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LOS ANGELES SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHRISTOPHER REUEL TOLKIEN, PRISCILLA MARY ANNE REUEL TOLKIEN, JOAN ANNE REUEL TOLKIEN, and BAILLIE JEAN TOLKIEN, as TRUSTEES OF THE TOLKIEN TRUST; a United Kingdom Charitable Trust; CHRISTOPHER REUEL TOLKIEN, PRISCILLA MARY ANNE REUEL TOLKIEN, MICHAEL GEORGE REUEL TOLKIEN, BAILLIE JEAN TOLKIEN, ALAN GRAHAM POULTER, and SIMON MARIO REUEL TOLKIEN, as TRUSTEES OF THE JRR TOLKIEN 1967 DISCRETIONARY SETTLEMENT, a United Kingdom Trust; HARPERCOLLINS PUBLISHERS, LTD., a United Kingdom corporation; UNWIN HYMAN LTD., a United Kingdom corporation; and GEORGE ALLEN & UNWIN (PUBLISHERS) LTD., a United Kingdom corporation,

Plaintiffs,

v.

NEW LINE CINEMA CORP., a Delaware corporation; KATJA MOTION PICTURE CORP., a California corporation; and DOES 1 to 50, inclusive,

Defendants.

Case No. **BC385294**

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) DECLARATORY RELIEF - TERMINATION;
- (3) DECLARATORY RELIEF - PROFIT PARTICIPATION;
- (4) REFORMATION;
- (5) FRAUD;
- (6) ACCOUNTING TRUST; AND
- (8) BREACH OF FIDUCIARY DUTY

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 Case assigned to D-40
 ANN I. J. ORIGINAL

1 Plaintiffs Christopher Reuel Tolkien, Priscilla Mary Anne Reuel Tolkien, Joan Anne
2 Reuel Tolkien, and Baillie Jean Tolkien, as Trustees of The Tolkien Trust, a United Kingdom
3 Charitable Trust; Christopher Reuel Tolkien, Priscilla Mary Anne Reuel Tolkien, Michael George
4 Reuel Tolkien, Baillie Jean Tolkien, Alan Graham Poulter, and Simon Mario Reuel Tolkien, as
5 Trustees of The JRR Tolkien 1967 Discretionary Settlement, a United Kingdom Trust;
6 HarperCollins Publishers, Ltd., a United Kingdom corporation; Unwin Hyman Ltd., a United
7 Kingdom corporation; and George Allen & Unwin (Publishers) Limited., a United Kingdom
8 corporation (collectively, "plaintiffs") allege as follows:

9 INTRODUCTION

10 1. This case presents an extraordinary example of how enormous financial success
11 can breed unabashed and insatiable greed. The three hugely successful films based on J.R.R.
12 Tolkien's beloved *Lord of the Rings* trilogy have grossed nearly \$6 billion. Despite these record-
13 setting revenues (amounts derived ultimately from Professor Tolkien's classic fantasy novels),
14 Defendant New Line Cinema ("New Line") has paid **nothing** to Tolkien's successors with respect
15 to their contractually-mandated participation in the gross revenues of the films. Despite the
16 nearly \$6 billion in gross revenues, New Line has crafted a fantasy tale of its own, making the
17 stunning assertion that it has not received sufficient money to pay plaintiffs a dime.

18 2. New Line produced and distributed three films based on Professor Tolkien's epic
19 literary works: "The Lord of the Rings: The Fellowship of the Ring" ("Film 1"), "The Lord of
20 the Rings: The Two Towers" ("Film 2"), and "The Lord of the Rings: The Return of the King"
21 ("Film 3") (collectively, the "Films"). Due in no small part to the universality of Tolkien's
22 themes, the immense and enduring popularity of Tolkien's literary works, and the devoted
23 following of Tolkien fans around the world, the Films smashed box office records, reportedly
24 grossing nearly \$3 billion in worldwide box office receipts and an additional nearly \$3 billion
25 from the sale of home video and other ancillary revenues to date. The Films continue to earn
26 significant revenues.
27
28

1 3. New Line has clearly engaged in the infamous practice of creative “Hollywood
2 accounting” – a collection of inscrutable “bookkeeping” devices that delays payment to profit
3 participants of profit sharing in films, often forever, by a complicated process which excludes
4 certain gross revenues (often the most significant amounts) from the computation and deducts
5 from the reported gross revenues innumerable categories of fees and costs. By finding a way to
6 pay plaintiffs absolutely nothing from these Films which collectively grossed nearly \$6 billion
7 worldwide, New Line has taken “Hollywood accounting” to a new extreme. To make matters
8 worse, using New Line’s improper accounting techniques, plaintiffs will never see any payment
9 at all on their gross participation.

