

1 Marc Toberoff (CA State Bar No. 188547)
2 Nicholas C. Williamson (CA State Bar No. 231124)
3 Keith G. Adams (CA State Bar No. 240497)
4 TOBEROFF & ASSOCIATES, P.C.
5 2049 Century Park East, Suite 2720
6 Los Angeles, CA 90067
7 Telephone: (310) 246-3333
8 Facsimile: (310) 246-3101
9 MTobeorff@ipwla.com

10 Attorneys for Plaintiff
11 THE FIRST NATIONAL BANK IN SIOUX FALLS

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 CV 09-00674 PA (RZX)

15 THE FIRST NATIONAL BANK IN
16 SIOUX FALLS, as Trustee for
17 THE SEQUOIA CHARITABLE
18 TRUST, a Trust,

19 Plaintiffs,

20 vs.

21 WARNER BROS.
22 ENTERTAINMENT INC., a
23 corporation; WARNER BROS.
24 TELEVISION PRODUCTION INC.,
25 a corporation, and DOES 1 through
26 10,

27 Defendants.

ORIGINAL

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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
BY [Signature]

FILED

CASE NO. _____

COMPLAINT FOR:

- 1 BREACH OF CONTRACT;
- 2 FRAUD;
- 3 UNJUST ENRICHMENT;
- 4 ACCOUNTING; and
- 5 DECLARATORY RELIEF.

DEMAND FOR JURY TRIAL

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1 Plaintiff The First National Bank in Sioux Falls, as Trustee for The Sequoia
2 Charitable Trust ("Plaintiff") as and for its complaint against defendants Warner
3 Bros. Entertainment Inc. and Warner Bros. Television Production Inc. ("WBTV")
4 (collectively, "Defendants") alleges as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff is the assignee and successor in interest to all rights, claims
7 and interests of Gy Waldron and his loan-out company, Gy Waldron Productions
8 Incorporated (collectively, "Waldron"), relating to "The Dukes of Hazzard"
9 television series and all motion pictures and other derivative works based upon the
10 series. Gy Waldron is the credited "creator" of "The Dukes of Hazzard" series.
11 This action arises from Defendants' willful failure to properly account to and pay
12 Waldron and now Plaintiff, as Waldron's successor, its rightful share of
13 Defendants' gross receipts from "The Dukes of Hazzard" television series, "The
14 Dukes of Hazzard" motion pictures and other works derived from the series, in
15 willful violation of the express terms of a 1987 settlement agreement between
16 WBTV and Waldron. The 1987 settlement agreement had settled a prior action
17 concerning WBTV's prior accounting malfeasance with respect to "The Dukes of
18 Hazzard," and WBTV's repeated breaches of a preceding 1980 settlement
19 agreement with Waldron, including WBTV's willful concealment of over \$12
20 million in profits due Waldron.

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
23 1332 (diversity) in that the state of citizenship of the Plaintiff is different from
24 the state of citizenship of the Defendants, and the amount in controversy
25 exceeds \$75,000.00, exclusive of interest and costs.

26 3. This Court has personal jurisdiction over the Defendants in that
27 Defendants are regularly doing business in the State of California and in this
28 Judicial District, and because a substantial part of the relevant acts complained

1 of herein occurred in the State of California and in this District.

2 4. Venue is proper in the United States District Court for the Central
3 District of California pursuant to 28 U.S.C. §§ 1391(a)(1) and (2), in that
4 Defendants have offices in this District and regularly conduct business therein
5 and a substantial part of the acts complained of or giving rise to the claims
6 herein occurred in this District.

7 **PARTIES**

8 5. Plaintiff THE FIRST NATIONAL BANK IN SIOUX FALLS is the
9 Trustee of THE SEQUOIA CHARITABLE TRUST, a wholly charitable trust
10 organized and existing under the laws of the State of South Dakota, which has its
11 principal place of business in South Dakota and is and at all times has been a citizen
12 of the State of South Dakota. THE SEQUOIA CHARITABLE TRUST is, among
13 other things, the irrevocable assignee and successor in interest of all of Waldron's
14 rights and claims against Defendants with respect to "The Dukes of Hazzard"
15 television series and all motion pictures and other works derived from the series.

16 6. Defendant WARNER BROS. ENTERTAINMENT INC. (hereinafter,
17 "Warner Bros.") is a corporation organized and existing under the laws of the State
18 of Delaware, which has its principal place of business in Los Angeles County,
19 California, and is a citizen of the State of Delaware. Warner Bros. is the successor
20 in interest to Warner Bros., Inc.

21 7. Defendant WARNER BROS. TELEVISION PRODUCTION INC. is a
22 corporation organized and existing under the laws of the State of Delaware, which
23 has its principal place of business in Los Angeles County, California, and is a
24 citizen of the State of Delaware. WBTV is a wholly owned subsidiary of
25 Defendant Warner Bros.

26 8. Plaintiff is informed and believes and based thereon alleges that
27 Defendants Warner Bros. and WBTV are, and at all times material hereto were, the
28 alter egos of each other, and there exists and has existed at all times material hereto

1 a unity of interest and ownership among such Defendants such that any
2 separateness has ceased to exist in that Defendants, and/or each of them, used assets
3 of the other Defendants, and/or each of them, for its and/or their separate,
4 individual purposes, and caused valuable assets, property, rights and/or interests to
5 be transferred to each other without adequate consideration.

