

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

THE PRODUCER CIRCLE CO.,

Plaintiff,

-v-

MIRAMAX FILMS, CORP.,

Defendant.

) Date Summons filed: March 20,
) 2006. Plaintiff designates New
) York County as the place of trial.
) The basis for venue is CPLR §503
) in that plaintiff resides within New
) York County
)
)
)
)

Index No.

SUMMONS & COMPLAINT

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to serve a notice of appearance on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will betaken against you by default for the relief demanded in the notice set forth below.

PLEASE TAKE NOTICE THAT Plaintiff asserts claims against you in the amount of not less than \$10,000,000.00 for (1) your breaches of contract; (2) declaratory relief; (3) an accounting; (4) *quantum meruit*; and (5) promissory estoppel.

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FILED
MAR 20 2006
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York
March 20, 2006

LAW OFFICES OF THOMAS P. PUCCIO



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THE PRODUCER CIRCLE CO. ("PCC" or "plaintiff"), by and through its counsel, Law offices of Thomas P. Puccio, for its Complaint against MIRAMAX FILMS, CORP. ("Miramax" or "defendant"), states as follows:

1. This is an action for breach of contract brought by The Producer Circle Co. ("PCC") against Miramax Films Inc. ("Miramax"), Miramax agreed to finance and produce, in conjunction with PCC, a major motion picture based on the musical *Chicago*, a smash Broadway hit of the 1970's. In so agreeing, Miramax promised PCC, the owner of the film rights to the musical *Chicago*, certain contingent compensation in return for permitting Miramax to participate in the production and distribution of the movie. Pursuant to written agreements between Miramax and PCC, PCC was to receive a percentage of the film's gross revenues after deductions relating to the cost of making and financing the film.

2. The film, starred Hollywood luminaries Richard Gere, Catherine Zeta Jones and Renee Zellweger. It was directed by Rob Marshall, based on a play by Bob Fosse and Fred Ebb, who based their work on an earlier play written by Maurine

Dallas Watkins. The screenplay was written by Bill Condon. Martin Richards, the founder and principal of PCC, was the producer of the movie *Chicago*, with Bob and Harvey Weinstein, the founders of Miramax acting as co-executive producers. The movie was released in December 2002 and was an extraordinary box office and critical success. It generated both hundreds of millions of dollars in revenue for Miramax and took home numerous awards, including, the coveted Oscar for "Best Picture" for 2002. Upon information and belief, *Chicago* was both the highest grossing and most profitable movie ever released by Miramax.

3. Despite its success, Miramax has failed to pay to PCC the promised contingency compensation it is owed. While PCC is unable to determine with precision the amounts that it is owed, it estimates that Miramax breach of contract has cost it no less than \$10 million.

PARTIES, JURISDICTION & VENUE

4. PCC is a joint venture between Mr. Richards and Hit Productions, Inc., with its principal place of business located in New York, New York. Mr. Richards is a resident of the State of New York; Hit Productions, Inc. is a corporation organized pursuant to the laws of the State of New York.

5. Miramax is a corporation organized pursuant to the laws of the State of Delaware and a wholly owned subsidiary of The Walt Disney Corp. ("Disney") with its principal place of business located in New York, New York.

6. Miramax is doing business in the State of New York and within New York County for purposes of CPLR §§301, 302 and 504.

BACKGROUND

7. Miramax is a well known successful movie production and distribution company. The company has been involved in the production of some of the more commercially and critically successful films of the past two decades. These include:

- a. *The Crying Game* – this 1992 film is one of the hardest movies to categorize – it is either a political/terrorism drama or a tale of gender bending sexual intrigue; regardless, its surprise ending helped it win an Oscar in 1993.
- b. *The Piano* – this 1993 drama tells the story of a woman who refuses to speak, her daughter and her piano traveling to 19th Century New Zealand for an arranged marriage; *The Piano* was a triple Oscar winner in 1994.
- c. *Pulp Fiction* – this 1994 Oscar winner follows the lives of two mob hit men, a boxer, a gangster's wife, and a pair of diner bandits intertwining in four tales of violence and redemption; *Pulp Fiction* is credited with reviving the career of actor John Travolta.
- d. *The English Patient* – this 1996 winner of the "Best Picture" and nine other Oscars, through dramatic flashbacks, retells the past of a grievously wounded WWII aviator/cartographer, cared for by a young nurse; *The English Patient* is thought by many to be one of the great love stories ever brought to the silver screen.
- e. *Sling Blade* – this 1996 Oscar winner follows the heart rendering and heartwarming travails of Karl Childers, a simple man hospitalized since his childhood murder of his mother and her lover, as he is released to start a new life in a small town.
- f. *Good Will Hunting* – this 1997 double Oscar winner tells the story of a mathematical genius hiding as a janitor at MIT and the psychiatrist who assists him in dealing with his gift for numbers and life in general; *Good Will Hunting*

introduced the world to box office superstars Matt Damon and Ben Affleck.

- g. *Shakespeare In Love* – this 1998 winner of the Best Picture Oscar told the story of the Bard's romantic inspiration in transforming "Romeo and Ethel The Pirate's Daughter" into his classic "Romeo and Juliet".
- h. *The Cider House Rules* – this 1999 double Oscar winning drama deals with a compassionate young man, raised in an orphanage and trained to be a doctor there, as he decides to leave to see the world.

