothers' re-use of one or more of these 7
10 clips violated one or more of the provisions of the 2010 Agreement set forth in
11 Paragraphs 16-19 above.

12 61. On information and belief, Warner Brothers re-used additional
13 music sound track from theatrical motion pictures in other motion picture
14 productions in a manner that violated the provisions of the 2010 Agreement set
15 forth in Paragraphs 16-19 above.

16 62. In addition to the clips identified in Paragraph 58 above, Warner
17 Brothers previously represented that it had licensed 40 clips from music sound
18 tracks produced under the 2010 Agreement or another post-1960 Agreement to
19 entities not listed as signatories to the 2010 Agreement for use in a motion picture
20 between April 1, 2010 and June 17, 2014. AFM received payment for the use of
21 only two of these 40 clips.

22 63. On information and belief, in addition to the examples identified in
23 Paragraph 58 above, Warner Brothers licensed music sound tracks from theatrical
24 motion pictures to non-signatories to the 2010 Agreement who used portions of
25 such music sound tracks in subsequent motion pictures in a manner that violated
26 one or more of the provisions of the 2010 Agreement set forth in Paragraphs 16-
27 19 above.

28

1 69. In addition to the clips identified in Paragraph 67, Paramount
2 previously represented that it had licensed 13 additional clips from its music
3 sound tracks produced under the 2010 Agreement or another post-1960
4 Agreement to entities not listed as signatories to the 2010 Agreement for use in a
5 motion picture between April 1, 2010 and November 20, 2013. AFM has
6 received payments for the use of only one of those 13 clips.

7 70. On information and belief, in addition to the examples identified in
8 Paragraph 67 above, Paramount licensed music sound tracks from theatrical
9 motion pictures to non-signatories to the 2010 Agreement who used portions of
10 such music sound tracks in subsequent motion pictures in the same manner as the
11 re-use examples set out in Paragraph 67, but has failed to report or make
12 appropriate payments for such re-use and/or has failed to ensure the clip was used
13 in a manner permitted by the 2010 Agreement.

14 71. Other Defendants have previously represented that during the term
15 of the 2010 Agreement they collectively licensed at least 7 clips of music sound
16 track from theatrical motion pictures created under a post-1960 Agreement to
17 Paramount, for re-use in subsequent motion pictures. AFM has not received
18 payments for the use of any of these 7 clips.

19 72. On information and belief, Paramount itself improperly re-used
20 music sound track from theatrical motion pictures produced under the 2010
21 Agreement or another post-1960 Agreement in other motion picture productions,
22 but has failed to report or make appropriate payments for such re-use, and/or has
23 used the clip in a manner prohibited by the 2010 Agreement.

24 73. Paramount's actions set forth in Paragraphs 67-72 above constitute
25 violations of the 2010 Agreement that have caused financial injuries to musicians
26 represented by the AFM.

27
28

COUNT SIX

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

1
2
3 74. The allegations in Paragraphs 1 through 20 above are re-alleged
4 and incorporated herein by reference.

5 75. The music sound tracks for theatrical motion pictures *Karate Kid*
6 and *Close Encounters of the Third Kind* were created by musicians whose services
7 were covered by a post-1960 Agreement. Defendant Columbia was the Producer
8 of these theatrical motion pictures.

9 76. Columbia licensed the use of music sound tracks from theatrical
10 motion pictures for which it was the Producer to certain non-signatories to the
11 2010 Agreement who, in turn, used a portion of the music sound track as follows:

- 12 (i) 59 seconds un-synced clip of the music sound track from
13 the theatrical motion picture *Karate Kid* was licensed to
14 and used by Remote Broadcasting, Inc., in Season 3,
15 Episode 17 (titled “She Got Game Night”) of the television
16 motion picture *Happy Endings*;
17 (ii) 2 minutes and 23 seconds un-synced clip of the music
18 sound track from the theatrical motion picture *Close*
19 *Encounters of the Third Kind* was licensed to and used by
20 Frank’s Pie Company, LLC, in the theatrical motion
21 picture *Labor Day*.

