

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

TROMA ENTERTAINMENT, INC. Plaintiff, vs. RICHARD SAPERSTEIN, Defendant.	INDEX NO. 652539/2018 <u>AMENDED COMPLAINT</u>
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Plaintiff, Troma Entertainment, Inc., for its Complaint against Defendant, Richard Saperstein, alleges and says:

FIRST COUNT

1. Plaintiff, Troma Entertainment, Inc. ("Plaintiff" or "Troma"), is a business with an office at 36-40 – 11th Street, Long Island City, New York 11106.
2. Defendant, Richard Saperstein ("Defendant"), is an individual who, upon information and belief, resides at 12323 – 12th Helena Drive., Los Angeles, California 90049-3920.
3. On or about November 7, 2016, Troma, as seller, entered into an Amended and Restated Option Purchase Agreement with Elysium Films, Inc. ("Elysium"), as purchaser, under which Elysium was granted an option to acquire the Original Picture and Existing Derivative Productions, as defined therein, to "The Toxic Avenger" (hereinafter the "Option Agreement").
4. On or about June 29, 2017, Troma and Elysium entered into an amendment to the Option Agreement (the "6/29/17 Amendment") under which Troma agreed to extend the Option

Period, as defined in the Option Agreement, for up to eight (8) consecutive one (1) month periods, continuing through May 31, 2018, with no additional payment due to Troma.

5. In consideration for Troma granting Elysium the extension of the Option Agreement, on June 29, 2017, Defendant Saperstein executed an agreement pursuant to which he agreed that in the event pre-production (and payment of Executive Producer fees pursuant to the terms of the Option Agreement and June 29, 2017 Amendment) did not commence by November 30, 2017, that Saperstein would personally pay Troma \$20,000 per month, payable on the first of each month, for any months the pre-production did not commence continuing through May 31, 2018 (the "Saperstein Agreement"). A true copy of the Saperstein Agreement is annexed hereto as Exhibit "A".

6. The Saperstein Agreement further provided that if and when the Owner [Troma] begins receiving Executive Producer fees pursuant to the terms of the Option Agreement, Owner would repay Saperstein \$20,000 per month from the monthly Executive Producer fees Owner receives, until Saperstein recouped any amounts paid to Troma under the Saperstein Agreement.

7. Event pre-production did not commence by November 30, 2017, or at any time thereafter, nor did Elysium, or its assignee, BGP Productions, LLC, make payment of Executive Producer fees pursuant to the terms of the Option Agreement and Amendment.

8. In accordance with the terms of the Saperstein Agreement, Troma made demand that Saperstein pay to Troma \$20,000 a month commencing December, 2017.

9. In response to Troma's demand for payment, Saperstein asked that he be afforded until January, 2018 to make the first \$20,000 payment due and owing under the Saperstein Agreement.

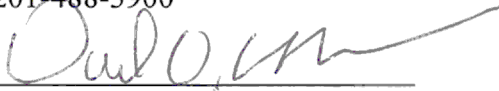
10. Saperstein failed to make any monthly payments to Troma under the Saperstein Agreement, despite demand having been made.

11. The Option was never exercised by BG Productions, LLC and is terminated.

12. There is due and owing from Saperstein to Plaintiff the sum of \$120,000 pursuant to the terms of the Saperstein Agreement.

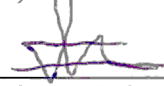
WHEREFORE, Plaintiff, Troma Entertainment, Inc., demands judgment against Defendant Richard Saperstein in the amount of \$120,000, together with interest, reasonable attorneys' fees, costs of suit, and such other and further relief as the Court deems just and proper.

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and

LAW OFFICES OF ERIC PELZ, P.C.
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By: 
Eric M. Pelz

Attorneys for Plaintiff

Dated: November 2, 2018

EXHIBIT A

Mr. Richard Saperstein
c/o ELYSIUM FILMS, INC.
345 N. Maple Drive, Suite 140
Beverly Hills, CA 90210

As of June 29, 2017

TROMA ENTERTAINMENT, INC.
36-40 11th Street
Long Island City, NY 11106
Att: Michael Herz

Reference is hereby made to that certain Amended and Restated Option Purchase Agreement dated November 7, 2016 (the "Option Agreement") and the Amendment thereto dated as of June 29, 2017 (the "Amendment") by and between Elysium Films, Inc., 345 N. Maple Drive, Suite 140, Beverly Hills, CA 90210 ("Purchaser") and Troma Entertainment, Inc. ("Owner") in connection with the project entitled "The Toxic Avenger". Capitalized terms not otherwise defined in this Agreement shall have the meanings given them in the Option Agreement and Amendment.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as an inducement to Owner to agree to and execute the Amendment, Owner and I agree to the following:

1. In the event pre-production (and payment of Executive Producer fees pursuant to the terms of the Option Agreement and Amendment) does not begin by ~~October 31, 2017~~ ^{Nov. 30, 2017}, I shall pay Owner Twenty Thousand Dollars (\$20,000) per month, payable on the first of each month, for any months the pre-production does not commence continuing through May 31, 2018.
2. If and when Owner begins receiving Executive Producer fees, Owner shall repay me Twenty Thousand Dollars (\$20,000) per month from the monthly Executive Producer fees Owner receives, until I recoup any amounts paid pursuant to Paragraph 1, above.
3. Neither Owner nor I shall have the right to assign this Agreement without the written consent of the other. This Agreement and all rights and obligation hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
4. This Agreement expresses the entire understanding of the parties hereto. No modification, alteration, or amendment of this Agreement shall be valid or binding unless it is in writing and signed by the parties hereto.

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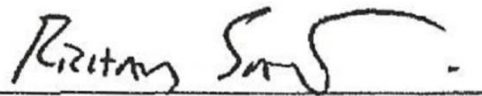
5. This Agreement shall be governed and construed in accordance with the laws of the State of California. Jurisdiction over controversies regarding this Agreement shall vest in the courts (state and federal) of California and/or New York.

6. This Agreement may be executed by facsimile or PDF signatures and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

AGREED AND ACCEPTED:

AGREED AND ACCEPTED:



Richard Saperstein



TROMA ENTERTAINMENT, INC.
By Michael Herz, Vice President