8. PCC, which has been led by Mr. Richards since its founding in 1975, is also a successful theatrical production company. Mr. Richards and/or PCC's theatre credits include numerous commercially and critically acclaimed original Broadway productions of musicals and plays:

- a. *Chicago* – opened on Broadway in June 1975 and ran nearly 1,000 performances; choreographed and directed by the legendary Bob Fosse, it starred Gwen Verdon, Chita Rivera and Jerry Orbach, and was nominated for eleven Tony Awards.
- b. *On the Twentieth Century* – opened on Broadway in 1979 and ran 450 performances, as well as additional performances on tour. This musical comedy tells the madcap tale of a down-on-his-luck Broadway producer and his pursuit of his former lover (and currently a Hollywood diva) while on board the 20th Century Limited from Chicago to New York, circa 1930. Directed by Harold Prince, with music by Cy Coleman and book and lyrics by Betty Comden and Adolph Green, it starred Madeleine Kahn, John Cullen and Kevin Kline, and won five Tony Awards.
- c. *Sweeney Todd* – opened on Broadway in 1979 and ran for 557 performances and additional performances on tour. Directed by Harold Prince, with music and lyrics by Stephen Sondheim, it starred Angela Lansbury and Len Cariou in a story about a man returning from his exile in Australia to 19th century London bent on revenge against the judge who destroyed his family. This landmark musical won eight Tony Awards, including Best Musical

- d. *Crimes of the Heart* – opened on Broadway in 1981 and ran 535 performances. This comedy of a dysfunctional southern family won two Theatre World Awards and the Pulitzer Prize for Best Play.
- e. *Grand Hotel* – opened in 1989, based on the 1930 novel by Vicki Baum and the 1935 MGM film. Directed and choreographed by Tommy Tune, this musical intertwined the stories of several guests at a luxury hotel in Berlin in the early 1930's, ran 1,017 performances and won five Tony Awards in 1990.
- f. *The Will Rogers Follies* – opened in 1991 and ran nearly 1,000 performances on Broadway. Directed and choreographed by Tommy Tune, and starring Keith Carradine, with the voice of Gregory Peck as Florenz Ziegfeld, it is a gala, broad-brushed Follies revue of the life of Will Rogers in the 1920's and 30's. It earned a total of six Tony Awards, including Best Musical.
- g. *La Cage aux Folles* – original musical based on the French/Italian film by Jean Poiret, with music and lyrics by Jerry Herman, directed by Arthur Laurents. This 1983 musical comedy follows a family, led by a star female impersonator, and his companion, meeting the companion's son's about-to-be in laws for the first time. It enjoyed an original run of 1,761 performances and received six Tony Awards, including Best Musical. The 2004 revival, also co-produced by Mr. Richards, won two Tonys including Best Revival of a musical.

9. Over the past thirty five years, Mr. Richards and/or PCC have also produced numerous successful feature films, including, without limitation, the following:

- a. *Some of My Best Friends Are* (1971), a slice of life movie starring Rue McClannahan and exploring the challenges and frustrations facing New York's gay community during the immediate post-Stonewall era. *Some of My Best Friends Are* was acclaimed by critics and was one of the first mainstream movies to explore issues important to the gay community.
- b. *The Boys From Brazil* (1978), a sci-fi, political thriller in which a dedicated Nazi hunter, played by Lawrence Olivier, seeks to thwart the notorious Dr. Josef Mengele, played by Gregory Peck, in his effort to clone Adolph

Hitler. Based on a best selling novel, *The Boys From Brazil* was commercially successful grossing over \$19,000,000.00 the year it was released.

- c. *The Shining* (1980), a chilling thriller, starring Jack Nicholson, and revolving around his character's creeping madness, which occurs while he is snowed in with his family at an isolated mountain resort. *The Shining* was a top grossing movie for 1980 taking in over \$44,000,000.00 in gross domestic box office receipts during that year.
- d. *Fort Apache the Bronx* (1981), an action packed police drama starring Paul Newman as a beleaguered New York City policeman attempting to hold his precinct house together against corruption, apathy and turbulent racial and ethnic violence endemic to the South Bronx of the 1970's. *Fort Apache the Bronx* was very successful commercially, with gross domestic box office receipts of approximately \$30,000,000.00 in 1981.

STUDIO ACCOUNTING FOR PARTICIPANT CONTRACTS

10. In the movie industry, there are at least two forms of accounting used by major studios in tallying the profits or losses on movies: (a) accounting for financial reporting purposes; and (b) accounting for the purpose of calculating individual contingent compensation. Financial accounting, restrained by GAAP, the IRS code and the ire of shareholders, tends to be rather run of the mill, reflecting the mundane efforts of Hollywood's CPA's to match movie revenue with movie costs. Contingent compensation accounting, reigned in only by the avarice of the studios and the leverage they hold over the talent they hire, is opaque, confusing and leads to patently absurd results, leading one Tinseltown accountant to observe that, in Hollywood, "most of the creative work in this business is done in the accounting department."

11. Studios perpetuate this dual track because, typically, numerous individuals involved in the production of a major movie have contracts with the studio granting them some form of contingent compensation: Some or all of the leading actors,

the director, the producer and the writer may have the right to a percentage of the movie's profits. Therefore, the definition of "profit" becomes critical for purposes of accounting for these contracts.

12. Some of the independent contractors participating in the production of a movie (*e.g.*, actors, directors, writers and/or producers) possess sufficient leverage to demand contracts wherein their contingent compensation is calculated on the basis of an all inclusive definition of "gross receipts" for the movie, accompanied by limited or minimal deductions for expenses – deals that are known in the business as "gross deals".

13. For example, mega star Arnold Schwarzenegger was able to obtain an almost obscenely lucrative "gross deal" for his work on *Terminator 3: Judgment Day*. Upon information and belief, his contract included:

- a. A guaranteed payment of \$29.5 million dollars, payable during the production of the movie;
- b. Weekly payments of \$1.6 million for every week that filming went over its 19 week schedule;
- c. A perk package of \$1.5 million for private airplanes, on location exercise facilities, limos and personal bodyguards;
- d. 20% of the revenues generated by the movie after it reached the "cash break even" point, with total revenues including 100% of DVD and home video sales and other items and certain limitations being placed on costs and expenses attributed to the movie for purposes calculating of Mr. Schwarzenegger's share of the profits.

14. On the other end of the spectrum, are "net profit deals" which go to lesser luminaries. Under these contracts, independent contractors participating in the production of a movie who do not possess the name cachet needed to obtain a "gross deal", are granted "net profit deals". In accounting to the individuals who have such

contracts, the studios typically decrease revenue and increase costs and expenses attributable to the movie.

