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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

P.E.A. FILMS, INC.,
Plaintiff,

vs.

METRO-GOLDWYN-MEYER INC.,
Defendant.

Civil Action No. 14-cv-7263(JSR)

COMPLAINT

Plaintiff P.E.A. FILMS, INC., by its attorneys Ronald S. Taft, P.C. and Wolff & Samson PC, as and for its Complaint against defendant METRO-GOLDWYN-MEYER INC., hereby alleges as follows:

PARTIES

1. Plaintiff P.E.A. Films, Inc. (“PEA”) is a New York corporation with its principal place of business in New York County, State of New York. PEA is the owner of any and all rights in and to the highly acclaimed motion pictures “The Good, the Bad and the Ugly” (“GBU”), “For a Few Dollars More” (“FFD”), and “Last Tango in Paris” (“LTP”).

2. As used hereinafter, “PEA” refers to PEA, as the assignee and/or successor-in-interest to PEA-Produzioni Europee Associate, an Italian corporation, Alberto Grimaldi Productions S.A., a Luxembourg corporation, and Alberto Grimaldi.

3. Defendant Metro-Goldwyn-Meyer Inc. (“MGM”) is a Delaware corporation with its principal place of business in California. MGM is the assignee and/or successor-in-interest to United Artists Corporation.

JURISDICTION

4. This Court has diversity jurisdiction over the present action under 28 U.S.C. § 1332(a)(1) because there is complete diversity between the plaintiff and the defendant. The matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

NATURE OF THE ACTION

5. This action seeks to terminate agreements, described below, between PEA and MGM pursuant to which PEA licensed to MGM certain rights in GBU, FFD, and LTP. Among the terms of said agreements are the rights of PEA to receive honest and accurate accounting statements (“statements”), showing revenue and expenses, together with timely payment of the amounts due to PEA.

6. PEA seeks to terminate those agreements because MGM breached the agreements and breached the covenant of good faith and fair dealing inherent in those agreements. Among those breaches were the failure to send to PEA honest and accurate statements together with timely payments for the periods in issue, and the assertion by MGM of more than \$10,000,000 in unsupported fees and expenses, an assertion which on its face is a breach of MGM’s duty of the covenant of good faith and fair dealing. MGM knew, or certainly should have known, that an assertion of more than \$10,000,000 in unsupported fees and expenses would be challenged by PEA. Upon information and belief, MGM purposefully made that assertion, knowing it would be challenged, to hinder and delay payment to PEA.

7. In addition to termination, Plaintiff seeks an accounting through the date of this complaint of all sums due to PEA from MGM and damages in excess of \$5,000,000 for the breaches of the agreements described herein.

8. In the event the agreements are not terminated, Plaintiff seeks money damages for MGM's breaches and a permanent injunction requiring MGM, during PEA's audits of MGM's books and records, to provide, for each applicable audit period: (a) access to MGM's electronically stored information ("ESI"); (b) access to the ESI on consecutive days, or on a reasonable schedule set forth by PEA, during normal business hours; (c) access to a suitable work room at MGM during normal business hours; (d) access to books and records which are not stored as ESI with the right to scan or make copies of such records during normal business hours; and (e) access to, and copies of, all fully executed unredacted agreements which MGM asserts require or justify expenses or deductions against PEA's share of revenue, receipts, and proceeds and/or which relate to revenue, income, and/or gross receipts.

BACKGROUND FACTS

9. PEA and MGM entered into an agreement dated November 14, 1967 concerning GBU (the "1967 GBU Agreement") incorporated herein by reference. Among other things, the 1967 GBU Agreement provides for PEA to receive certain payments, including a producer's share of gross receipts.

10. PEA and MGM entered into an agreement dated November 21, 1966 concerning FFD (the "1966 FFD Agreement") incorporated herein by reference. Among other things, the 1966 FFD Agreement provides for PEA to receive certain payments, including a producer's share of gross receipts.

11. PEA and MGM entered into agreements dated as of December 15, 1971 concerning LTP (collectively, the “1971 LTP Agreements”) incorporated herein by reference. Among other things, the 1971 LTP Agreements provide for PEA to receive certain payments, including a producer’s share of gross receipts, and for the right to audit MGM’s books and records.