10 4. Perhaps the most glaring example of New Line’s rapacious accounting
11 methodology is its handling of video revenue. Although New Line is contractually obligated to
12 report to plaintiffs the actual gross revenues generated from home video, DVD and like media “at
13 the source” (as opposed to on a royalty basis), New Line has failed and refused to account to
14 plaintiffs in the manner required under the operative contracts. Instead, New Line has unilaterally
15 and artificially allocated only 20 percent of the video/DVD income as Gross Receipts for
16 purposes of computing plaintiffs’ participation, thereby preventing plaintiffs from participating in
17 a full 80 percent of the revenues received from the Films’ incredibly lucrative video distribution.

18 5. In another flagrant example, New Line has included, as a cost of producing the
19 Films, the shares of profits it has paid to its own predecessors in interest, Zaentz and Miramax.
20 Amazingly, New Line contends that the amount of profits earned by its predecessors should be
21 accounted in the same way as the salary paid to the film’s editor or gaffer. This accounting trick
22 has (not surprisingly) helped to inflate the cost of each Film by over \$100 million dollars per film.

23 6. These are merely examples. There are unfortunately many more improper and
24 unlawful accounting techniques that New Line has employed to misrepresent the true
25 participation earned by plaintiffs pursuant to the parties’ written agreements. The result is that, in
26 spite of the Films’ unprecedented financial success, plaintiffs have **not received a single penny**
27 of their contracted share of the gross receipts earned from the Films. By its close-fisted
28 accounting manipulation, New Line contends that the colossal financial success it has enjoyed

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1 from its exploitation of Professor Tolkien's world-renowned literary works is somehow
2 insufficient to trigger New Line's obligation to account for and pay the agreed-upon percentage
3 of gross revenues to plaintiffs.

4 7. In an obvious effort to mask its clearly unlawful conduct for as long a period as
5 possible, New Line has concealed its accounting chicanery by, among other things, flatly refusing
6 to permit plaintiffs to audit Films 2 and 3. And as the *coup de grace*, on information and belief,
7 plaintiffs allege that New Line has even **permitted the destruction of books and records**
8 relating to the determination of revenue and expenses for the Films, which document destruction
9 has been heavily sanctioned by the United States District Court for the Central District of
10 California in an action commenced against New Line by director Peter Jackson's production
11 company for, among other things, New Line's failure to properly account and pay to Jackson his
12 appropriate profit participation in the Films.

13 8. Despite plaintiffs' repeated inquiries, objections and demands, New Line has
14 failed and refused, and continues to fail and refuse, (a) to properly calculate, account and pay to
15 plaintiffs their contracted share of revenues from the Films; and (b) to provide documentation
16 necessary to determine the magnitude of the amounts owed to plaintiffs. Plaintiffs have been and
17 continue to be damaged by New Line's material breaches of contract and its fraudulent and
18 wrongful conduct. This intolerable situation has left plaintiffs with no choice but to seek relief in
19 the courts.

20 **THE PARTIES**

21 9. The Tolkien Trust, constituted by a deed of trust dated April 1, 1977, is a
22 registered charity in the United Kingdom that benefits a wide range of charitable causes
23 throughout the world, such as Save the Children Fund, The Darfur Appeal, Asia Earthquake
24 Appeal, The Niger Appeal, The National Campaign for Homeless People (Great Britain),
25 Breakthrough Breast Cancer, Alzheimer's Society, Foundation for Children with Leukemia,
26 National Library for the Blind, Rebuilding Sri Lanka, World Cancer Research Foundation,
27 Climate Outreach Information Network, Friends of the Earth Trust, UNICEF, World Wildlife
28 Foundation, The Poetry Trust, Performing Rights Society and many other worthy causes.

1 10. Plaintiff Christopher Reuel Tolkien is a Trustee of The Tolkien Trust and he is a
2 citizen of the United Kingdom and a resident of France. Plaintiff Priscilla Mary Ann Reuel
3 Tolkien is a Trustee of The Tolkien Trust and she is a citizen and resident of the United
4 Kingdom. Plaintiff Joan Anne Reuel Tolkien is a Trustee of The Tolkien Trust and she is a
5 citizen and resident of the United Kingdom. Plaintiff Baillie Jean Tolkien is a Trustee of The
6 Tolkien Trust and she is a citizen of Canada and a resident of France.

7 11. The J.R.R. Tolkien 1967 Discretionary Settlement (the "Tolkien Discretionary
8 Settlement") is a private discretionary trust, established by a deed of settlement dated September
9 1, 1967, whose beneficiaries are descendants of J.R.R. Tolkien.

10 12. Plaintiff Christopher Reuel Tolkien is a Trustee of the Tolkien Discretionary
11 Settlement. Plaintiff Priscilla Mary Ann Reuel Tolkien is a Trustee of the Tolkien Discretionary
12 Settlement. Plaintiff Michael George Reuel Tolkien is a Trustee of the Tolkien Discretionary
13 Settlement and he is a citizen and resident of the United Kingdom. Plaintiff Baillie Jean Tolkien
14 is a Trustee of the Tolkien Discretionary Settlement. Plaintiff Alan Graham Poulter is a Trustee
15 of the Tolkien Discretionary Settlement and he is a citizen and resident of the United Kingdom.
16 Plaintiff Simon Mario Reuel Tolkien is a Trustee of the Tolkien Discretionary Settlement and he
17 is a citizen and resident of the United Kingdom.