15. For purposes of accounting for “net deals”, many movies – even those that by all objective measures appear to be commercially successful – never actually show a “net profit”. For example, the net effect of Mr. Schwarzenegger’s contract for *Terminator 3: Judgment Day*, was such that, while the movie enjoyed total worldwide theatrical box office receipts of over \$425 million (making it one of the most successful movies of all time), the studio was able to claim that it barely broke even, allowing it, upon information and belief, essentially, to stiff other, lesser participants in the profits of the movie.

16. Therefore, those with “net deals” may never actually see any of their promised contingent compensation. Questionable accounting tactics employed by the studios with respect to “net deals” caused movie star Eddie Murphy to call them “monkey points” – *i.e.*, only a monkey would expect them to actually result in any payment to the talent.

17. Between these two extremes are so called “gross-after-break-even deals”, contracts that – from the individual participant’s point of view – have some of the advantages of “gross deals” and some of the drawbacks of “net deals”.

18. Accordingly, depending on the kind of contracts it has with its independent talent, for purposes of determining payments to them, it becomes critical for the studio to control and shape the profitability of the movie. Turning normal financial expectations upside down, for purposes of participant accounting, the worse a movie performs financially, the better off the studio is.

19. Well known examples of this Alice In Wonderland aspect of movie making include:

- a. Writer Art Buchwald's experience as the creator/writer for the movie *Coming To America*. The movie was an astounding commercial success, generating revenue in the hundreds of millions. However, due to contract accounting sleight of hand, Buchwald's 2% "net profit" participation, according to the studio, Paramount, should have resulted in no payment because – amazingly – the movie never made a "profit". Buchwald was only able to peel back the studio's shrouded accounting after a lengthy and costly law suit.
- b. Writer Winston Groom received an up-front payment of \$350,000 for the movie rights to *Forrest Gump*, however, his additional fee of three percent of net profits has yet to be paid. *Gump* was the fourth highest-grossing film in history with \$661 million in box-office receipts, but due to Hollywood-style participant contract accounting, it incurred a net loss of \$62 million as of December 31, 1994.
- c. When, following its extraordinarily successful box office run, Sigourney Weaver and James Cameron, respectively, the star and director of the movie *Alien*, were told by the studio that their "net profit" participation yielded them nothing, they were forced to sue.
- d. *The Lord of the Rings* trilogy spawned at least a trilogy of lawsuits one by Producer Saul Zaentz and other claims by Director Peter Jackson and his production partner Fran Walsh. These lawsuits focused on the studio's, New Line Cinema, practice of selling foreign rights to the films to related companies for less than fair market value, which had the effect of depressing the plaintiffs' participation in the films' revenues. Though they were "gross profit" participants, the trio claimed to have been short changed by the studio.

20. The key to determining whether a profit participant gets a lucrative "gross deal" or a virtually meaningless "net deal" lies in the leverage that the participant brings to the table and his ability to negotiate with the studios. Studios cannot

unilaterally impose a specific kind of contract on a participant, but rather, must engage in arms length negotiations with the participants.

21. Upon information and belief, In connection with the contracts between the parties regarding the movie *Chicago*, Miramax has attempted to unilaterally impose a restrictive net deal on Mr. Richards and PCC. It has attempted to do so despite the terms of the agreement that it has with PCC – *i.e.*, a “gross after break even” deal – and despite the fact that, given the opportunity to negotiate “net deal” with PCC, it failed to do so, only seeking long after PCC’s performance pursuant to the contract in question had been largely completed, to bind PCC to a “net deal” to which PCC had never agreed.

22. Upon information and belief, Miramax compounded its duplicity in this regard by failing to properly account to PCC for even the restrictive “net deal” that it seeks to impose on PCC. As detailed below, upon information and belief, Miramax has omitted from the revenue base on which PCC’s profit participation is calculated hundreds of millions of dollars in revenue generated by the movie *Chicago*. Miramax’s ability to systematically shortchange PCC in this regard depended largely on its willingness to misallocate and fail to account completely for revenue earned from lucrative DVD sales and/or foreign distribution of the movie. Both of these revenue reducing schemes, in turn, depended, in whole or in part, on Miramax’s status as a wholly owned subsidiary of Disney and were enabled by self dealing arrangements for DVD sales and/or foreign distribution reached between Miramax and other Disney affiliates.

**ECONOMIC TRENDS IN THE GLOBAL FILM INDUSTRY
HIGHLIGHT THE STUDIOS' NEED & ABILITY TO SEGREGATE REVENUE
FOR PURPOSES OF PARTICIPANT CONTRACT ACCOUNTING**

23. Over the past decade, the economics of the movie industry have changed and these changes have accelerated and highlighted the studios' need and ability to segregate revenue for purposes of participant contract accounting.

24. The studio's business practices with respect to contract accounting reflect two trends that have overtaken the business of producing and distributing movies in recent years: (a) the U.S. market no longer accounts for even half of the theatrical revenue generated by most movies released by the studios; and (b) DVD and video sales account for approximately 49% of all revenues with theatre box office revenues accounting for no more than 15-20%.

25. Warner Brothers' experience with 2003's *The Last Samurai* exemplifies the dual effect of overseas receipts and DVD.

- a. Warner Bros. rolled out *The Last Samurai*, a production costing approximately \$170 million and starring Tom Cruise.
- b. North American audiences were drawn to the tale of a Civil War veteran who leads Japanese soldiers to battle, but they were not swept away, with domestic box office totaling \$111 million, with 45% (approximately \$50 million) of that total estimated to have gone to Warner Bros. as the producing studio.
- c. However, foreign exhibitions added another \$350 million to total box office (approximately \$208 million in receipts to Warner Bros.).
- d. Finally, DVD sales have been just as spectacular. *The Last Samurai* was one of 2003-2004's best-selling DVDs, with revenues exceeding \$100 million.

26. Accordingly, upon information and belief, had Warner Brothers been depending exclusively on domestic distribution to pay for *The Last Samurai*, the studio would have been looking at a loss of in excess of \$100 million. With the addition of foreign distribution and DVD sales, the studio, instead, booked, something approaching a \$140 million profit.

27. Enriched by these newer sources of revenue, studios are not anxious to cut contract participants in on them. Accordingly, they have sought to segregate these revenues apart from those to which they account to contract profit participants, using various questionable accounting practices.

