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11 Television, LLC ; and NBC West, LLC

Original

FILED

LOS ANGELES SUPERIOR COURT

JAN 25 2008

JOHN M. CLARKE, CLERK
BY MARY GARCIA, DEPUTY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

BC384387

14 UNIVERSAL NETWORK PROGRAMMING,
15 LLC, a limited liability company;
16 UNIVERSAL NETWORK TELEVISION, LLC,
17 a limited liability company; and NBC WEST,
18 LLC, a limited liability company,

19 Plaintiffs,

20 vs.

21 WOLF ENTERTAINMENT, INC., a
22 corporation; RICHARD WOLF, an individual;
23 and DOES ONE through TEN, inclusive,

24 Defendants.

Case No.: _____

COMPLAINT FOR:

- (1) DECLARATORY RELIEF, and
(2) REFORMATION

25 Plaintiffs Universal Network Programming, LLC and Universal Network Television, LLC
26 (collectively, "Universal"), and NBC West, LLC ("NBC"), hereinafter referred to collectively as
27 "Plaintiffs," make the following allegations against Defendants Wolf Entertainment, Inc.,
28 Wolf, and Does 1 through 10, inclusive (collectively "Wolf" or "Defendants")

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Case assigned to Judge Mel Recana D-45

INTRODUCTION

1
2 1. Richard Wolf is the creator and executive producer of the television programs *Law &*
3 *Order*, *Law & Order: Special Victims Unit*, and *Law & Order: Criminal Intent* (the “Law & Order
4 Programs”). Universal Network Programming, LLC and Universal Network Television, LLC are the
5 entities that have produced the Law & Order Programs, and that employ Wolf in exchange for
6 “executive producer fees” (among other compensation). Separately, NBC is the entity that has
7 ordered the Law & Order Programs from Universal and broadcast those Programs on its television
8 network. The dispute here relates to the amount of executive producer fees to which Wolf is entitled
9 from Universal under the parties’ operative agreement, dated September 7, 2004 and fully executed
10 on or about September 17, 2004 (the “Wolf Agreement”).

11 2. NBC has the option each year to order additional season(s) (at least 22 episodes) of
12 each of the Law & Order Programs. As a concession to Wolf, however, the Wolf Agreement
13 provides that Universal would guarantee to pay him an initial block of 72 episodes of executive
14 producer fees (*i.e.*, three seasons of fees assuming 24 episodes per season) for the *first* order of each
15 of the Law & Order Programs upon execution of the Wolf Agreement, regardless of how many
16 episodes NBC actually ordered (the “Initial 72-Episode Commitment”). Further, Universal
17 guaranteed Wolf executive producer fees for *subsequent* NBC orders of any of the Law & Order
18 Programs, but reduced the executive producer fee guarantee to blocks of 48 episodes of fees (*i.e.*, two
19 seasons of episodes assuming 24 episodes per season) for these subsequent orders (the “48-Episode
20 Guarantee”).

21 3. For example, when NBC ordered *Law & Order* from Universal for the 2005/2006
22 broadcast season – NBC’s first order upon execution of the Agreement – Universal was obligated to
23 guarantee Wolf executive producer fees pursuant to the Initial 72-Episode Commitment (*i.e.*, for
24 three seasons, through the end of the 2007/2008 broadcast season), whether or not NBC ordered those
25 additional seasons. When NBC *subsequently* ordered *Law & Order* for the 2006/2007 broadcast
26 season, Wolf’s fee guarantee reduced pursuant to the Wolf Agreement to the 48-Episode Guarantee
27 (*i.e.*, two seasons), and thus his executive producer fee guarantee continued to run through the end of
28 the 2007/2008 broadcast season (when it would have co-terminated with the Initial 72-Episode