18 13. The Tolkien Trust and the Tolkien Discretionary Settlement, and each of them, are
19 successors-in-interest to J.R.R. Tolkien.

20 14. Plaintiff HarperCollins Publishers, Ltd. ("HarperCollins") is a corporation created
21 and existing under the laws of the United Kingdom. HarperCollins is the worldwide exclusive
22 licensee of the book publishing rights in the J.R.R. Tolkien literary works *The Hobbit* and *The*
23 *Lord of the Rings* trilogy. Plaintiff Unwin Hyman Ltd. is a corporation created and existing under
24 the laws of the United Kingdom and is a wholly owned subsidiary of HarperCollins. Plaintiff
25 George Allen & Unwin (Publishers) Ltd. is the successor, by way of name change, of George
26 Allen & Unwin Ltd. and is a wholly owned subsidiary of Unwin Hyman Ltd. Certain rights to
27 proceeds from the July 8, 1969 contract between George Allen & Unwin (Publishers) Ltd. and
28

1 United Artists, described below, were assigned to Unwin Hyman Ltd. and HarperCollins
2 Publishers, Ltd.

3 15. Plaintiffs are informed and believe, and based thereon allege, that defendant New
4 Line Cinema ("New Line") is a corporation organized and existing under the laws of the State of
5 Delaware, doing business in Los Angeles, California. Plaintiffs are further informed and believe,
6 and based thereon allege, that New Line is a wholly-owned subsidiary of Time Warner, Inc., an
7 entertainment and communications conglomerate.

8 16. Plaintiffs are informed and believe, and based thereon allege, that defendant Katja
9 Motion Picture Corp. ("Katja") is a corporation organized and existing under the laws of the State
10 of California, with its principal place of business in Los Angeles, California. Plaintiffs are further
11 informed and believe, and based thereon allege, that Katja is a subsidiary or affiliate of New Line,
12 was the company in charge of the physical production of the Films, and was at all relevant times
13 responsible for accounting for the actual costs of producing the Films.

14 17. The true names and capacities of the defendants named herein as DOES 1 through
15 50, inclusive, whether individual, corporate, associate or otherwise, are presently unknown to
16 plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave to
17 amend their complaint to allege the true names and capacities of said defendants when plaintiffs
18 have ascertained the same. On information and belief, plaintiffs allege that each of the fictitiously
19 named defendants was responsible in some manner for the acts and omissions alleged herein and
20 are liable to plaintiffs therefor.

21 18. Plaintiffs are informed and believe, and based thereon allege that in doing the acts
22 and things hereinafter alleged, each defendant acted individually for himself and itself, and as the
23 agent, employee, and/or representative of each of the other defendants and, in doing the things
24 hereinafter alleged, each was at all times acting within the course and scope of said agency,
25 representation or employment relationship with the advance knowledge, acquiescence or
26 subsequent ratification of each and every other defendant.

FACTS COMMON TO ALL CAUSES OF ACTION

1
2 19. J.R.R. Tolkien (1892 – 1973) was a writer, poet, philologist and University
3 professor at Oxford University. He is the world-famous author of the fantasy classics *The*
4 *Hobbit: or There And Back Again* (the “Hobbit”) and *The Lord of the Rings* trilogy, which
5 consists of *The Fellowship of the Ring*, *The Two Towers* and *The Return of the King* (the
6 “Trilogy”). The Trilogy and *The Hobbit* are collectively referred to herein as the “Literary
7 Works.”

8 20. Professor Tolkien’s Literary Works have been translated into numerous different
9 languages and are widely considered to be among the most popular and influential works in 20th-
10 century literature. Since their first publication more than 50 years ago, *The Hobbit* and each
11 volume of *The Trilogy* have been among the best-selling fictional works of all time.

12 **The 1969 Agreements and New Line’s Acquisition of Rights**

13 21. Plaintiffs’ predecessors-in-interest, Sassoon Trustee and Executor Corporation,
14 Ltd. (“Sassoon”) and George Allen & Unwin, Ltd. (“GAU”), and New Line’s predecessor-in-
15 interest, United Artists Corporation (“United Artists”), entered into a pair of contemporaneously
16 written contracts, dated as of July 8, 1969 regarding certain motion picture and other rights in the
17 Literary Works. One of these agreements was between Sassoon and United Artists (the “1969
18 Sassoon Agreement”) and the other was between GAU and United Artists (the “1969 GAU
19 Agreement”). These two agreements are collectively referred to herein as the “1969
20 Agreements.” Each of the 1969 Agreements states that it is to be governed by New York law.

