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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 HARLAN ELLISON, *an*
13 *individual,*

14 *Plaintiff,*

15 *v.*

16 CBS-PARAMOUNT, INC., *a*
17 *Delaware corporation;* WRITERS
18 GUILD OF AMERICA, a labor
19 organization; and Does 1-10,
20 inclusive,

21 *Defendants.*

Case. No.

COMPLAINT FOR:

1. BREACH OF THE DUTY OF FAIR REPRESENTATION

2. BREACH OF COLLECTIVE BARGAINING AGREEMENT

[SECTION 301, LABOR MANAGEMENT RELATIONS ACT]

DEMAND FOR JURY TRIAL

22 Plaintiff complains and avers as follows:

23 **PARTIES**

24 1. Harlan Ellison (Ellison), a Los Angeles resident, is a famous author,
25 screenwriter, commentator and public speaker. He is the winner of countless
26 literary awards and known publicly as the writer of one the best-loved and most
27 honored original *Star Trek* episodes, *The City on the Edge of Forever (City)*, first
28 broadcast in 1967.

1 (supplemental jurisdiction over state-law claims that form part of a single case or
2 controversy, if any later alleged), as well as 28 U.S.C. § 1331, 1337, as this case
3 arises under federal laws regulating interstate commerce.

4 7. This Court may assert personal jurisdiction over Defendants because:
5 Defendants Paramount and WGA maintain a place of business in this District
6 where the acts and incidents herein averred took place; and

7 8. This Court is a proper venue for this matter under 28 U.S.C. §§ 1391(b)
8 and 1392(a) because:

9 (a) Defendant Paramount and its relevant records may be found in
10 this District, and substantial events relevant to the causes of action alleged in
11 this Complaint occurred in this District; and

12 (b) Defendant WGA may be found in this District, and substantial
13 events relevant to the causes of action alleged in this Complaint occurred in this
14 District.

15 (c) Venue is also appropriate under 29 U.S.C. § 185(c), as the
16 defendant WGA has one of its two principal offices in this judicial district and is
17 engaged in representing Members in this judicial district.

18 9. Does 1-10 are persons or entities whose identity is not known to
19 Ellison on this date, who materially participated in, assisted in, and/or conspired
20 to cause harm to Ellison through the conduct of which this action complains.
21

22 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

23 10. Defendant WGA and defendant Paramount are parties to a collective
24 bargaining agreement known as the Television Film Minimum Basic Agreement
25 (MBA). The particular MBA at issue in this case was entered into in 1960, and
26 amended in 1966. The 1960 MBA as amended covers work that WGA Members,
27 including Ellison, duly performed during the period of the operation of that
28 particular MBA, including Ellison's *City* teleplay, which aired in 1967.

1 11. Paramount's predecessor-in-interest, DesiLu, hired Ellison to write a
2 screenplay for the *Star Trek* series. Ellison delivered the *City* script and the
3 episode based thereupon was aired during *Star Trek's* first season. This episode
4 receives continuing accolades, has become one of the all-time money making
5 commercial favorites, was ranked as one of the "100 Greatest Television Episodes
6 of All Time" by *T.V. Guide* in 1997 as part of its 50 year survey; and "One of the
7 100 Most Memorable moments in T.V. History" in the 29 June 1996 nationwide
8 survey; and as recently as in its 20-26 April 2002 issue, *T.V. Guide* celebrated
9 *Star Trek's* 35th anniversary featuring, of the hundreds of episodes since its
10 debut, the "35 Greatest Moments!" *City* was # 2.

11 12. Pled *in haec verba*, the 1960 MBA, as amended by the 1966
12 Amendment, provides in relevant part in Article XVIII (N) on page 27:
13 "ADDITIONAL COMPENSATION FOR CERTAIN USES OF SERIAL OR EPISODIC
14 SERIES MATERIAL[:] Additional compensation shall be paid to the writer of a
15 story or a story and teleplay for an established serial or episodic series television
16 film as provided in this Paragraph N.... If the Producer licenses or grants to any
17 third party the publication rights to such material ... Producer will pay to the
18 writer an amount equal to fifteen percent (15%) of the Producer's net receipts
19 derived therefrom. The net receipts to the Producer shall be computed by
20 deducting from the gross amounts paid to the Producer on account of such
21 license or sale of the publication rights, all costs, expenses and charges incident
22 to such licensing or sale, including royalties, commissions and other amounts
23 which the Producer is contractually obligated to pay by reason of such
24 publication or measured by receipts derived therefrom." The 1966 Amendment
25 modifies that section by stating: "Article XVIII Compensation – The following
26 additions and amendments shall be made to Article XVIII (Compensation): ...(viii)
27 In subparagraph (g) of Paragraph N the words and figure fifteen per cent (15%)
28 should be deleted and the words and figure twenty-five percent (25%) shall be