1 Guarantee). However, when NBC subsequently, and most recently, ordered *Law & Order* for the
2 2007/2008 broadcast season, the two seasons of Wolf's 48-Episode Guarantee then began to extend
3 past the 2007/2008 broadcast season and currently runs until the end of the 2008/2009 broadcast
4 season – whether or not NBC actually orders *Law & Order* for the 2008/2009 broadcast season. If
5 NBC *does* order *Law & Order* for the 2008/2009 broadcast season, Wolf's 48-Episode Guarantee
6 would likewise again guarantee him 48 episodes (two seasons) from NBC's order, to run until the end
7 of the 2009/2010 broadcast season; if NBC does *not* order *Law & Order* for the 2009/2010 season,
8 Universal would owe Wolf executive producer fees for that one season (2009/2010) of unproduced
9 episodes. In other words, the 48-Episode Guarantee guarantees Wolf *one* additional year of
10 executive producer fees for shows not actually produced after the last *one*-season order by NBC.
11 Alternately, if the last order by NBC is a *two*-season order (of 24 episodes each season), the show
12 order – 48 episodes – would wholly coincide with Wolf's 48-Episode Guarantee, and Universal
13 would not have to pay Wolf executive producer fees for any episodes that were not produced.

14 4. On or around March 27, 2007, however, Wolf informed Universal for the first time
15 that he interpreted the 48-Episode Guarantee differently from what is set forth above. Subsequently,
16 Wolf clarified his position to be that a 48-Episode Guarantee did not include any season or seasons
17 worth of episodes that NBC ordered for one of the *Law & Order* Programs. Instead, according to
18 Wolf, the 48 episodes worth of fees were a stand-alone “tail fee” or “kill fee” that operated as a sort
19 of two-year severance payment once a *Law & Order* Program was not renewed. Thus, according to
20 Wolf, for each of the *Law & Order* Programs, when NBC decides not to exercise its option to order
21 production of a further season of shows, Wolf is automatically entitled to 48 episodes of executive
22 producer fees (for shows never produced) as a result of NBC's cancellation of that particular series.

23 5. The negotiating history leading to the 48-Episode Guarantee in the Wolf Agreement,
24 including the initial signed “short-form” memorandum of agreement, demonstrates that Universal's
25 interpretation of the 48-Episode Guarantee is correct, and makes clear that Wolf's position is wholly
26 contrary to the parties' intent and would provide Wolf with an unintended windfall of millions of
27 dollars. Indeed, the parties never remotely contemplated during these negotiations, let alone
28 discussed, that Wolf would get bonus “kill fees” for several years of shows that were never produced.

1 6. For these reasons, Universal seeks a declaration by the Court of the meaning of the
2 relevant provisions of the Wolf Agreement to resolve the parties' dispute arising from their
3 conflicting interpretations.

4 **THE PARTIES**

5 7. Plaintiff Universal Network Programming, LLC is a Delaware limited liability
6 company with its principal place of business in the State of California.

7 8. Plaintiff Universal Network Television, LLC is a Delaware limited liability company
8 with its principal place of business in the State of California. Universal Network Programming, LLC,
9 formerly Studios USA Programming, LLC, and/or Universal Network Television, LLC, formerly
10 Studios USA Television, LLC, has at all relevant times been the television studio that has produced
11 and owned the relevant rights to the Law & Order Programs, and which has employed Richard Wolf.

12 9. Plaintiff NBC West, LLC, is a Delaware limited liability company with its principal
13 place of business in the state of New York. NBC Entertainment, a division of NBC West, LLC, owns
14 and operates the NBC Television Network. NBC has certain rights and obligations, including to
15 order pilots and programming from Universal relating to the Law & Order Programs or other
16 programs written or supervised by Richard Wolf, in the Wolf Agreement. NBC does not employ
17 Wolf and is not obligated to make any payments to him under the Wolf Agreement.

18 10. Plaintiffs allege on information and belief that defendant Richard Wolf is, and at all
19 times relevant hereto was, a New York resident, residing in the County of New York.