28. With respect to the movie *Chicago*, Miramax, upon information and belief, sought to arrogate unto itself, the revenues generated by DVD sales and foreign distribution. It did so by improperly imposing on PCC a net deal, when, in fact, it had no such deal with PCC. Indeed, upon information and belief, the sizeable revenues generated by DVD sales and foreign distribution of the movie *Chicago* provided Miramax with the motive for improperly accounting to PCC as if it had a net deal with Miramax.

**MEDIA CONGLOMERATION ENHANCES STUDIOS'
ABILITY TO IMPROPERLY ACCOUNT TO PROFIT PARTICIPANTS**

29. The fact that many of the movies produced for initial release in the United States are ultimately financed and controlled by large media conglomerates such as The Walt Disney Co. ("Disney") and Time Warner, Inc., enhances the studios' opportunities to use questionable accounting tactics for the purposes of artificially depressing the revenues and increasing the expenses and costs attributed to a given production in connection with the accounting to profit participants in that production.

30. Media conglomerates typically own both production/studio subsidiaries and distribution subsidiaries, which, while nominally separate companies, both contribute to the bottom line of the conglomerate/parent company. For example, Disney owns 100% of both Miramax, a production/studio subsidiary, and 100% of Buena Vista Home Entertainment, upon information and belief, a DVD and video distribution subsidiary.

31. Upon information and belief, there are several ways in which media conglomerates can use their complex corporate structures to their benefit in connection with accounting to those who have "gross profit" or "net profit" participation contracts with the conglomerate's movie production subsidiaries.

32. First, because the conglomerates, upon information and belief, release numerous major motion pictures annually, they can attribute costs, properly attributable to a money losing movie, to a money making movie when accounting to individuals with "gross deals", "net deals" or "gross-after-break-even deals". This cost shifting has the effect of delaying the point at which the ostensibly money making movie will show a "gross profit", thereby delaying payments due to those with "gross deals". It also has the effect of making it less likely that the ostensibly money making movie will ever show a net profit for purposes of accounting to those with "gross after break even deals" or "net deals". For purposes of this complaint, this practice will be known as "improper cost shifting".

33. Second, because the conglomerates, upon information and belief, have engaged in questionable practices with respect to accounting for the revenues generated by the foreign distribution of their movies, they have been able to either delay

payments to "gross participants" and/or virtually eliminate payments to "net participants".

34. Upon information and belief, one way in which the conglomerates achieve this result is through "packaging" of their movie offerings to foreign film distributors. "Packaging" is a practice whereby a movie studio (or its affiliated distribution company) requires an unaffiliated foreign distributor to purchase the foreign distribution rights (*e.g.*, theatrical performances, DVD, video cassette, pay television, "free" television) to an entire slate of movies offered by the studio as opposed to offering the foreign distribution distributor the opportunity to purchase the foreign distribution rights to individual movies. The foreign distributor and the studio, after determining the price for the slate of films purchased, arbitrarily attribute some proportion of the revenue generated to each individual movie, allowing the parties maximal flexibility to designate revenue as they see fit.

35. "Packaging" is, upon information and belief, central to the success of U.S. movies overseas. As Toby Miller, the director of the University of California's film and cultural studies program recently noted, when asked if foreign audiences truly enjoyed the offerings of the U.S. film industry:

Well, of course, that's the \$64,000 question, isn't it . . . ? Again and again, we're told, well, Hollywood's successful because people love its stories. Its stories are simple, there's romance, there's desire, there's the notion that you can, in a sense, pass away from your origins and become a new kind of person. There's a sort of secular transcendence that comes from the Hollywood dream of money, sex, power, commodities, love. Well, that no doubt is part of the appeal, but it's also about forms of distribution and exhibition that are not very competitive. *It's about saying you can have the next Spielberg movie in your local theater if you'll take this, you know, Van Damme movie that no one else wants.*

36. An extreme hypothetical example illustrates the point. In 1997, Paramount and 20th Century Fox released the fabulously successful *Titanic*, which ultimately generated box office revenues of over \$1 billion in worldwide, making it the most successful movie of all time. If a foreign distributor wanted to obtain the distribution rights from Paramount and 20th Century Fox for this blockbuster, assuming that these companies engaged in "packaging", they might also have required the purchase of the rights to *Speed2*, a notoriously unsuccessful 20th Century Fox offering of 1997 as well as other money losing movies in their portfolios.

37. However, in apportioning the revenues generated by the sale of the foreign distribution rights to individual movies, the producing studios and their foreign distributor would be free to apportion them virtually as they saw fit. Accordingly, if *Titanic* was sold, along with nineteen money losing movies, for a total of \$80 million, the companies could apportion \$4 million in revenue to each movie, despite the fact that *Titanic* clearly represented the overwhelming majority of the value obtained in this hypothetical foreign rights sale.

38. Under this arrangement, for purposes of reporting to the individual profit participants in *Titanic*, the studios would only show \$4 million in revenue for the movie from the sale of foreign distribution rights, despite the fact that *Titanic* was the only economically viable film contained in the \$80 million sale of foreign rights. This arrangement would artificially depress the revenues shown to participants in *Titanic*'s profits and would either delay payments to them or eliminate such payments altogether.

39. Another way in which media conglomerates can effectively conceal revenues generated by the sale of foreign distribution rights is through the sale of

such rights from their studio subsidiaries to their distribution subsidiaries, which then, in turn, either distribute the films in foreign markets themselves or resell the rights to third party foreign distributors. For purposes of this complaint, this accounting gambit is referred to as an "undervalued affiliate transaction" and can be used to artificially depress revenues that the studio subsidiary receives from the film. And, as noted above, by depressing such revenues, studios can either unreasonably delay or eliminate payments to profit participants.