21 22. Under the 1969 Agreements, United Artists obtained the right, among other things,
22 to make films based on the Literary Works and agreed, among other things, to pay GAU and
23 Sassoon a total of 7.5% of the “Gross Receipts” from any films based upon the Literary Works
24 after a contractually-defined “Artificial Payment Level” is reached (hereafter referred to as the
25 “Gross Receipts Participation” or “Participation”). The 1969 Agreements expressly define
26 “Gross Receipts” to include “all moneys derived by the distributor of the photoplay” less certain
27 defined “off-the-top” expenses. The 1969 Agreements define the “Artificial Payment Level” as
28

1 that point at which the "Gross Receipts" exceed 2.6 times the defined "final cost of production of
2 the photoplay," plus certain other defined costs.

3 23. Under the 1969 Agreements, United Artists agreed to provide periodic accounting
4 statements reflecting any Gross Receipts Participation due and owing. Specifically, the 1969
5 Agreements required United Artists to provide monthly accounting statements for the first three
6 years after any film was released, and then semi-annual accounting statements thereafter.

7 24. The Tolkien Trust and the Tolkien Discretionary Settlement are the successors-in-
8 interest to Sassoon under the 1969 Sassoon Agreement. HarperCollins is the successor-in-interest
9 to GAU under the 1969 GAU Agreement.

10 25. Through a series of written agreements and assignments, defendant New Line has
11 succeeded to the rights, interests and obligations of United Artists under the 1969 Agreements.
12 Specifically, pursuant to a written agreement and assignment dated as of December 2, 1976
13 between United Artists and The Saul Zaentz Production Company ("Zaentz"), Zaentz acquired
14 from United Artists, all of United Artists' right, title and interest in and to the Literary Works
15 under and pursuant to the 1969 Agreements (the "Zaentz/UA Agreement"). Pursuant to the
16 Zaentz/UA Agreement, Zaentz assumed, among other things, the obligation to pay plaintiffs their
17 Gross Receipts Participation as set forth in the 1969 Agreements.

18 26. Thereafter, pursuant to a series of written agreements dated as of August 8, 1997,
19 Zaentz granted Miramax Film Corporation ("Miramax") an option to license the exclusive rights
20 to produce, distribute and exploit certain theatrical feature motion pictures based upon the
21 Literary Works (the "Miramax Agreements"). Plaintiffs are informed and believe, and based
22 thereon allege that Miramax exercised that option. Pursuant to the Miramax Agreements,
23 Miramax assumed, among other things, the obligation to pay plaintiffs their Gross Receipts
24 Participation as set forth in the 1969 Agreements.

25 27. In or about August, 1998, Zaentz consented to Miramax's assignment to defendant
26 New Line of Miramax's rights and obligations under the Miramax Agreements.

27 28. Pursuant to a written agreement effective as of May 9, 2000 between New Line
28 and Zaentz (the "New Line/Zaentz Agreement"), New Line expressly assumed the obligation to

1 pay plaintiffs their Gross Receipts Participation required by the 1969 Agreements with respect to
2 any films based on the Literary Works produced by or pursuant to the authority of New Line. In
3 sum, UA, Zaentz and Miramax are predecessors in interest of New Line and New Line “stands in
4 their shoes.”

5 **The Films’ Success and New Line’s Avarice**

6 29. The three Films, which were released for theatrical distribution in 2001, 2002 and
7 2003, respectively, met with virtually unprecedented critical and financial success. The Films
8 were nominated for a total of 30 Academy Awards, winning in 17 categories including Best
9 Picture for the third film, *The Lord of the Rings: The Return of the King*. Indeed, Film 3 was
10 nominated for 11 Academy Awards and won in all 11 categories.

11 30. The Films’ historic critical acclaim was eclipsed only by their phenomenal
12 financial success. The Films took the global box office by storm, reportedly generating nearly \$3
13 billion in worldwide box office receipts. In addition, the Films have reportedly earned nearly \$3
14 billion in home video, television and other ancillary revenues to date. Plaintiffs are informed and
15 believe, and based thereon allege, that New Line’s share of this remarkable financial success is in
16 the billions of dollars. The Films continue to earn significant revenues.

17 31. Instead of celebrating in this critical and financial triumph with its profit
18 participants, New Line became greedy. In spite of the magnitude of the revenues generated from
19 the Films (indeed, more likely because of it), New Line engaged in concerted efforts to deprive
20 plaintiffs (and on information and belief, other profit participants) of their contracted share of the
21 Films’ revenues.

22 32. In or about May of 2002, New Line began rendering periodic participation
23 accounting statements (“Participation Statements”) to plaintiffs purporting to quantify the amount
24 of plaintiffs’ Participation in the revenues generated from the Films. In these Participation
25 Statements, New Line has falsely represented and continues to falsely represent that plaintiffs are
26 not entitled to receive any portion at all of the Films’ significant revenues. New Line continues to
27 periodically provide these Participation Statements to plaintiffs.