22 77. Columbia failed to make the payments required by the 2010
23 Agreement for the use of the clip identified in Paragraph 76(i) above. Columbia
24 violated the 2010 Agreement by permitting a non-signatory to use the clip
25 identified in Paragraph 76(ii) above in a manner prohibited by the 2010
26 Agreement.

27 78. In addition to the clips identified in Paragraph 76, Columbia has
28 previously represented that it had licensed 8 additional clips from its music sound

1 tracks produced under the 2010 Agreement or another post-1960 Agreement to
2 entities not listed as signatories to the 2010 Agreement for use in a motion picture
3 between January 1, 2013 and November 20, 2013. AFM has received payments
4 for the use of only two of those 8 clips.

5 79. On information and belief, in addition to the examples identified in
6 Paragraph 76 above, Columbia licensed music sound tracks from theatrical motion
7 pictures to non-signatories to the 2010 Agreement who used portions of such
8 music sound tracks in subsequent motion pictures in the same manner as the re-
9 use examples set out in Paragraph 76, but has failed report or make appropriate
10 payments for such re-use and/or has failed to ensure the clip was used in a manner
11 permitted by the 2010 Agreement.

12 80. Other Defendants have previously represented that during the term
13 of the 2010 Agreement they collectively licensed at least three clips of music
14 sound track from theatrical motion pictures to Columbia or its marketing arm,
15 Columbia Tristar Marketing Group, Inc., for re-use in subsequent motion pictures.
16 AFM has not received payments for the use of any of these three clips.

17 81. On information and belief, Columbia itself improperly re-used
18 music sound track from theatrical motion pictures produced under the 2010
19 Agreement or another post-1960 Agreement in other motion picture productions,
20 but has failed to report or make appropriate payments for such re-use, and/or has
21 used the clip in a manner prohibited by the 2010 Agreement.

22 82. Columbia's actions set forth in Paragraphs 76-81 above constitute
23 violations of the 2010 Agreement that have caused financial injuries to musicians
24 represented by the AFM.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, the AFM respectfully requests that this Court:

(1) As against Defendant Fox, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT ONE;

(2) As against Defendant Universal, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT TWO;

(3) As against Defendant Disney, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT THREE;

(4) As against Defendant Warner Brothers, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT FOUR;

(5) As against Defendant Paramount, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT FIVE;

(6) As against Defendant Columbia, award damages for all losses, including prejudgment interest, suffered by the AFM and musicians it represents as a result of Defendant’s breaches of the Agreement as set out in COUNT SIX; including prejudgment interest, and

(7) Order such other and further relief, including costs, to which Plaintiff is entitled or as to which this Court deems appropriate.

JURY DEMAND

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: May 26, 2015

Respectfully submitted,

/s/ Lewis N. Levy, Esq.

LEWIS N. LEVY, Bar No. 105975
DANIEL R. BARTH, Bar No. 274009
Levy, Ford & Wallach
3619 Motor Avenue
Los Angeles, CA 90034
Telephone: (213) 380-3140
Facsimile: (213) 480-3284
Email: LLevy@lflawyers.com
DBarth@lflawyers.com

JEFFREY R. FREUND (*pro hac vice application forthcoming*)
ROBERT ALEXANDER (*pro hac vice application forthcoming*)
ABIGAIL V. CARTER (*pro hac vice application forthcoming*)
PHILIP C. ANDONIAN, Bar No. 222243
Bredhoff & Kaiser, PLLC
805 Fifteenth St., N.W. Tenth Floor
Washington, D.C. 20005
Telephone: (202) 842-2600
Facsimile: (202) 842-1888
Email: jfreund@bredhoff.com
ralexander@bredhoff.com
acarter@bredhoff.com
pandonian@bredhoff.com

Attorneys for Plaintiff