20 11. Plaintiffs allege on information and belief that defendant Wolf Entertainment, Inc. is,
21 and at all times relevant hereto was, a Delaware corporation with its principal place of business in the
22 State of California.

23 12. Plaintiffs are not currently aware of the true names or capacities, whether individual,
24 corporate or otherwise of defendant DOES 1 through 10, inclusive, and therefore bring this action
25 against these defendants by such fictitious names. Plaintiffs will amend this Complaint to show their
26 true names and capacities when ascertained. Plaintiffs allege on information and belief that each of
27 the fictitiously named defendants designated as a Doe herein is in some manner responsible for the
28 events and occurrences herein described.

1 13. Plaintiffs allege on information and belief that each defendant was the agent or
2 employee of each of the remaining defendants in doing the acts alleged herein and was acting in the
3 course and scope of such agency.

4 **FACTUAL BACKGROUND**

5 **A. THE WOLF EMPLOYMENT CONTRACTS**

6 14. It is common practice in the entertainment industry when negotiating agreements first
7 to prepare a written “short-form” agreement that captures, in abbreviated form, the key terms of an
8 agreement reached between negotiating parties. Subsequently, a “long-form” of the agreement is
9 often prepared, which articulates the terms to which the parties agree in greater detail.

10 15. Here, Wolf and Universal spent several months in early 2004 negotiating their
11 eventual agreement for Wolf’s services and compensation with regard to all three Law & Order
12 Programs, which was first memorialized in a short-form agreement (the parties’ “Short-Form
13 Agreement”) in or around early May 2004. The Short-Form Agreement included fully-negotiated
14 provisions relating to Wolf’s executive producer fees, imputed license fees, and other fees and
15 compensation to Wolf for the Law & Order Programs.

16 16. Subsequent to the execution of the Short-Form Agreement, Universal prepared a long-
17 form document that the parties entered into as of May 11, 2004. That long-form document was
18 subsequently amended to address the appropriate Wolf entity, and signed by the parties in or around
19 September 2004. This Amended Long-Form (referred to herein as the “Wolf Agreement”) was
20 intended to memorialize the terms negotiated by the parties and reflected in the Short-Form
21 Agreement; it is the operative agreement that clearly reflects a “pay or play” obligation for NBC
22 rather than an automatic bonus “kill fee” or “tail fee.”

23 17. The Wolf Agreement, as well as the Short-Form Agreement, includes confidentiality
24 provisions. In light of these provisions, Plaintiffs are not attaching the respective agreements, but
25 ^{ENCLOSURE} will provide them to the Court at an appropriate time.

26 **B. THE 48-EPISODE GUARANTEE: NEGOTIATING HISTORY**

27 18. Wolf’s representative first sent a proposal for new employment terms for Wolf’s
28 executive producing services on all three Law & Order Programs to Universal’s representative on or

1 about January 13, 2004. Wolf's proposal was that his executive producing fees would be "pay or
2 play" for every season of the Law & Order Programs that NBC ordered; in other words, Wolf would
3 receive the executive producer fees for all of the episodes produced in an entire season whether or not
4 Universal actually elected to use his executive producing services for all such episodes. Wolf's
5 proposal did not contain any concept of a "kill fee" for any of the Law & Order Programs.

6 19. In the months that followed, Universal and Wolf exchanged several revised proposals,
7 none of which called for Wolf to receive any sort of "tail fees" or "kill fees" with regard to any of the
8 Law & Order Programs. Indeed, in one of the drafts leading up to the proposal of the 48-Episode
9 Guarantee for each of the Law & Order Programs, Wolf proposed that "with respect to additional
10 production seasons not already covered by a minimum 'pay or play' commitment herein" – meaning
11 the Initial 72-Episode Guarantee – Wolf would be "pay or play" for 24 episodes for such subsequent
12 seasons. In other words, Wolf clearly understood at the time – just as Universal did – that the Initial
13 72-Episode Guarantee and the 48-Episode Guarantee resulting from these negotiations were in the
14 nature of a "pay or play" obligation guaranteeing Wolf payment for episodes that might be produced
15 depending on the number of seasons ordered by NBC (even if they ultimately were not produced or if
16 his services were not utilized in doing so), rather than a "kill fee" for multiple seasons of episodes
17 that would by definition never be produced.