1 inserted in lieu thereof.”) Regarding merchandising rights the 1966 Amendment
2 provides on page 2: “(x) Insert a new subparagraph (m) of Paragraph N providing
3 for a five percent (5%) royalty on Producer’s net receipts as defined in
4 subparagraph (g) for merchandising rights under this Paragraph N.” Other
5 similar provisions entitle the WGA Member to receive 25% of the exercise of
6 *dramatic rights*, 50% of the *radio rights*, etc. Importantly, there is no language in
7 the 1960 MBA or its 1966 Amendment that abrogates or diminishes these
8 substantial rights accorded union writers under its terms, or narrows the
9 meaning of the term *publication rights* to include only word-for-word replications
10 of teleplays.

11 13. On information and belief, Paramount has exploited the *City* teleplay
12 numerous times since 1967 and specifically within the past four years. At all
13 relevant times herein, Ellison did not receive *notice* of Paramount’s exercise of
14 any of the exploitation rights referred to above in Paragraph 12. Ellison did not
15 receive *accountings* related to Paramount’s exercise of any of the exploitation
16 rights referred to above in Paragraph 12. Ellison did not receive *payment* for
17 Paramount’s exercise of any of the exploitation rights referred to above in
18 Paragraph 12.

19 14. Instead Ellison was informed by a third party, and/or discovered for
20 himself as a mere consumer, that Paramount had engaged in certain recent
21 exercises of the exploitation rights in the *City* teleplay including, without
22 limitation, merchandising such as a “talking” Christmas ornament, and a series
23 of successful books based on the *City* teleplay. Ellison believes there were and
24 continue to be countless additional exploitations of which he was not specifically
25 informed and of which he is not specifically aware, but nonetheless form part of
26 the basis of his Complaint and shall be presented in accordance with proof at the
27 time of trial.
28

1 15. Ellison avers that since he never received proper notice or accounting
2 related to Paramount’s various exploitations of the *City* teleplay, the applicable
3 time limitations have not yet began to run on claims for payment from those
4 exploitations.

5 16. Ellison attempted on several occasions over the past year to obtain the
6 WGA’s assistance in obtaining his share of the various revenue streams
7 established in the 1960 MBA and 1966 Amendment. Ultimately the WGA failed
8 and refused to act on Ellison’s behalf. Initially the WGA would promise to take a
9 few steps to look into Ellison’s claims, or ask for further information, but not
10 formally deny Ellison’s request. Toward the end of Ellison’s attempts to initiate
11 an arbitration or at least a real inquiry, the WGA falsely suggested that Ellison
12 had “withdrawn” his claim so as to manufacture a more favorable record and
13 avoid responsibility for advocating on behalf of Ellison.

14 17. Ellison made his attempts to obtain proper WGA representation on the
15 phone and in person, in writing and through counsel. The WGA finally refused
16 the direct requests by Ellison and his counsel for intervention and assistance on
17 February 2, 2009, indicating the WGA would take no further action on Ellison’s
18 demand for representation in an Arbitration proceeding or otherwise through
19 informal efforts. The WGA falsely suggested, as it had done before, that Ellison
20 had verbally withdrawn his claim (even though it was earlier asserted in writing
21 by counsel), when in fact what Ellison had requested was a “statement of non-
22 arbitrability” if the WGA was refusing to arbitrate his claims. The WGA’s recent
23 attempts to make it look like Ellison was “withdrawing” his claims reflect its bad
24 faith and propensity to lay a false record to suggest the WGA was not failing to
25 take the requested and required action.

26 18. The WGA refused to initiate arbitration proceedings on behalf of
27 Ellison, or otherwise reasonably pursue payment to Ellison under the 1966 MBA,
28 as amended. In its refusal to act on behalf of Ellison, the WGA relied at least in

1 part on justifications that are pre-textual, arbitrary, and serve the institutional
2 interests of the WGA and Paramount rather than the interests of Ellison as an
3 individual member of a labor organization. To some extent, this case is about the
4 degree to which the Producers have co-opted the WGA, and how *the WGA in*
5 *various ways improperly screens out contractually legitimate claims by its*
6 *individual Members to avoid rocking the boat.* This self-serving institutional stance
7 leaves individual WGA Members with few viable remedies other than those
8 provided by the Labor Management Relations Act, and Ellison thus requests
9 those remedies herein.