12. In 1990, PEA and Grimaldi sued, in this District, MGM’s predecessor, for, among other things, audit claims for failure to pay the full amounts due for GBU, FFD, and LTP after PEA audited MGM’s books and records for the relevant periods. Grimaldi v. MGM/UA Communications Co. et al., 1:90-cv-03175-CSH.

13. The case was resolved by a settlement in March 1993.

14. MGM’s distribution rights pursuant to the 1966 FFD Agreement and the 1967 GBU Agreement expired and were renewed by an amendment as of March 29, 1993 (the “1993 Amendment”), incorporated herein by reference.

15. In the 1993 Amendment, PEA and MGM agreed that for GBU and FFD home video distribution, MGM could not charge any distribution fees as an expense before calculation of PEA’s share of gross receipts, but could only charge certain defined expenses:

From the “Producer’s share of gross receipts” as defined in the Distribution and Financing Agreements, MGM shall then recoup the total costs and charges expended or incurred by MGM in connection with the distribution or exploitation of the Pictures as is more fully set forth in the Distribution and Financing Agreements (herein “Distribution Expenses”) except that, for home video distribution, the Distribution Expenses shall be all customary costs and expenses such as duplication, manufacturing, packaging, freight, pick, pack and ship, advertising costs and any servicing fees (to the extent payable to Warner Home Video or any other bona fide third party servicing company) and the home video Distribution Expenses shall be recouped out of one hundred percent of (100%) home video gross receipts before deducting the distribution fee set forth in Paragraph C.3.c. above.

16. Paragraph C.3.c. of the 1993 Amendment provides that after deduction of only the expenses permitted (which do not include a distribution fee) as pleaded above in Paragraph 15 above, the home video gross receipts for both FFD and GBU shall be paid 50% to PEA and 50% to MGM.

17. The 1993 Amendment amended PEA's rights to audit:

a. MGM shall render statements to Grimaldi showing the gross receipts of the applicable Picture in each media, deductions from the gross receipts and the amount, if any, due to Grimaldi hereunder . . .

b. MGM shall keep true and correct books of account with respect to the distribution of each Picture, showing in reasonable detail the gross receipts and deductions from Gross Receipts, including Distribution Expenses. Such books of account shall be kept at such place or places as may from time to time be customary with MGM in accordance with its ordinary business practices. Grimaldi shall have the right to have such records audited and inspected at Grimaldi's own cost by a firm of certified public (sic) accountants, at reasonable times during business hours, but not more than once annually for each Picture and for not more than two thirty (30) day periods during each annual period.

18. Simultaneously, by agreement dated as of March 29, 1993 (the "1993 Agreement"), incorporated herein by reference, PEA and MGM settled certain audit claims and amended certain accounting and payment terms regarding LTP, among other things.

19. In 1996, PEA again sued MGM in this District. P.E.A. Films, Inc. v. Metro-Goldwyn-Mayer, et al., 1:96-cv-07228-TPG. Among the allegations in that 1996 lawsuit were audit claims for failure to pay the full amounts due for GBU, FFD, and LTP.

20. The 1996 lawsuit was resolved by a settlement dated August 1999.

21. Thereafter, as set forth in an audit report dated May 19, 2003 and supplemented by report dated September 30, 2003 (the "2003 Audit Report"), PEA audited the statements and payments for the periods 2000 through 2002 for GBU, FFD, and LTP.

22. The 2003 Audit Report revealed that the amount MGM paid to PEA was materially and significantly less than the amount MGM owed to PEA for that audit period.

23. MGM received the 2003 Audit Report from PEA and delayed in responding to the claims made.

24. The audit claims in the 2003 Audit Report were resolved by a settlement agreement dated April 6, 2004 (the "2004 Settlement"), incorporated herein by reference.

25. MGM successfully delayed until approximately April 2004 paying to PEA the amount that should have been paid to PEA as early as 2000 and no later than 2002, a delay of approximately two years.