28

1 33. Immediately upon receipt of the first Participation Statement and continuing
2 thereafter, plaintiffs objected to New Line's Participation Statements and methods of accounting,
3 demanding more information and requesting to conduct an audit. New Line systematically
4 ignored and/or evaded plaintiffs' inquiries. Ultimately, New Line agreed to permit plaintiffs to
5 conduct a partial audit of New Line's books and records beginning in or about the Spring of 2005,
6 but only with respect to Film 1 through the period ending September 30, 2005. Even then,
7 however, New Line threw up roadblocks to plaintiffs' ability to ascertain the amounts to which
8 they were entitled, engaging in inordinate delay and denying plaintiffs access to vital documents
9 and information necessary to complete the partial audit. Even worse, New Line refused and
10 continues to refuse to permit plaintiffs to audit Films 2 and 3 at all, disingenuously claiming that
11 it is too busy to deal with plaintiffs' audit rights at this time.

12 34. Notwithstanding New Line's obfuscation, even the partial audit revealed that New
13 Line has failed and refused, and continues to fail and refuse, to properly account, calculate and
14 pay the Gross Receipts Participation due and owing to plaintiffs under the 1969 Agreements in
15 numerous ways, including but not limited to the following:

16 a. Substantially understating Gross Receipts earned on the Films by, among other
17 things, underreporting hundreds of millions of dollars in domestic and international home
18 video/DVD receipts, improperly and intentionally excluding Gross Receipts received by New
19 Line and its affiliates in connection with the Films, failing and refusing to calculate Gross
20 Receipts "at the source" where New Line or its affiliates have self-distributed the Films or
21 distributed it through a "rent-a-system," joint venture or other similar arrangement;

22 b. Substantially overstating purported costs and expenses associated with the Films
23 by, among other things, improperly including hundreds of millions of dollars in participation
24 payments and bonuses for certain talent, production companies and prior rights holders,
25 including without limitation New Line's predecessors-in-interest Zaentz and Miramax,
26 improperly including hundreds of millions of dollars in purported worldwide advertising,
27 publicity and promotional costs; improperly claiming hundreds of millions of dollars of
28

1 purported overhead, administrative, supervisory or similar charges; and accruing hundreds of
2 millions of dollars of participations not yet due or payable;

3 c. Failing and refusing to calculate, account and pay plaintiffs utilizing the
4 appropriate percentage of the Gross Receipts of the Films as required by the 1969 Agreements,
5 instead contending that a lesser percentage applied to certain of the Films;

6 d. Improperly charging plaintiffs with millions of dollars as a purported
7 "overbudget penalty," phantom interest charges and/or other similar charges in calculating the
8 Artificial Payment Level;

9 e. Improperly allocating production costs between and among the Films;

10 f. Failing and refusing to timely provide Participation Statements to plaintiffs as
11 required under the 1969 Agreements; and

12 g. Failing and refusing to deduct from the costs of production amounts received by
13 New Line and/or its affiliates in the form of production tax subsidies, rebates, and the like.

14 35. In short, New Line has utterly failed and refused, and continues to fail and refuse,
15 (a) to acknowledge and comply with its contractual obligation to account and pay to plaintiffs
16 their fair and proper share of the revenues derived from the Films, (b) to supply essential
17 documents and information necessary to substantiate revenues it has earned and expenses it has
18 charged to the Films, including without limitation destroying pertinent revenue and expense
19 documentation concerning the Films despite pending legal claims, (c) to acknowledge the
20 unfairness of licenses into which it has entered in connection with the Films (especially those
21 licenses New Line has made with its own affiliated companies), and (d) to otherwise determine
22 the amounts properly due and owing to plaintiffs in connection with the Films.

23
24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract as to Defendant New Line and DOES 1 through 30)**

26 36. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
27 contained in paragraphs 1 through 35, above, as though fully set forth herein.

1 37. Pursuant to the terms of the 1969 Agreements and the New Line/Zaentz
2 Agreement, New Line, as a successor-in-interest to United Artists, is obligated to properly
3 calculate, account and pay to plaintiffs a contractually-defined share of the revenues derived from
4 exploitation of the Films, in accordance with the terms set forth in the 1969 Agreements.

5 38. Further, there was at all times relevant herein, an implied covenant in the 1969
6 Agreements and the New Line/Zaentz Agreements that New Line would act in good faith and
7 deal fairly with plaintiffs in all aspects of their contractual relationships, and would refrain from
8 conduct that would result in destroying, frustrating, or injuring plaintiffs' rights under the
9 pertinent agreements.

10 39. Plaintiffs and their predecessors-in-interest have fully performed each and every
11 obligation required to be performed on their part under the 1969 Agreements, except as such
12 performance has been waived, prevented or excused from performance by the conduct or
13 omissions of New Line or by operation of law.