40. Again, using a hypothetical, posit that, on a commercially successful movie, such as 2003's *Lord of the Rings: The Return of the King*, a movie that grossed over \$375 million, the producer, New Line Cinema, a wholly owned subsidiary of Time Warner sold its foreign distribution rights to another Time Warner subsidiary, which, in turn, either sold the foreign rights to foreign distributors or distributed the film itself in foreign markets. Under such a scenario, when New Line calculated the amounts due to the profit participants, these individuals would be credited only with the revenues actually received by New Line from its brother/sister companies under the Time Warner umbrella. They would be shut out of revenues received by affiliated companies from their own resale or distribution of the film in foreign markets.

41. Upon information and belief, other accounting gambits used by the studios to either reduce revenue and/or increase expenses and costs with respect to their "gross profit" and "net profit" participant contract accounting include, the following:

- a. Charging maximum overhead against revenues despite the fact that actual overhead is far lower;
- b. Charging inflated interest rates;
- c. Charging interest without crediting the participant with amounts attributable to the studio's distribution fee;

- d. Charging interest on already inflated overhead charges;
- e. Charging interest on senior profit participants' distributions; and
- f. Charging surcharges on items such as advertising.

42. Upon information and belief, with respect to the movie *Chicago* and the manner in which Miramax accounted for the revenue generated by it, Miramax's ability to shortchange PCC by attempting to bind it to a net deal that it never agreed to was enhanced by Miramax's relationships with other Disney subsidiaries and affiliates. Upon information and belief, without informing PCC that it would do so, Miramax struck less than arms length deals with Disney affiliates concerning DVD sales and foreign distribution of the movie *Chicago* and through these deals was able to systematically shortchange PCC while without affecting Disney's bottom line profitability with respect to the movie.

CHICAGO: THE MOVIE MUSICAL A LONG TIME IN THE MAKING

43. Since bringing the musical *Chicago* to Broadway in 1975, Mr. Richards was determined that it belonged on the silver screen and began a 27 year quest to fulfill this dream.

44. The centerpiece, indeed, the star of *Chicago* is America's "second city" at the height of the Prohibition Era. Through a lively montage of songs and skits, the audience regales in a story about two women in 1920's Chicago, who achieve celebrity and notoriety from jail as they await trial on separate murder charges. Their fame is ultimately eclipsed by even more spectacular crimes but they manage to break into show business when their sleazy lawyer gets them off by doing a little razzle-dazzle on the juries.

45. The score by John Kander and Fred Ebb is one of the most exciting, varied and jazziest scores ever brought to Broadway, not to mention the screen, featuring such standards as "All That Jazz."

46. *Chicago* first opened on Broadway in 1975. It was a major hit, with a run of over 1,000 performances. Following its first run, a revival of *Chicago* started a new run on Broadway in 1996 and garnered eight Tony awards in 1997. Theatergoers are still enjoying a revival of *Chicago* today at the Ambassador Theatre at 49th and Broadway, in the heart of Manhattan's theatre district.

47. Upon completing its first Broadway run of *Chicago*, Mr. Richards and PCC obtained the film rights to the play and music for a price of approximately \$505,717.00. Following this, through Mr. Richard's, PCC sought to find a motion picture studio to finance the production of a major motion picture of *Chicago*.

48. In the 1990s, the most popular musicals starred mermaids and monsters. While Disney's animated films always contained music, including a few songs that have evolved into standards, songs written specifically for use in films had dwindled to the point that numbers from the new Disney cartoon features became annual contenders for the "Best Song" Oscar. The trend towards animated musicals, oriented primarily towards children, began with 1989's *The Little Mermaid* and continued through the release of *Toy Story 2* in 1999.

49. In the early years following the turn of the century, the movie musical aimed at adults made a comeback. In 2002, *Moulin Rouge* won two Oscars and was even nominated for the "Best Picture" Oscar. This success was followed in 2003, when *Chicago* won the "Best Picture" Oscar. Noting a possible trend, the day after the

2003 Oscars were handed out, Miramax chief Harvey Weinstein told the *New York Times* "I'll tell you the first thing I'm going to do, and that is to begin work on a new musical. Right away. First thing tomorrow."

**MIRAMAX'S OPTION FOR *CHICAGO*
& SUBSEQUENT AGREEMENTS WITH PCC**

50. Clearly, by the early 1990's, Miramax, was building a reputation for releasing films that combined artistic quality and commercial appeal and seemed like a natural to join with PCC in the production of *Chicago*.

51. After initial negotiations, in or around September 28, 1994, PCC and Miramax entered into an agreement whereby Miramax agreed to acquire an option to purchase the motion picture rights to and produce the movie *Chicago* in conjunction with PCC.

52. The Option was executed by Mr. Richards on behalf of PCC and by Harvey Weinstein on behalf of Miramax. The parties' execution of the Option was witnessed by Ms. Louise Ciccone, a/k/a, Madonna.

53. Pursuant to the Option, Miramax acquired the right, among other things, to produce a feature film based on the stageplay, music and lyrics to *Chicago*.

54. In full payment for the option, Miramax paid PCC \$25,000.00 and agreed that PCC would receive further compensation should Miramax produce a feature film of *Chicago*.

55. Miramax agreed that, should it decide to exercise the option, it would pay \$505,717.00 to PCC to compensate it for the amounts it expended in acquiring the rights to *Chicago*.

56. In addition, Miramax and PCC agreed that PCC would receive certain additional cash payments if the option period was extended.

57. In addition, Miramax and PCC agreed that Mr. Richards would act as producer of the film *Chicago* if Miramax decided to make a feature film and would receive a cash producing fee of \$300,000.00, guaranteed, with an additional \$200,000.00 after the movie passed the "First Cash Break Even Level". This relatively low guaranteed component of PCC's compensation reflects the fact that PCC was entering into the option with Miramax with the expectation that, were the movie successful, it would make the overwhelming portion of its money on its contingent compensation.

58. In addition, Miramax and PCC agreed that PCC would receive contingent compensation, based on the film's receipts, should Miramax decide to make a feature film and should Mr. Richards fully perform his duties as the producer of such feature film.

59. In particular, the Option provides that PCC shall receive:

(a) A cash producing fee of \$300,000 payable twenty percent (20%) in equal weekly installments over the pre-production period, sixty percent (60%) in equal weekly installments over the scheduled production period, to percent (10%) on start of mix and ten percent (10%) after Delivery of the Film.