26. As set forth in an audit report dated February 14, 2006 and supplemented by report dated April 1, 2006 (the "2006 Audit Report"), PEA audited the statements and payments for the period from 2002 through 2004 for GBU, FFD, and LTP.

27. The 2006 Audit Report revealed that the amount MGM paid to PEA was materially and significantly less than the amount MGM owed to PEA for that audit period.

28. MGM received the 2006 Audit Report from PEA and delayed in responding to the claims made.

29. The audit claims in the 2006 Audit Report were resolved by a settlement agreement dated July 17, 2007 (the "2007 Settlement"), incorporated herein by reference.

30. MGM successfully delayed until approximately July 2007 paying to PEA the amounts that should have been paid to PEA as early as 2002 and no later than 2004, a period in excess of 5 years for the payments due in 2002, and in excess of 3 years for the payments due in 2004.

31. As set forth in an audit report dated August 4, 2010 (the "2010 Audit Report"), PEA audited the statements and payments for the period from 2004 through 2008 for GBU and FFD and from 2004 through January 31, 2009 for LTP.

32. The 2010 Audit Report revealed that the amount MGM paid to PEA was materially and significantly less than the amount MGM owed to PEA.

33. MGM received the 2010 Audit Report and delayed in responding to the claims made.

34. The audit claims were resolved by a settlement agreement dated April 19, 2011 (the "2011 Settlement"), incorporated herein by reference.

35. MGM successfully delayed until approximately April 2011 paying to PEA the amounts that should have been paid to PEA as early as 2004 and no later than 2008, a period in excess of 7 years for the payments due in 2004, and in excess of 3 years for the payments due in 2008.

36. As can be discerned from the factual pattern above, since at least 1990, MGM has not paid the proper amounts to PEA in a timely fashion, but rather has sent to PEA statements and payments which did not truthfully reflect the amounts due to PEA. After the applicable PEA audits, each of which MGM intentionally delayed for years, settlements were reached, years after honest and accurate statements and payments were due. The delays between the time honest and accurate statements and payments were due, and the cumulative times until the 2004 Settlement, the 2007 Settlement, and the 2011 Settlement is between an astonishing 8 to 14 years.

The Present Controversy

37. The present controversy concerns the continuation of this pattern of MGM not paying the honest and accurate amounts to PEA in a timely fashion but rather presenting knowingly incomplete, false and misleading statements for the time periods in issue, and knowingly sending payments which are materially and substantially less than the amount due.

38. In addition to failing to pay PEA the honest and accurate amounts in a timely fashion, MGM also (a) improperly and intentionally delayed in scheduling the audits duly requested by PEA; (b) once the PEA audit procedures began, improperly and intentionally hindered and impeded the auditor's work; and (c) improperly and intentionally created unnecessary and significant expense to PEA because of the delays. Upon information and belief, it is MGM's intention, having receiving the audit report described below, to improperly and intentionally resist paying PEA the honest and accurate amounts due and owing, for the purpose of forcing PEA to negotiate a settlement in order to receive even a portion of the money owed to it years earlier.

39. This pattern demonstrates a conscious, deliberate, and calculated plan by MGM to hinder, impede and defeat PEA's rights to an honest and accurate statement of revenues and expenses, together with prompt payment of the honest and accurate amount due to PEA based on a complete and accurate statement of revenues and expenses.

40. MGM knowingly presents to PEA the statements and payments for GBU, FFD, and LTP in a "Hollywood accounting catch me if you can" process designed intentionally to keep for itself money rightfully due to PEA.

The 2012 Audit Time Period

41. MGM continued this pattern in the audit underlying the present controversy (the "2012 Audit"), which audited the following time periods: (a) September 1, 2008 to August 31, 2011 for GBU; (b) August 1, 2008 to August 31, 2011 for FFD; and (c) February 1, 2009 to July 31, 2011 for LTP (the "2012 Audit Time Period").

42. For each of the applicable statements and payments during the 2012 Audit Time Period, PEA invoked its right to audit MGM's books and records.

43. MGM notified PEA that PEA would be placed on the “queue” for the 2012 Audit and that PEA would have to wait approximately one year before PEA’s “turn” came up, immediately causing at least a one year delay.