14 40. The conduct of New Line as alleged hereinabove constitutes a material breach and
15 repudiation of the 1969 Agreements. Moreover, New Line has also repeatedly breached the
16 covenant of good faith and fair dealing contained in the 1969 Agreements by, among other things,
17 failing to properly calculate, account and pay to plaintiffs their Gross Receipts Participation, and
18 engaging in numerous other wrongful acts and omissions as alleged hereinabove, all of which
19 have deprived plaintiffs of the benefits of the 1969 Agreements.

20 41. As a direct and proximate result of New Line's said acts of breach, plaintiffs have
21 been damaged to date in a sum as yet unknown to them, but which plaintiffs are informed and
22 believe and, on that ground, allege substantially exceeds the sum of \$150 million. Plaintiffs'
23 damages will increase as New Line continues its acts of breach. Plaintiffs will seek leave to
24 amend this Complaint to set forth the full amount of such damages when ascertained.

SECOND CAUSE OF ACTION

(Declaratory Relief -- re Termination as to Defendant New Line and DOES 1 through 30)

1
2
3 42. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
4 contained in paragraphs 1 through 35, and 37 through 40, above, as though fully set forth herein.

5 43. Plaintiffs are informed and believe, and based thereon allege, that in or about
6 February 2007, New Line purported to elect to produce a feature length motion picture based
7 upon *The Hobbit* for worldwide distribution, purportedly pursuant to paragraph 9C of the 1969
8 GAU Agreement.

9 44. Plaintiffs are further informed and believe, and based thereon allege, that in or
10 about December 2007, New Line purported to elect to produce a second motion picture based on
11 *The Hobbit*, which picture may contain some elements from the Trilogy, again purportedly
12 pursuant to paragraph 9C of the 1969 GAU Agreement.

13 45. In failing and refusing to pay plaintiffs any of the Gross Receipts Participation to
14 which they are entitled under the 1969 Agreements, New Line has defeated the principal
15 objective of those Agreements. Paragraph 23 of the 1969 GAU Agreement and paragraph 22 of
16 the 1969 Sassoon Agreement give plaintiffs the explicit right to terminate New Line's rights to
17 the Films for breach of its payment obligations.

18 46. By reason of New Line's willful and material breaches of contract and the implied
19 covenant of good faith and fair dealing as alleged hereinabove, and New Line's utter failure and
20 refusal to pay plaintiffs any portion of their contracted share of the revenues from the Films, and
21 subject to the potential rights of innocent parties, plaintiffs are entitled to cancel and terminate all
22 future rights of New Line under the 1969 Agreements, including without limitation New Line's
23 right to produce, distribute and/or exploit future films based upon the Trilogy and/or the Films, as
24 well as all rights to produce, distribute and/or exploit films based on *The Hobbit*, and without
25 prejudice to plaintiffs' right to recover damages or to any other right or remedy of plaintiffs.

26 47. A controversy exists between the parties, in that plaintiffs contend that they have
27 such a right of cancellation and/or termination and New Line denies the existence of any such
28 right.

1 48. Plaintiffs request a declaration from this Court that plaintiffs have the right to
2 terminate all of New Line's rights to make future films based on the Trilogy or *The Hobbit*. This
3 declaration is necessary so that the parties may know their respective rights and obligations under
4 the parties' written contracts.

5
6 **THIRD CAUSE OF ACTION**

7 **(Declaratory Relief re Participation Interest as to Defendant New Line**
8 **and DOES 1 through 30)**

9 49. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
10 contained in paragraphs 1 through 35, above, as though fully set forth herein.

11 50. During the negotiations leading up to the 1969 Agreements, the parties agreed
12 plaintiffs would receive 7.5% of gross revenues derived from the exploitation of films based upon
13 any of Professor Tolkien's four Literary Works (i.e. *The Hobbit*, *The Fellowship of the Ring*, *The*
14 *Two Towers* and *The Return of the King*). An early draft of the parties' agreement, as well as
15 various correspondence and documents, reflected this agreement. Thereafter, however, the
16 parties decided to split the one agreement into two separate agreements. Nonetheless, the
17 agreements cross-reference each other in numerous places and are intended to work together. In
18 order to keep the total 7.5% Gross Receipts Participation, the parties decided to have one
19 agreement require a 2.5% royalty, while the other would require a 5% royalty, but constructed the
20 two agreements so that they would operate jointly as to any films made based upon the Literary
21 Works. When taken together, these two agreements grant to plaintiffs the contemplated and
22 agreed-upon 7.5% participation in the gross revenues (2.5% plus 5% on any film utilizing any of
23 the Literary Works).

24 51. Although the 1969 Agreements reflect the contemporaneous and intertwined
25 nature of their creation, New Line has taken a contrary position. Specifically, New Line contends
26 that plaintiffs are entitled to 7.5% of Gross Receipts on *the Fellowship of the Ring*, *The Return of*
27 *the King*, and *The Hobbit*, and only 2.5% of Gross Receipts on *The Two Towers*.