10 19. On information and belief, Paramount has earned millions exploiting
11 the *City* teleplay since it was aired in 1967. Yet Paramount has not accounted to
12 Ellison or paid him for such exploitations as it is required to do under the 1960
13 MBA and 1966 Amendment. Ellison thus seeks the intervention of this
14 Honorable Court in ensuring that the terms of the collective bargaining
15 agreement at issue are observed and upheld by the WGA, and honored by
16 Paramount.

17 **FIRST CLAIM FOR RELIEF**

18 **(Breach of Duty of Fair Representation Against the WGA and Does 6-10)**

19 20. Paragraphs 1 through 19 are incorporated by this reference and alleged
20 herein as though set forth fully in this section.

21 21. At all material times to this action, the WGA owed Ellison a duty of fair
22 representation. The duty of fair representation requires a labor organization to
23 serve its Members' interests without hostility or discrimination toward any, to
24 exercise its discretion with complete good faith and honesty, and to avoid
25 arbitrary conduct. This duty prohibits bad faith or discriminatory treatment of
26 Members by their union. The duty to refrain from arbitrary conduct further
27 prohibits actions by the union so far outside a wide range of reasonableness as
28 to be irrational.

1 22. By the acts alleged in this Complaint, the WGA breached the duty of
2 fair representation owed Ellison. Among other things, the WGA did not request
3 and/or insist upon material information from Paramount related to the various
4 exploitations of the *City* teleplay which might be reasonably covered by the MBA,
5 did not initiate a grievance or arbitration proceeding when asked repeatedly in
6 person and in writing despite earlier offering to do so, and did not respond to
7 reasonable requests from Ellison at least to obtain some kind of accounting from
8 Paramount for the recent publication of a paperback trilogy based on *City* by
9 Paramount’s licensor and sister company, Pocket Books/Simon and Schuster,
10 Inc., (*Pocket Books/Simon and Schuster*). (The series title of that exploitation is
11 *Crucible*.) In the end, the WGA falsely attempted to make it appear as though
12 Ellison had withdrawn his request and demand for an arbitration related to
13 Paramount’s chronic failure to account to Ellison, or adhere to the terms of the
14 1960 MBA as amended.

15 23. The stated justifications for WGA’s refusal to proceed on behalf of
16 Ellison were pre-textual and/or arbitrary, in bad faith, and designed to serve the
17 WGA’s organizational imperative toward self-preservation, and not the interests
18 of an individual Member with a legitimate claim under the collective bargaining
19 agreement.

20 24. In one instance, Ellison asked the WGA to pursue his claim to revenue
21 from a particular “talking” Christmas ornament featuring one of the key elements
22 of his *City* teleplay, *The Guardian of Forever*. The WGA informed Ellison that
23 when they contacted Paramount about it, the Paramount representative was
24 “going to check the big computer.” It is not clear what “the big computer” is or
25 whether it was ever “checked” by anyone or whether the “big computer” produced
26 an answer to the question of how much money Paramount received for the
27 license of the merchandising rights in and to the Christmas ornament, or how
28 much Ellison was to receive. The WGA never informed Ellison of the result of

1 such alleged inquiry. Instead, having done nothing to ascertain any real
2 information, the WGA later informed Ellison that the merchandise was “outside
3 the two year limitations period” for claims under the MBA. However, because
4 Ellison never received notification or an accounting from Paramount or the WGA
5 about exploitations of the *City* teleplay, and only found out about the ornament
6 by happenstance, he contended that such time limitation should not apply to
7 unreported exploitations of the *City* teleplay. In any event, longer limitations
8 apply even under the MBA.