(b) A deferred fee of \$200,000 which is payable out of distributor's "gross Receipts" of the Film from and after "First Cash Break Even Level".

For purposes hereof, "First Cash Breakeven Level" shall be deemed to have been reached at such time, if ever, as the distributor's Gross Receipts of the film are sufficient to pay or recoup the following items, in the following order of priority: a) a distribution fee of 20%; b) all customary distribution expenses in connection with the Film; c) the negative cost of the Film (Miramax's overhead shall not exceed 15%, plus interest, and subject to mutual approval and pari passu treatment with Miramax; d) any gross receipts or net profits participations or deferments payable at or prior to the point that the "First Cash Breakeven Level" has been reached.

(c) Contingent Compensation equal to five percent (5%) of distributor's "Gross Receipts" of the Film from and after "Second Cash Breakeven Level".

For purposes hereof, the "Second Cash Breakeven Level" shall be deemed to have been reached at such time, if ever, as the distributor's Gross Receipts of the film are sufficient to pay or recoup the following items in the following order of priority: a) a distribution fee of 25%, b) all customary distribution expenses in connection with the Film, c) the negative cost of the film (Miramax's overhead shall not exceed 25%), plus interest, and subject to the mutual approval and pari passu treatment with Miramax, d) any gross receipts or net profits participations or deferments payable at or prior to the point that the "Second Cash Breakeven Level" has been reached.

(d) With respect to Ancillary Rights (i.e., music, music publishing, soundtrack, interactive rights, merchandising, publishing rights, now known or developed in the future), we will allocate to Gross Receipts such moneys for Ancillary Rights in accordance with our standard definition of Gross Receipts.

60. With respect to ancillary rights, the Option states that these are limited to music, music publishing, soundtrack, interactive rights, merchandising and publishing rights, now known or developed in the future and that revenue from these particular sources will be allocated to Gross Receipts in accord with Miramax's standard definition of Gross Receipts.

61. The Option contains no definition of the term "Gross Receipts".

62. Upon information and belief, as of the execution of the Option, Miramax had no standard definition of Gross Receipts, with different profit participants' contingent compensation being calculated based on different Gross Receipt bases.

63. In or around July 2, 1996, Miramax extended the initial option period applicable under the Option for an additional two years, through September 27, 1998.

64. Other than extending the option period, the 1996 extension contained no material alterations to the terms of the Option relating to PCC's contingent compensation.

65. The 1996 extension contains no definition of the term "Gross Receipts".

66. Upon information and belief, as of the execution of the 1996 extension, Miramax had no standard definition of Gross Receipts.

67. In or around September 18, 1998, Miramax again extended its option on the film rights to *Chicago*.

68. Except for providing that "fifty percent (50%) of the contingent compensation set forth in paragraph 8.c of the [Option] will be payable to [PCC] provided [PCC] is not in breach of his obligations under the [Option] and/or this letter agreement in the event that Miramax exercises its option to purchase the Property as set forth herein and produces the Film," the 1998 extension altered none of the Option's terms relating to PCC's contingent compensation.

69. The 1998 extension contains no definition of the term "Gross Receipts".

70. Upon information and belief, upon the execution of the 1998 extension, Miramax had no standard definition of Gross Receipts.

THE PURPORTED PRODUCTION CONTRACT & THE LIGHTING CONTRACT

71. Following the execution of the Option and several renewals of it, in or around August 7, 2000, Miramax finally determined that it wanted to acquire the rights to *Chicago* and finance and distribute a feature film based on it. A true and correct

copy of a document purporting to be a contract between PCC and Miramax relating to Miramax's acquisition of the rights and the duties and obligations of the parties with respect to the production of the film was executed by the parties on or about August 7, 2000 ("the Purported Contract").

72. With respect to contingent compensation, the Purported Contract provided that:

If MR [Martin Richards] performs MR's producing services in connection with the Film, then as further consideration therefore [MR/PCC shall receive] Percentage Compensation of an amount equal to five percent (5%) of the distributor's "Gross Receipts" (if any) of the Film from and after "Cash Breakeven". . . .

For purposes hereof, "Cash Breakeven" shall be deemed to have been reached at such time, if ever, as the distributor's "Gross Receipts" of the Film are sufficient to pay or recoup the following items in the following order of priority: (i) a distribution fee of 25%; (ii) all customary distribution expenses in connection with the Film; (iii) the negative cost of the Film (Miramax's overhead shall not exceed 15%), plus interest, and (iv) subject to mutual approval by MR and Miramax and pari passu treatment with Miramax, any gross receipts or net profits participations or deferments payable at or prior to the point that the "Cash Breakeven" has been reached. Subject as aforesaid, the Contingent Compensation herein provided for shall be defined, paid, computed and accounted for in accordance with Miramax's Exhibit "NP" attached hereto and by this reference made a part hereof.

73. The provision of the Purported Contract dealing with Ancillary Rights is substantially similar to the Ancillary Rights provision of the Option.

74. When the Purported Contract was executed, there was no Exhibit "NP" attached to it.

75. During the negotiations that lead to the execution of the Purported Contract, Exhibit "NP" was never discussed by the parties.

76. For two years following the execution of the Purported Contract, PCC never saw a copy of Exhibit NP.

77. The text of the Purported Contract contains no definition of the term "Gross Receipts".

78. Upon information and belief, when the Purported Contract was executed, Miramax had no standard definition of Gross Receipts. Upon information and belief, Miramax's standard practice was to present potential profit participants with a restrictive definition of Gross Receipts when negotiating the terms of a contract with the particular participant. Following this, depending on the leverage and negotiating ability of the participant, Miramax and the person would work out a definition of Gross Receipts that was tailored to the individual's contract.

79. By withholding Exhibit NP from PCC, Miramax deprived PCC of negotiating the meaning of the term Gross Receipts. Two years after the fact, Miramax attempted to apply to the PCC arrangement with Miramax an extremely restrictive definition of Gross Receipts, as if the parties had agreed to it when they had not.