18 20. In subsequent communications, Wolf repeatedly acknowledged that the 48-Episode
19 Guarantee for each of the Law & Order Programs was just that: a guarantee that Wolf's executive
20 producer fees would be guaranteed in 48-episode blocks upon each order from NBC, regardless of
21 the number of episodes actually ordered. Nothing in the negotiations between the parties supports
22 Wolf's position that the 48-Episode Guarantee constitutes a "kill fee" automatically providing Wolf
23 with executive producer fees for two seasons of unproduced episodes for any of the Law & Order
24 Programs at the point that NBC decides not to order further seasons of that Program.

25 21. The Short-Form Agreement was negotiated and drafted in roughly equal proportions
26 by Universal and Defendants. The final version of the Short-Form Agreement, which was fully
27 executed on or around May 7, 2004, reflected the parties' agreement with respect to the Initial 72-
28 Episode Guarantee, providing that Wolf's executive producer fees for the Law & Order Programs

1 would be guaranteed for at least 72 episodes beyond the then-current NBC order for each program
2 (the then-current NBC order for *Law & Order* was the end of the 2004/2005 season; for *Law &*
3 *Order: Special Victims Unit* (“SVU”), the end of the 2003/2004 season; and for *CI*, the end of the
4 2003/2004 season). It also reflected the parties’ agreement with respect to the 48-Episode Guarantee
5 for each of those Programs: “NBC to have perpetual successive annual options to order at least 22
6 episodes of the series, which such option must be exercised by May 1 of the then current broadcast
7 season; provided Wolf’s executive producing fees will be guaranteed for a minimum of 48 episodes
8 for each option exercised by NBC.”

9 **C. THE WOLF AGREEMENT**

10 22. In or around June 2004, after the Short-Form Agreement was signed and executed,
11 Plaintiffs’ Contracts Department prepared a long-form (amended to become the Wolf Agreement) to
12 memorialize the terms of the deal embodied in the fully executed Short-Form Agreement. There
13 were no material substantive negotiations among the parties between execution of the Short-Form
14 Agreement and the drafting and subsequent execution of the Wolf Agreement.

15 23. With regard to the Initial 72-Episode Guarantee and the 48-Episode Guarantee, the
16 language appearing in the Wolf Agreement with regard to each of the Law & Order Programs is as
17 follows:

18 (a) **Law & Order:** NBC “shall have perpetual successive annual options to order
19 no less than twenty-two (22) new episodes for subsequent broadcast year(s), which option(s) must be
20 exercised in writing by May 1 of the then-current broadcast year. Notwithstanding the foregoing, and
21 without limiting NBC’s obligation to pay the applicable license fees required by the foregoing order,
22 the total number of applicable executive producer fees payable to Lender for Wolf’s executive
23 producer services on L&O are hereby guaranteed by UNP (i.e., Lender [f/s/o Wolf] is ‘pay or play’)
24 for a minimum of seventy-two (72) episodes beyond the number of episodes ordered through the end
25 of the 2004/2005 broadcast year. Furthermore, for each broadcast year for which NBC renews L&O
26 commencing with the 2006/2007 broadcast year, the total number of guaranteed executive producer
27 fees shall be further increased by a minimum of forty-eight (48) new episodes.”
28

1 (b) *SVU*: NBC "shall have perpetual successive annual options to order no less
2 than twenty-two (22) new episodes for subsequent broadcast year(s), which option(s) must be
3 exercised in writing by May 1 of the then-current broadcast year. Notwithstanding the foregoing, and
4 without limiting NBC's obligation to pay the applicable license fees required by the foregoing order,
5 the total number of applicable executive producer fees payable to Lender for Wolf's executive
6 producer services on *SVU* are hereby guaranteed by UNP (i.e., Lender [f/s/o Wolf] is 'pay or play')
7 for a minimum of seventy-two (72) episodes beyond the number of episodes ordered through the end
8 of the 2003/2004 broadcast year. Furthermore, for each broadcast year for which NBC renews *SVU*
9 commencing with the 2006/2007 broadcast year, the total number of guaranteed executive producer
10 fees shall be increased by a minimum of forty-eight (48) new episodes."