9 25. In another instance, Paramount licensed to Simon &
10 Schuster/Pocketbooks—one of its sister corporations—the right to base a series
11 of books on the *City* teleplay (the *Crucible* series) that make use of all the key
12 aspects of that teleplay including the so-called *Guardian of Forever* entity specific
13 only to that episode and, pivotally at the core of all three books, Ellison’s creation
14 of Sister Edith Keeler and the significant question of the impact of her life or
15 death on the course of events, plus unique time-travel concepts and singular
16 themes, plot points, mood, an entire storyline set in the era of America’s 1930’s
17 Great Depression, and pacing—all present in the *City* teleplay. Simon &
18 Schuster/Pocket Book used references to the *City* episode in marketing materials
19 developed to promote and sell the books. No one reading the books would have
20 any doubt that they were reading a work fundamentally derivative of the ideas,
21 expressions and concepts contained in the *City* episode, and would probably not
22 otherwise purchase the books. Paramount, through its licensor and sister
23 company, Pocket Books/Simon and Schuster carefully and, Ellison asserts, with
24 flagrant intent, purposely avoided any mention of Ellison anywhere on or in the
25 trilogy though his WGAW-Award-winning authorship of *City* is universally
26 acknowledged.

27 26. The WGA told Ellison that the WGA’s own, alleged internal
28 interpretation of the terms of the WGA narrowly restrict the use of the broad

1 term *publication rights* in the MBA only to those circumstances where the
2 Producers make a virtual word-for-word replication of the teleplay.

3 27. To the extent the WGA has internally or otherwise interpreted the broad
4 language of the collective bargaining agreement to exclude such a substantial
5 use of a Member's work from the meaning of the term *publication rights*, such
6 restriction is arbitrary, unreasonable, pre-textual, contrary to accepted rules of
7 contract interpretation, and denies the Members the fruits and benefits of the
8 collective bargaining agreement.

9 28. Such an unreasonably narrow interpretation of the term *publication*
10 *rights* encourages the Producer or its licensee to change minor aspects of the
11 teleplay underlying an episode while simultaneously trading on the unique
12 aspects of that episode to sell books based on work by WGA Members to whom
13 the Producer duplicitously avoids substantial compensations.

14 29. To the extent the WGA has become complicit in such an interpretation
15 of *publication rights*, and such justification is at least part of the basis for its
16 failure to proceed on behalf of Ellison in the instant circumstance, such
17 interpretation is not only unlawfully narrow, but arbitrary, unreasonable, pre-
18 textual, and in bad faith.

19 30. The WGA acts in bad faith by relying on this arbitrary and
20 unreasonably narrow interpretation of publication rights so the WGA can shrink
21 nearly altogether from direct confrontation with the Producers on this issue and
22 simply tell its Members they have no rights. The WGA does this as part of its
23 organizational imperative for self-preservation and to avoid rocking the boat on
24 behalf of individual writers whenever it can.

25 31. Ellison demanded that the WGA pursue Paramount for an accounting
26 and a payment on all its exploitations of *City* that might be compensable under
27 the collective bargaining agreement. Ellison's claims extend to all exploitations
28 from inception to date, and are not confined either to the aforementioned

1 Christmas ornament or *Crucible* series of books based on *City*. The WGA failed
2 and ultimately refused to act on Ellison's reasonable requests, despite Ellison's
3 intense efforts to seek relief. It would be futile for Ellison to pursue any further
4 attempts to obtain relief through the WGA, as the WGA demonstrated for nearly
5 a year through phone conversations, in personal meetings, and in writing that it
6 has no intention of engaging in any advocacy on behalf of Ellison whatsoever to
7 obtain compensation for Paramount's exploitations of *City* and in fact finally
8 confirmed that fact in writing on February 2, 2009.

9 32. Further, Ellison was active in the recent writer's strike, on the picket
10 line, in numerous media interviews, and in the granting to his union for *YouTube*
11 exposure without recompense of a 3½ minute-long, pro-WGA excerpt from the
12 recent film documentary feature about Ellison's life, *Dreams With Sharp Teeth*, in
13 which Ellison powerfully makes the case to *pay the writer*. As of 11 March 2009,
14 this pro-WGA *YouTube* piece has had more than 229,000 viewings. However, in
15 certain of the aforementioned interviews and in other forums, Ellison was highly
16 critical of the team that ultimately negotiated the strike settlement on behalf of
17 WGA Members. Ellison publicly noted the sea-change occurring in the nature of
18 the entertainment industry, and suggested that the WGA Members would not be
19 well-served by the outcome of the negotiations that led to the current collective
20 bargaining agreement.

21 33. On information and belief, the WGA Management, such as those
22 charged with responding to his demand for arbitration on the *City* matter, were
23 or became hostile to Ellison and this unwarranted hostility and/or
24 discrimination was one of the unlawful reasons the WGA failed to pursue relief
25 for Ellison from defendant Paramount under relevant provisions of the 1960 MBA
26 as amended.