80. Following the execution of the Purported Contract, on or about January 28, 2002, Miramax and PCC entered into an agreement pursuant to which they agreed to jointly bear the costs of retaining the services of certain lighting designers who were going to provide lighting design services for the film *Chicago* ("the lighting contract"). In negotiating and implementing the lighting contract, PCC understood that Messrs. Harvey and Bob Weinstein were using their personal funds to fulfill their obligations under the lighting contract. PCC's understanding in this regard arose from the fact that they were informed that personal money had to be used as the amounts called for from the parties under the lighting contract were above and beyond the amounts allocated to lighting in the budget for *Chicago*.

81. Specifically, the lighting contract provided that PCC would pay one half of the charges for obtaining the services of lighting designers Jules Fisher and Peggy Eisenhower, with PCC to recoup its payment

if at all, solely from and out of a sum equal 15% of 100% of the "Adjusted Gross Receipts" (as hereafter defined) of the Picture derived from and after such time, if ever, ad the Film first achieves "Cash Breakeven" (as hereafter defined) calculated with an across the board 15% distribution fee. "Adjusted Gross Receipts" means "Gross Receipts" from the Film less Miramax's customary off the top deductions more fully set forth in the Company's Exhibit "GRP". A copy of the relevant provisions of Exhibit "GRP" are attached hereto as Exhibit "A" and by this reference are made part hereof. "Cash Breakeven" means the point when, if ever, the Picture first achieves "Net Profits" (as calculated in accordance with the Complaint's Exhibit "NP") calculated with the applicable across the board distribution fee, with no fee being assessed on Gross Receipts derived from U.S. home video but with Gross Receipts credited with a royalty on the same basis as the "New Profits of the Film. Furthermore, for the purpose of calculating "Net Profits" with respect to U.S. home video, Gross Receipts shall be credited with an amount equal to 20% of the following: the wholesale price actually received by the home video distributor or any subdistributor licensed by Miramax to exploit the Film's home video rights for "rental priced" home videos actually sold in the U.S. and paid of and not returned (10% for sell through and reported units) less rebates, credits and taxes. For avoidance of doubt, "home video" shall be deemed to include compatible products such as DVD's and furthermore, 100% of the actual receipts received by Company which are derived from home video exploitation of the Film outside the United States shall be included in Gross Receipts for the Picture.

82. The lighting contract had attached to it a copy of Miramax Exhibit "GRP".

83. The lighting contract did not have attached to it a copy of Miramax Exhibit "NP".

84. Upon receiving the unexecuted lighting contract, in or around late February 2002, PCC inquired of Miramax as to the contents of Exhibit "NP" to the Purported Contract, if any.

85. Miramax responded by sending PCC a purported copy of Exhibit "NP" on or about March 7, 2002, every page of which is stamped "DRAFT". This was the first time that either party had even attempted to discern the terms and conditions contained in Exhibit "NP".

THE PRODUCTION AND RELEASE OF *CHICAGO*

86. Production on the feature film *Chicago* commenced in early December 2001 and the filming was completed in or around May 2002.

87. Originally the budget for the film – *i.e.*, the negative cost of the film – was set at approximately \$47,000,000.00.

88. The film ran over budget by approximately \$10,000,000.00.

89. Miramax never consulted with or received PCC's approval for any budget overruns with respect to the film, despite the fact that both the Option and the Purported Contract required such consultations and approvals.

90. In obtaining the services of stars Richard Gere, Renee Zellweger and Catherine Zeta Jones, Miramax, upon information and belief, agreed to pay each of these individuals Contingency Compensation based on percentage payments that would become payable before Miramax's Contingent Compensation obligations to PCC became payable. Miramax never made PCC aware of these contractual arrangements.

91. A limited release of *Chicago* commenced in theatres across the United States on December 27, 2002. Ultimately, at the height of its release, over 2,700 theatres showed the film. *Chicago* became an enormous commercial and critical success.

92. Writing in December 2002 in the Chicago *Sun-Times* and on his website, RogerEbert.com, renowned film critic Roger Ebert enthused that:

Chicago continues the reinvention of the musical that started with *Moulin Rouge*. Although modern audiences don't like to see stories interrupted by songs, apparently they like songs interrupted by stories. The movie is a dazzling song and dance extravaganza, with just enough words to support the music and allow everyone to catch their breath between songs. You can watch it like you listen to an album, over and over; the same phenomenon explains why *Moulin Rouge* was a bigger hit on DVD than in theaters.

* * *

Chicago is a musical that might have seemed unfilmable, but that was because it was assumed it had to be transformed into more conventional terms. By filming it in its own spirit, by making it frankly a stagy song-and-dance revue, by kidding the stories instead of lingering over them, the movie is big, brassy fun.

93. *Chicago* played in theatres in the United States for approximately ten months during its first release.

94. *Chicago* was nominated for thirteen Oscars in 2003, winning six, including Best Picture and Best Actress in a Supporting Role (Ms. Zeta Jones).

95. *Chicago*, upon information and belief, generated over \$170,000,000 in gross receipts for Miramax during its initial release in the United States.

96. The foreign release of *Chicago*, upon information and belief, has generated additional scores of millions in gross receipts for Miramax.

97. The video and DVD sales and the theatrical re-release of *Chicago* in 2003, have, upon information and belief, generated additional scores of millions in gross receipts for Miramax.

98. While precise figures are not available to PCC, upon information and belief, to date, *Chicago* has generated over \$300,000,000 in gross receipts for Miramax.

MIRAMAX FAILS TO ACCOUNT PROPERLY TO PCC FOR *CHICAGO*

99. Beginning in or around 2004 and continuing through today, Miramax has released periodic statements to PCC purporting to show the Gross Receipts for *Chicago* and various deductions that it subtracts from those receipts in a purported accounting of the receipts of the film for purposes of calculating PCC's Contingency Compensation.