11 (c) *CI*: NBC "shall have perpetual successive annual options to order no less than
12 twenty-two (22) new episodes for subsequent broadcast year, which option must be exercised in
13 writing by May 1 of the then-current broadcast year. Notwithstanding the foregoing, and without
14 limiting NBC's obligation to pay the applicable license fees required by the foregoing order, the total
15 number of applicable executive producer fees payable to Lender for Wolf's executive producer
16 services on *CI* are guaranteed by UNP (i.e., Lender [f/s/o Wolf] is 'pay or play') for a minimum of
17 seventy-two (72) episodes beyond the number of episodes ordered through the end of the 2004/2005
18 broadcast year. Furthermore, for each broadcast year for which NBC renews *CI* commencing with
19 the 2006/007 broadcast year, the total number of guaranteed executive producer fees shall be further
20 increased by a minimum of forty-eight (48) new episodes."

21 24. On or about March 27, 2007, Defendants expressed for the first time to Universal a
22 new interpretation of the 48-Episode Guarantee in the Wolf Agreement. They have subsequently
23 clarified their original position, but still assert that when NBC decides not to exercise its option to
24 order production of a further season of shows, Wolf is automatically entitled to 48 episodes of
25 executive producer fees (for shows never produced) as a result of NBC's cancellation of that
26 particular series.

27 25. Universal's interpretation of the language in the Wolf Agreement relating to the
28 48-Episode Guarantee as to all of the Law & Order Programs is the correct one and reflects the spirit

1 and intent of the parties at the time they entered into the Wolf Agreement. This is readily apparent
2 both on the face of the provision itself and when considered in light of the parties' negotiations, the
3 Short-Form Agreement, and the unanticipated results produced by Wolf's reading of the provision.

4 26. Beginning in September 2007 the parties executed an agreement tolling Plaintiffs'
5 claims in this matter with Plaintiffs hoping to resolve this dispute and avoid litigation. The parties
6 have agreed to repeated short-term tolling agreements since then, but have not been able to resolve
7 their disputes. Accordingly, Plaintiffs have brought this action now in order to establish their rights
8 going forward.

9 **FIRST CAUSE OF ACTION**
10 **For Declaratory Relief (Cal. Code Civ. Proc. § 1060)**
11 **(As to all Defendants)**

12 27. The allegations of paragraphs 1 through 26 are incorporated by reference as though
13 fully set forth herein.

14 28. An actual controversy has arisen and now exists between Universal and Defendants
15 concerning their respective rights and duties under the Wolf Agreement whether each option pickup
16 of *Law & Order*, *SVU*, or *CI* entitled Wolf to receive additional executive producer fees beyond a
17 total of 48 episodes worth of fees.

18 29. Universal contends an order by NBC of *Law & Order*, *SVU*, or *CI* obligates Universal
19 to guarantee Wolf a minimum total of 48 episodes worth of executive producer fees for that Program
20 at the time of the option pickup, whether or not those episodes are actually produced, *not* to pay Wolf
21 an automatic "kill fee" of 48 unproduced episodes worth of guaranteed executive producer fees.

22 30. Defendants contend an order by NBC of *Law & Order*, *SVU*, or *CI* requires Universal
23 to pay Wolf after the final order of that Program by NBC an automatic "kill fee" of 48 unproduced
24 episodes worth of guaranteed executive producer fees.