44. In or about January 2012, Edward J. Slizewski, MGM Senior Vice President, Financial Affairs (“Slizewski”) met with Steven D. Sills, CPA, CFE, CFF (“Sills”), PEA’s designated auditor, concerning the 2012 Audit.

45. Slizewski notified Sills that the 2012 Audit fieldwork could commence within the first quarter of 2012.

46. Slizewski also notified Ronald S. Taft, Esq. (“Taft”), an attorney for PEA, that MGM had changed its procedures so that a large amount of the audit work could be done directly from Sills’ office, accessing MGM’s records for reconciliation purposes by remote electronic means.

47. PEA heard nothing from Slizewski concerning the 2012 Audit after the January 2012 meeting with Sills.

48. By e-mail dated February 6, 2012, Taft asked Slizewski if MGM implemented the online electronic reconciliation procedure, so that Sills could perform a large amount of the audit work remotely, as opposed to Sills sitting at the MGM office, and if there was a specific date for PEA to commence the 2012 Audit field work.

49. Taft sent a follow-up e-mail on February 13, 2012 because he had not received a response to his February 6, 2012 e-mail.

50. Slizewski responded by e-mail dated February 13, 2012 stating that the MGM coordinator was working on the reconciliations and that Slizewski would e-mail Sills to schedule a call to discuss how to proceed and to schedule fieldwork.

51. Thereafter, approximately 6 months later, by July 2012, MGM produced some initial documentation related to the audits of GBU and FFD.

52. No initial documentation at all regarding LTP was given as of July 2012.

53. In or about July 2012, PEA requested information regarding GBU, FFD, and LTP.

54. MGM failed to respond in a timely fashion to the PEA request for further information.

55. MGM knew that its failure to respond to the July 2012 request in a timely fashion would further delay and hinder the 2012 Audit.

56. During the course of the 2012 Audit, from the date of each notice of audit for each relevant period through to PEA's transmission to MGM on July 28, 2014 of the Audit Report dated July 25, 2014 (the "2014 Audit Report," incorporated herein by reference), periods in excess of 6 years for the statements dated 2008 and in excess of 3 years for the statements dated 2011, MGM failed to respond in a timely fashion to PEA's requests for information.

57. MGM claimed, among other things, that lack of staff and changes in its staff were causing, and would continue to cause, delays in responding to PEA requests.

58. As another excuse, and contrary to Slizewski's prior representation, MGM would not permit PEA's auditors to use the online reconciliation procedure.

59. At times, MGM claimed it did not have any rooms available in which the PEA auditor could work.

60. At other times, MGM refused to even let the auditors use copy machines to make copies, but forced the auditors either to make handwritten copies or have a typist type the information concerning GBU, FFD, and LTP.

61. The above are but some examples of MGM's intentional acts for the purposes of hindering, delaying, and impeding the 2012 Audit, causing PEA unnecessary auditing expense, and allowing MGM to keep money it knew rightfully belonged to PEA and which it knew it would have to pay to PEA.

62. The actions and inactions of MGM described above resulted in the 2014 Audit Report taking more than 2 years to complete, more than twice as long as it should have taken to complete.

Audit Discoveries

63. In addition to the examples detailed above to hinder, delay, and impede the audit process, MGM breached the 1971 LTP Agreements, the 1993 Amendment, and the 1993 Agreement and breached its duty of good faith and fair dealing by underreporting revenue and claiming unsubstantiated fees and expenses, among other things.

64. Upon information and belief, according to MGM, MGM entered into an agreement with 20th Century Fox Home Entertainment, Inc. (the "Fox Agreement") for home video distribution of GBU and FFD.

65. MGM charged PEA more than \$1,500,000 in administrative fees claimed by Fox for GBU and FFD.

66. MGM did not provide in any fashion any supporting documentation for the fees actually charged.

67. MGM charged GBU and FFD with a staggering \$10,620,869 in home video fees and expenses but completely refused to provide in any fashion even a single piece of supporting documentation.

68. MGM claims that \$10,620,869 is a distribution expense, and in breach of PEA's right to audit such an expense, refused and continues to refuse to let PEA examine substantiation for that expense.