1 of the parties believed and intended that the 1969 Agreements would reflect the original
2 agreement to pay plaintiffs' 7.5% of the Gross Receipts (after the Artificial Payment Level is
3 reached).

4 57. To the extent that New Line's predecessors-in-interest knew that the 1969
5 Agreements did not accurately reflect the parties' intent, they also knew or suspected, or should
6 have known or suspected, that plaintiffs and their predecessors-in-interest understood the 1969
7 Agreements to provide that plaintiffs would be entitled to receive 7.5% of the Gross Receipts
8 (after the Artificial Payment Level is reached) derived from the exploitation of any films based
9 upon the Literary Works, including *The Two Towers*.

10 58. Accordingly, the 1969 Agreements should be reformed to provide that plaintiffs
11 are entitled to receive 7.5% of the Gross Receipts (after the Artificial Payment Level is reached)
12 derived from *The Two Towers*, and the 1969 Agreements should be enforced as so reformed.

13
14 **FIFTH CAUSE OF ACTION**

15 **(Fraud as to Defendant New Line and DOES 1 through 30)**

16 59. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
17 contained in paragraphs 1 through 35, above, as though fully set forth herein.

18 60. New Line, through its accounting and participations personnel and Ben Zinkin, its
19 Senior Executive Vice President, Business and Legal Affairs, have repeatedly made affirmative
20 misrepresentations regarding plaintiff's Participation interests and have concealed material facts
21 from plaintiffs, which it had an obligation to disclose.

22 61. Specifically, each of the Participation Statements is itself a false and fraudulent
23 representation regarding the Gross Receipts derived from each Film, the cost of production of
24 each Film and the calculation of the Artificial Payment Level. Among other things, each of these
25 statements inaccurately reflects the total revenue derived from the Film, grossly overstates the
26 costs of producing the Film, and falsely asserts that certain charges and costs were actually
27 incurred by New Line.

1 62. New Line also has an ongoing duty to fully disclose to plaintiffs, among other
2 things, the total amounts of any and all sources of revenue generated by the exploitation of the
3 Films, all actual and legitimate costs incurred in producing and distributing the Films and the true
4 nature of all monies charged against the Artificial Payment Level. This duty arises both from the
5 1969 Agreements, and from the issuance of the Participation Statements which contain only half-
6 truths and distortions. New Line has concealed the true facts regarding the actual revenues, costs
7 and calculation of plaintiffs' Participation since the first Participation Statement was issued. New
8 Line continues to conceal these important facts by, among other things, refusing to allow
9 plaintiffs to conduct an audit of Films 2 and 3.

10 63. The true facts are that New Line has hidden and refused to account for hundreds of
11 millions of dollars in revenue, including 80% of worldwide video distribution income, tens of
12 millions of dollars in television revenue and other ancillary revenue, such as music publishing
13 income. In addition, New Line has falsely represented the costs of producing the Films and the
14 calculation of the Artificial Payment Level by, among other things, inventing an "overhead
15 charge" that is purely fictional, including items in the costs of production which are not actual
16 production costs, claiming profit participations as a cost of producing the Films and overstating
17 the worldwide advertising costs.

18 64. New Line misrepresented and concealed said facts, as alleged hereinabove, in
19 order to induce plaintiffs to refrain from taking appropriate action to protect their rights and
20 obtain their full profit participations under the 1969 Agreements.

21 65. Reasonably relying on New Line's misrepresentations and on the belief that New
22 Line had properly accounted to it in accordance with the 1969 Agreements and that there had
23 been no concealment of material facts, plaintiffs did refrain from taking action to protect their
24 rights and interests.

25 66. As a direct and proximate result of New Line's acts of fraud, plaintiffs have been
26 damaged in a sum as yet unknown to them, but which plaintiffs are informed and believe and, on
27 that ground, allege substantially exceeds the sum of \$150 million. Plaintiffs will seek leave to
28 amend this Complaint to set forth the full amount of such damages when ascertained.

1 and accurate accounting with respect to Film 1. Moreover, New Line has failed and refused, and
2 continues to fail and refuse, to render a full and accurate accounting with respect to Films 2 and 3,
3 or to permit plaintiffs to examine New Line's books and records as they relate to Films 2 and 3 at
4 all.

5 72. The amount of monies withheld from plaintiffs is unknown to plaintiffs and cannot
6 be ascertained without an accounting of the financial information and records of New Line.
7 Moreover, plaintiffs are informed and believe, and based thereon allege, that Katja was at all
8 times responsible for accounting for the actual costs of production of the Films, and that the
9 Participation Statements rely in large part on Katja's accounting. A full and proper accounting of
10 plaintiff's Participation interest will require an examination of Katja's accountings of the costs of
11 producing the Films. Plaintiffs are informed and believe, and based thereon allege that the
12 amount of monies due and owing to plaintiffs substantially exceeds \$150 million.