27 34. The WGA's breach of its duty of fair representation is one legal and
28 proximate cause of Ellison's harm.

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2 35. Ellison has suffered enormous monetary damage as a result of the
3 WGA's breach of its duty of fair representation, but seeks in his prayer for relief
4 only one dollar in monetary damages from the WGA. Ellison does not desire to
5 take money from other writers, and the WGA operates with dues from its writer-
6 Members. However, partly for the good of other writers, Ellison *does* seek a
7 determination that the WGA breached its duty as averred, and seeks the
8 intervention of this Honorable Court in determining the amounts, if any, that
9 Ellison is owed from Paramount's exploitation of the *City* teleplay from inception
10 to date, and an order requiring payment of those amounts.
11

12 **SECOND CLAIM FOR RELIEF**

13 (Breach of a Collective Bargaining Agreement against Paramount, Does 1-5)

14 36. Paragraphs 1 through 19 are incorporated by this reference and alleged
15 herein as though set forth fully in this section.

16 37. Under the 1960 MBA as amended by the 1966 Amendment, of which
17 Paramount and the WGA are parties and Ellison is a third party beneficiary,
18 Paramount is obligated to pay Ellison the percentages of its revenue from various
19 exploitations of the *City* teleplay, as detailed in Paragraph 12, above, and as
20 otherwise contained in the collective bargaining agreement.

21 38. On information and belief, Paramount and its licensors including *Star*
22 *Trek*-affiliated publishers, have relentlessly exploited the merchandising,
23 publication and other rights in and to the *City* teleplay, but have not notified
24 Ellison of those exploitations, accounted to him, or paid him pursuant to the
25 terms of the collective bargaining agreement. Some of these exploitations have
26 occurred during the past four years and others may have occurred prior to that
27 time but were/are not specifically known to Ellison.
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39. On information and belief Ellison avers that Paramount has no system in place for tracking its responsibilities to WGA Members upon licensing rights to third parties and willfully employs an ostrich-like approach, only accounting and paying WGA Members if specifically called upon to do so by the WGA. On information and belief, because the WGA systematically and improperly screens out or discourages legitimate claims like those of Ellison in this instance, Paramount is conveniently and improperly “relieved” by the WGA of the obligation of monitoring the rights of WGA Members in connection with its voracious and highly profitable licensing activities.

40. Ellison has been damaged by the breach in an amount not yet known, but which shall be presented in accordance with proof at the time of trial. Ellison seeks specific performance of the collective bargaining agreement, compensatory damages, reasonably foreseeable consequential damages, and incidental damages.

41. Paramount has acted in bad faith in failing to adhere to the collective bargaining agreement, and has acted willfully, maliciously, oppressively and fraudulently. To the extent punitive damages (not normally allowed in a breach of contract action) are supported by the Labor Management Relations Act, Ellison asserts his right to such damages.

1
2 **PRAYER FOR RELIEF**

3 **WHEREFORE, Plaintiff** Harlan Ellison prays for judgment against
4 Defendants as follows:

5 **On the First Claim For Breach of the Duty of Fair Representation**
6 (Against the WGA and Does 6-10)

7 1. For a determination that the WGA and/or Does 6-10 have breached
8 their duty of fair representation to Ellison for all the reasons averred herein
9 above and those presented at trial; and

10 2. One U.S. dollar in claimed monetary damages (which is not a reflection
11 of the total amount of actual monetary damage, which is much greater); and

12 3. For attorney's fees and costs, to the extent allowed by law;

13 **On the Second Claim for Breach of a Collective Bargaining Agreement**
14 (Against Defendant Paramount and Does 1-5)

15 4. For specific performance and/or compensatory damages, jointly and
16 severally, in an amount to be established in accordance with proof at trial,
17 together with interest thereon at the legal rate; and

18 5. For reasonably foreseeable consequential damages;

19 6. For punitive damages, if and as allowed by law, in accordance with
20 proof at trial, together with interest thereon at the legal rate; and

21 7. For attorney's fees and costs, to the extent allowed by law;

22 **On All Claims**

23 8. For all other relief this court deems just and proper.

24 Respectfully Submitted,

25 March 13, 2009

Law Offices of John H. Carmichael

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28 John H. Carmichael, Esq.
Attorney for Plaintiff Harlan Ellison

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DEMAND FOR JURY TRIAL

Plaintiff demands jury trial against each and every defendant on each and every cause of action complained of in this document.

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