69. MGM's refusal to recognize PEA's right to verify, and refusal to permit PEA to verify, the \$10,620,869 in claimed expenses completely defeats PEA's right to audit the statements and payments.

70. Upon information and belief, MGM knew, or should have known, that PEA would challenge such a staggering amount of unsubstantiated fees and expenses.

71. Upon information and belief, MGM anticipated such a challenge, knowing it could hinder, delay, and impede the inevitable audit and knowing that it could delay paying PEA until a settlement, years after the amounts were rightfully due.

72. PEA has requested a copy of the Fox Agreement.

73. MGM refused to give a copy of the Fox Agreement to PEA. The refusal to give PEA an executed, unredacted copy, or any copy at all, of the Fox Agreement is a breach of PEA's audit rights as set forth in the 1993 Amendment because, among other things, PEA is unable to verify the deductions and expenses claimed by MGM pursuant to the Fox Agreement.

74. In addition to having the right to audit and verify the deductions and expenses claimed by MGM pursuant to the Fox Agreement, PEA is a third-party beneficiary of the Fox Agreement, because PEA receives a percentage of the revenue paid by 20th Century Fox Home Entertainment, Inc. to MGM under the Fox Agreement for GBU and FFD. MGM knows, or

should know, that as a third-party beneficiary of the Fox Agreement, PEA is entitled to see the Fox Agreement.

75. As a third-party beneficiary of the Fox Agreement, PEA is entitled to enforce PEA's rights to receive payment pursuant to the Fox Agreement.

76. Upon information and belief, either MGM has refused to let PEA see the Fox Agreement because it is a home video distribution agreement which MGM cannot charge as an expense against GBU and FFD or it is an agreement for which MGM allocates expenses against GBU and FFD instead of other movies because MGM receives a higher percentage share of revenues from the other movies, and it is in MGM's interest to do so, all at the expense of GBU and FFD.

77. Upon information and belief, MGM entered into an agreement with HBO regarding LTP.

78. PEA requested an unredacted copy of the agreement between MGM and HBO regarding LTP, as part of the 2012 Audit.

79. MGM refused to provide PEA with an unredacted copy of the agreement between MGM and HBO regarding LTP.

80. PEA was thus unable to review the license period, the number of runs, and other material terms of the agreement between MGM and HBO and determine whether it was properly paid pursuant to that agreement.

81. MGM has not provided (a) full, unredacted copies of all agreements pursuant to which MGM claimed, or should have claimed, revenues and/or expenses for GBU, FFD, and LTP; (b) full, unredacted copies of the documents, contracts and agreements identified in Comments 1, 2 and 3 of the 2012 Audit Report; (c) full, unredacted copies of the documents,

contracts and agreements identified as the “Open Items” in the 2012 Audit Report; and (d) all documents necessary to determine all amounts due to PEA from MGM for the 2012 Audit Time Period.

82. The 2014 Audit Report was sent to MGM on or about July 28, 2014.

83. MGM has failed to respond in any fashion.

**FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT)**

84. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 83, inclusive, as if set forth at length.

85. The actions and inactions of MGM have materially breached the 1971 LTP Agreements, the 1993 Amendment, and the 1993 Agreement.

86. MGM has failed to send honest and accurate statements and payments to PEA with respect to the 2012 Audit Time Period.

87. MGM has failed and refused, and continues to fail and refuse, to provide documentation requested by PEA to support and justify a charge of \$10,620,869 in home video expenses, thereby reducing the amount due to PEA by over \$5,000,000.

88. MGM has failed and refused, and continues to fail and refuse, to provide documentation requested by PEA to support and justify a charge of \$1,535,126 in administrative expenses.

89. MGM has failed and refused, and continues to fail and refuse, to give PEA true and accurate accountings reflecting the amount of revenues and expenses regarding GBU, FFD, and LTP for the 2012 Audit Time Period.

90. MGM has failed and refused to pay amounts due to PEA when payment was due for the 2012 Audit Time Period.

91. MGM has failed and refused to permit PEA to audit the books and records in a timely and reasonable manner for the 2012 Audit Time Period.