25 31. A judicial determination is necessary and appropriate at this time under the
26 circumstances so Universal may ascertain its rights and duties under the Wolf Agreement.
27
28

ENCLOSURE

SECOND CAUSE OF ACTION
For Reformation (Cal. Civ. Code § 3399)
(As to all Defendants)

1
2
3 32. The allegations of paragraphs 1 through 31 are incorporated by reference as though
4 fully set forth herein.

5 33. If this Court does not grant Plaintiffs' request for declaratory relief as to what NBC
6 believes to be the clear meaning of the executive producer fee provisions of the Wolf Agreement,
7 Plaintiffs seek in the alternative for the Court to reform the mistakenly written Wolf Agreement so it
8 conforms with the fully negotiated and executed Short-Form Agreement (which reflects the parties'
9 mutual understanding at the time they entered into the Short-Form and Wolf Agreements) with
10 respect to the term of the Initial 72-Episode Guarantee for *CI* and with respect to the operation of the
11 48-Episode Guarantee for all of the Law & Order Programs.

12 34. In addition, on or about March 27, 2007, Defendants contended to Universal that the
13 Initial 72-Episode Guarantee for *CI* did not begin until the 2005/2006 season, but that is not what the
14 parties intended when they negotiated and signed the Short-Form or Wolf Agreement. Although the
15 language in the Wolf Agreement states that the Initial 72-Episode Guarantee for *CI* is "beyond the
16 number of episodes ordered through the end of the 2004/2005 broadcast year" (thus suggesting that
17 Wolf's executive producing fees were guaranteed by the Initial 72-Episode Guarantee through the
18 2007/2008 broadcast season), the parties' intent, as reflected in the negotiating history and every draft
19 of the Short-Form Agreement including the executed Short-Form Agreement, was that the Initial 72-
20 Episode Guarantee for *CI* was to apply "beyond the current NBC order for the 2003/2004 season" –
21 meaning that it would run through the 2006/2007 broadcast season. Thus, by mutual mistake, or, in
22 the alternative, Universal's unilateral mistake which was known or suspected by Defendants at the
23 time the Wolf Agreement was executed by Defendants, the Wolf Agreement failed to correctly reflect
24 Universal's and Defendants' intent concerning the term of the Initial 72-episode Guarantee for *CI*.

25 35. Thus, by mutual mistake, or, in the alternative, Universal's unilateral mistake that was
26 known or suspected by Defendants at the time the Wolf Agreement was executed by Defendants, the
27 Wolf Agreement failed to unambiguously reflect Universal's and Defendants' intent concerning the
28

1 amount of Wolf's executive producer fees for the Law & Order Programs upon option pickup by
2 NBC.

3
4 **PRAYER**

5 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them,
6 as follows:

7 1. For declaratory relief to determine the rights and duties of Plaintiffs and Defendants
8 with respect to the provisions of the Wolf Agreement regarding the 48-Episode Guarantee for each of
9 the Law & Order Programs;

10 2. As an alternative to Plaintiffs' request for declaratory relief, for reformation of the
11 Wolf Agreement to conform to the intent of the parties as reflected in their negotiating history and the
12 executed Short-Form Agreement with respect to the operation of the 48-Episode Guarantee for all of
13 the Law & Order Programs;

14 3. For reformation of the Wolf Agreement to conform to the intent of the parties as
15 reflected in their negotiating history and executed Short-Form Agreement with regard to the term of
16 the Initial 72-Episode Guarantee for *CI*;

17 4. For costs of suit; and

18 5. For such other relief that the Court deems proper and just.

19 DATED: January 25, 2008

20 GIBSON, DUNN & CRUTCHER LLP
21 SCOTT EDELMAN
22 MICHAEL H. DORE
23 LYNN N. HANG

24 By: Scott Edelman / MD
25 Scott Edelman

26 Universal Network Programming, LLC; Universal
27 Network Television, LLC; and NBC West, LLC
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