13 73. An accounting is required to determine the true amounts due and owing to
14 plaintiffs under the 1969 Agreements with respect to New Line's exploitation of the Films.

15
16 **SEVENTH CAUSE OF ACTION**

17 **(Constructive Trust as to New Line and DOES 1 through 30)**

18 74. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
19 contained in paragraphs 1 through 35 and 60 through 68, above, as though fully set forth herein.

20 75. By virtue of its wrongful conduct described above, New Line has improperly
21 retained profits rightfully belonging to plaintiffs. By falsely accounting to plaintiffs and
22 wrongfully withholding the amounts to which plaintiffs are entitled, New Line has been unjustly
23 enriched.

24 76. As a result of New Line's fraudulent and wrongful withholding of plaintiff's
25 money, New Line is an involuntary trustee, holding this money in constructive trust for the
26 benefit of plaintiffs. Plaintiffs are entitled to recover any profits or other benefits received by
27 New Line from any of the property held in trust.

EIGHTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to New Line and DOES 1 through 30)

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3 77. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
4 contained in paragraphs 1 through 35, 37 through 41, and 60 through 68, above, as though fully
5 set forth herein.

6 78. The relationship between plaintiffs and New Line, as described more fully above,
7 is a long-standing relationship of trust and confidence, such that New Line owes fiduciary
8 obligations to plaintiffs. Specifically, New Line is at all times obligated to deal fairly and
9 honestly with plaintiffs with respect to any use or exploitation of plaintiffs' property.

10 79. New Line has repeatedly and deliberately breached its fiduciary duties to plaintiffs
11 by engaging in the fraudulent and bad faith conduct more fully described above, which has
12 deprived plaintiffs of the benefits of their valuable rights. New Line has at all times, acted in its
13 best interests and to the detriment of plaintiffs, without regard for plaintiffs' rights.

14 80. As a result of New Line's repeated breaches of its fiduciary obligations, plaintiffs
15 have been damaged in a sum as yet unknown to them, but which plaintiffs are informed and
16 believe and, on that ground, allege substantially exceeds the sum of \$150 million. Plaintiffs will
17 seek leave to amend this Complaint to set forth the full amount of such damages when
18 ascertained.

19 81. Plaintiffs are informed and believe, and based thereon allege that New Line's
20 conduct as hereinabove alleged was fraudulent, malicious and oppressive. New Line has willfully
21 retained for its own benefit multiple-millions of dollars to which it knew plaintiffs were entitled.
22 It fought and continues to fight to prevent plaintiffs from discovering the true facts concerning the
23 actual amount of monies due and owing to plaintiffs. On information and belief, plaintiffs allege
24 that New Line has also willfully destroyed documents to prevent the discovery of the true facts
25 and of evidence favorable to plaintiffs. Accordingly, plaintiffs are entitled to an award of
26 punitive and exemplary damages in an amount sufficient to punish New Line and deter such
27 conduct in the future.

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WHEREFORE, plaintiffs pray for judgment as follows:

1. For compensatory damages in excess of the sum of \$150 million;

2. For punitive damages in an amount which, considering New Line's enormous worldwide wealth and income, is sufficient to punish New Line, to set an example and to deter further such wrongful behavior;

3. For a declaration that plaintiffs are entitled to cancel and terminate all future rights of New Line under the 1969 Agreements, including without limitation New Line's right to produce, distribute and/or exploit future films based upon the Trilogy and/or the Films, as well as all rights to produce, distribute and/or exploit films based on *The Hobbit*, and without prejudice to plaintiffs' right to recover damages or to any other right or remedy of plaintiffs;

4. For a declaration that plaintiffs are entitled to receive 7.5% of the Gross Receipts (after the Artificial Payment Level is reached) as to any films based upon Professor Tolkien's four Literary Works;

5. In the alternative, to the extent that the Court were to adopt any meaning of the 1969 Agreements contrary to the contentions of plaintiffs, that the 1969 Agreements be reformed to provide the meaning represented by New Line's predecessor-in-interest and understood by plaintiffs and their predecessors-in-interest and/or the intent of the parties to the 1969 Agreement;

6. For an accounting between defendants and plaintiffs;

7. For payment over to plaintiffs of the amount due from defendants as a result of the accounting;

8. For imposition of a constructive trust over all monies due and owing to plaintiffs, and any benefits and income derived therefrom by New Line;

9. For interest at the maximum legal rate; and

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10. For costs of suit and such other and further relief as the Court shall deem proper.

DATED: February __, 2008

GREENBERG GLUSKER FIELDS
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Mario Reuel Tolkien, as Trustees of The JRR
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DATED: February __, 2008

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10. For costs of suit and such other and further relief as the Court shall deem proper.

DATED: February 10, 2008

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