100. Upon information and belief, these statements are omissive, false and misleading in at least the following respects:

- a. They vastly understate gross receipts for the film by, among other things, failing to include revenue relating to video and DVD sales;
- b. They vastly understate the gross receipts for the film by, among other things, failing to include revenue generated in connection with foreign exhibition and distribution of the film;
- c. They vastly overstate the deductions from the film's gross receipts by, among other things, charging PCC for two sets of distribution fees with respect to all foreign distribution of the film;
- d. They vastly overestimate customary distribution expenses in connection with the Film, by among other things, including in charges made against *Chicago's* receipts, costs and expenses related to other Miramax films (such as *The Gangs of New York*);
- e. They overstate overhead charges;
- f. They overstate interest charges;
- g. They overstate advertising and marketing charges generally;
- h. They overstated advertising surcharges;
- i. They overstate the negative cost of the film; and

- j. They overstate gross profit or net profits participations or deferrals payable at or prior to the point that the "Second Cash Breakeven Level" has been reached.

101. The net effect of the overstatements, misstatements, false statements and omissions from the accounting statements provided by Miramax to date is that PCC has yet to realize one cent of contingent compensation due to it in connection with the film *Chicago*.

102. While PCC is unable to estimate the total amount of Contingent Compensation that it is owed, upon information and belief, this amount exceeds \$10,000,000.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Relief)

103. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

104. PCC contends that the Purported Contract is not binding on it or Miramax.

105. Miramax has indicated to PCC that it believes that the Purported Contract, including Exhibit "NP" is the document that controls the parties' relationship with respect to PCC's contingent compensation.

106. A tangible dispute exists between the parties on the question of whether the Purported Contract is indeed binding, making the question one that is capable of being adjudicated by this Court.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Option)

107. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

108. The Option is a valid contract, binding the parties by its terms.

109. PCC has fulfilled all of its obligations under the Option.

110. The Option requires, among other things, Miramax to pay contingent compensation to PCC when Gross Receipts from *Chicago* exceed the defined "Second Cash Breakeven" level.

111. Upon information and belief, the film long ago passed the "Second Cash Breakven" level as the term is defined in the Option.

112. Miramax has failed to pay PCC Contingent Compensation owed to PCC pursuant to the Option.

113. Miramax's failure in this regard constitutes a breach of contract that has caused PCC damages and injury.

114. While PCC's damages cannot be calculated with certainty at this point in time, they are reasonably believed to exceed \$10,000,000.

AS AND FOR A THIRD CAUSE OF ACTION
(Accounting)

115. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

116. Miramax received and is in control of all monies generated by the film *Chicago*.

117. While Miramax was obligated to account for such revenues to PCC, it has failed to do so.

118. Miramax continues to hold monies generated by the film which monies belong to PCC.

119. Miramax owes to PCC an accounting for all monies received from the film *Chicago*.

AS AND FOR A FOURTH CAUSE OF ACTION
(Alternative Breach of the Purported Contract)

120. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

121. Should the Court determine that the Purported Contract is valid and binding, Miramax has nonetheless breached it.

122. PCC has fulfilled all of its obligations under the Purported Contract.

123. The Purported Contract requires, among other things, Miramax to pay contingent compensation to PCC when Gross Receipts from *Chicago* exceed the defined "Cash Breakeven" level.

124. Upon information and belief, the film long ago passed the "Cash Breakeven" level.

125. Miramax has failed to pay PCC Contingent Compensation owed to PCC pursuant to the Purported Contract.

126. Miramax's failure in this regard constitutes a breach of contract that has caused PCC damages and injury.

127. While PCC's damages cannot be calculated with certainty at this point in time, they are reasonably believed to exceed \$10,000,000.

AS AND FOR A FIFTH CAUSE OF ACTION
(Quantum Meruit)

128. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

129. PCC acted as the producer for the film *Chicago*.

130. As the producer of the film, it would be reasonably expected by both PCC and Miramax that PCC would receive compensation for its services, including contingent compensation.

131. To date, PCC has received no such compensation from Miramax.

132. Equity demands that PCC be provided with appropriate contingent compensation.

133. While the measure of appropriate contingent compensation cannot be calculated with certainty at this point in time, it is reasonably believed to exceed \$10,000,000.

AS AND FOR A SIXTH CAUSE OF ACTION
(Promissory Estoppel)

134. PCC repeats and realleges the allegations stated in ¶¶1 through 102 as if set forth fully at this point.

135. Miramax made unequivocal promises to pay compensation, including appropriate contingent compensation, to PCC in connection with the transfer of rights in the film *Chicago* to Miramax and PCC's acting as the producer of the film *Chicago*.

136. PCC acted to its detriment in reliance on these promises by among other things, transferring its rights in the film *Chicago* to Miramax and acting as producer for Miramax on the film.

137. As a result of these promises and resultant actions, Miramax should be estopped from denying compensation to PCC, including appropriate contingent compensation.

138. While the measure of appropriate contingent compensation cannot be calculated with certainty at this point in time, it is reasonably believed to exceed \$10,000,000.

WHEREAS, PCC prays that this Honorable Court grant it judgment as follows:

- (a) On its First Cause of Action: (i) a declaration that the Purported Contract is null and void and that the Option controls the relationship of the parties with respect to, among other things, contingent compensation owed to PCC; (ii) its reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.
- (b) On its Second Cause of Action: (i) damages in an amount sufficient to compensate PCC for Miramax's breach of contract; (ii) its reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.
- (c) On its Third Cause of Action: (i) a full and complete accounting for all receipts and expenses relating to the film *Chicago*; (ii) its reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.
- (d) On its Fourth Cause of Action: (i) damages in an amount sufficient to compensate PCC for Miramax's breach of contract; (ii) its reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.
- (e) On its Fifth Cause of Action: (i) just and reasonable contingent compensation owed to it by Miramax; (ii) its

reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.

- (f) On its Sixth Cause of Action: (i) just and reasonable contingent compensation owed to it by Miramax by virtue of PCC's acting to its detriment on Miramax's conduct; (ii) its reasonable attorneys' fees; and (iii) such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 20, 2006

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

THE PRODUCER CIRCLE CO.,

06600950

Plaintiff,

-v-

MIRAMAX FILMS CORP.,


Defendant.

Index No.

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SUMMONS & COMPLAINT

Dated: March 20, 2005
New York, New York


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