92. As a result of the breaches described above, PEA has been damaged in an amount exceeding \$5,000,000.

**SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)**

93. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 92, inclusive, as if set forth at length.

94. The actions and inactions of MGM have breached the covenant of good faith and fair dealing inherent in the 1971 LTP Agreements, the 1993 Amendment, and the 1993 Agreement.

95. MGM has acted (or not acted) in that, in bad faith and with the knowing intent to hinder, impede, and defeat PEA's enjoyment of its rights, MGM has issued untruthful and misleading statements and made payments based on such untruthful and misleading statements, has hindered and impeded PEA's audits of MGM's books and records, and has hindered, impeded, and defeated PEA's right to receive full payments when due.

96. MGM has acted (or not acted) as described above in order to keep for itself, for as long as it can, money which it knows or should know rightfully belongs to PEA.

**THIRD CLAIM
(Accounting)**

97. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 96, inclusive, as if set forth at length.

98. MGM was required to provide to PEA statements and payments accurately indicating the amount of revenues and expenses relating to the distribution of GBU, FFD, and LTP.

99. Despite demand, MGM has failed and refused to provide to PEA statements and payments accurately indicating the amount of revenues and expenses relating to the distribution of GBU, FFD, and LTP for the 2012 Audit Time Period.

100. An accounting is required to determine the amount of revenue due to PEA during the 2012 Audit Time Period and through the date of this complaint, and during, and as part of, such accounting, MGM must provide PEA, among other things, (a) full, unredacted copies of all agreements pursuant to which MGM claimed, or should have claimed, revenues and/or expenses for GBU, FFD, and LTP; (b) full, unredacted copies of the documents, contracts and agreements identified in Comments 1, 2 and 3 of the 2012 Audit Report; (c) full, unredacted copies of the documents, contracts and agreements identified as the "Open Items" in the 2012 Audit Report; and (d) all documents necessary to determine all amounts due to PEA from MGM for the 2012 Audit Time Period through the date of this complaint.

WHEREFORE, PEA demands judgment:

- a) On the First and Second Claims, for termination of the 1996 FFD Agreement, the 1967 GBU Agreement, the 1971 LTP Agreements, the 1993 Agreement, and the 1993 Amendment, together with damages to be determined at trial, but not less than \$5,000,000, together with pre-judgment interest at the maximum legal rate;
- b) On the First and Second Claims, in the event the 1996 FFD Agreement, the 1967 GBU Agreement, the 1971 LTP Agreements, the 1993 Agreement,

and the 1993 Amendment are not terminated, then, in addition to damages to be determined at trial, but not less than \$5,000,000 together with pre-judgment interest at the maximum legal rate, a permanent injunction requiring MGM, during PEA's audits of MGM's books and records, to provide, for each applicable audit period: (a) access to MGM's electronically stored information ("ESI"); (b) access to the ESI on consecutive days, or on a schedule set forth by PEA, during normal business hours; (c) access to a suitable work room at MGM during normal business hours; (d) access to books and records which are not stored as ESI with the right to scan or make copies of such records during normal business hours; and (e) access to, and copies of, all fully executed unredacted agreements which MGM asserts require or justify expenses or deductions against PEA's share of revenue, receipts, and proceeds and/or which relate to revenue, income, and/or gross receipts;

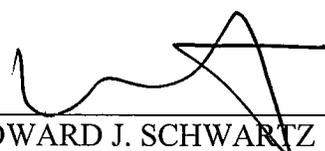
- c) On the Third Claim, for an accounting for the 2012 Audit Time Period through the date of this complaint requiring MGM to produce all documents demanded by PEA; and
- d) For costs, reasonable attorney's fees, interest and such other relief as may be necessary to accomplish complete justice between PEA and MGM and for such other and further relief as this Court may deem just and proper.

RONALD S. TAFT, PC
Attorneys for Plaintiff P.E.A. Films, Inc.

By 
RONALD S. TAFT

Dated: August 28, 2014

WOLFF & SAMSON PC
Attorneys for Plaintiff P.E.A. Films, Inc.

By 
HOWARD J. SCHWARTZ

Dated: August 28, 2014