6 9. Plaintiff is informed and believes and based thereon alleges that the
7 fictitiously named defendants captioned hereinabove as Does 1 through 10,
8 inclusive, and each of them, were in some manner responsible or legally liable for
9 the actions, damages, events, transactions and circumstances alleged herein. The
10 true names and capacities of such fictitiously named defendants, whether
11 individual, corporate, associate, or otherwise, are presently unknown to Plaintiff,
12 and Plaintiff will amend its Complaint to assert the true names and capacities of
13 such fictitiously named defendants when the same have been ascertained. For
14 convenience, each reference herein to a named Defendant or to Defendants shall
15 also refer to the Doe defendants and each of them.

16 10. Plaintiff is informed and believes and based thereon alleges that each
17 of the Defendants was the agent, partner, servant, employee, or employer of each of
18 the other Defendants herein, and that at all times herein mentioned, each of the
19 Defendants was acting within the course and scope of such employment,
20 partnership and/or agency and that each of the Defendants is jointly and severally
21 responsible for the damages hereinafter alleged.

22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 **Creation of "The Dukes Of Hazzard" Television Series**

24 11. In or about January-February 1978, Waldron pitched WBTB a
25 television series project tentatively entitled "Ballad," a.k.a. "The Dukes of
26 Hazzard" (hereinafter the "Dukes Series").

27 12. Waldron personally entered into a television writing contract with
28 WBTB, dated as of February 15, 1978, to write the "format," story and teleplay for

1 the Dukes Series.

2 13. After Waldron had delivered a format and presentation for the Dukes
3 Series, Waldron personally entered into a revised television writing contract with
4 WBTV, dated as of August 9, 1978, for Waldron to write the story and teleplay for
5 one of the first five episodes of the Dukes Series. The agreement provided Waldron
6 with a fixed fee and contingent compensation in the form of a defined net profit
7 participation.

8 14. The first or pilot episode of the Dukes Series aired on January 26,
9 1979 on the CBS network. The show was an instant success and ran until 1985.

10 15. Waldron entered into subsequent agreements with WBTV dated
11 February 16, 1979, April 3, 1979 and July 3, 1979, respectively, to write and/or
12 produce episodes of the Dukes Series.

13 16. Under all of the aforementioned agreements, the literary material
14 written by Waldron for the Dukes Series was "work-made-for-hire" under the
15 copyright law, owned at inception by WBTV.

16 17. As such, Waldron owned no intellectual property rights in the Dukes
17 Series. Waldron's rights were limited to the right to receive fixed compensation
18 and his contingent net profit participation in exchange for his writing services.

19 18. Defendants owned at inception and continue to own all rights, title and
20 interest in the Dukes Series and all episodes comprising the series as the proprietor
21 of "works-made-for hire" under the copyright law.

22 **The 1987 Settlement Agreement**

23 19. In or about 1980, a financial dispute arose between Waldron, on the
24 one hand, and WBTV, on the other, regarding Waldron's net profit participation in
25 the Dukes Series. This dispute did not involve, in any respect, WBTV's or Warner
26 Bros.' rights in or chain-of-title to the Dukes Series.

27 20. Thereafter, Waldron and WBTV resolved their dispute by entering into
28 a settlement agreement dated November 13, 1980 (hereinafter, the "1980

1 Settlement Agreement"). The 1980 Settlement Agreement provided that Waldron
2 would receive contingent compensation equal to a percentage of net profits from
3 the Dukes Series, as re-defined in the agreement (hereinafter, "Net Profit
4 Participation").

5 21. In or about 1983, Waldron reasonably believed that WBTV was
6 grossly under-reporting revenues from the Dukes Series and cheating Waldron on
7 their Net Profit Participation, which WBTV blankly denied. On or about
8 November 29, 1983, Waldron instituted an action against WBTV, Warner Bros. and
9 others in the Superior Court of the State of California for the County of Los
10 Angeles, Civil Action No. C 476 889 (hereinafter, the "Prior State Action").

11 22. The Prior State Action was essentially an accounting action regarding
12 Defendants' underpayment of Waldron's Net Profit Participation. The Prior State
13 Action did not involve, in any respect, WBTV's or Warner Bros.' intellectual
14 property rights in or chain-of-title to the Dukes Series, nor any rights underlying the
15 Dukes Series. Waldron, or either of them, did not claim in the Prior State Action
16 any intellectual property rights in the Dukes Series, as their rights in the Series were
17 limited to receiving their Net Profit Participation.

18 23. WBTV prolonged discovery in the Prior State Action for over three
19 years. However, Waldron's forensic accountants, Arthur Andersen, eventually
20 found that WBTV had wrongfully concealed *over \$12 million* due Waldron
21 pursuant to their Net Profit Participation under the 1980 Settlement Agreement.

22 24. Waldron and WBTV thereafter settled the Prior State Action by a new
23 settlement agreement, dated as of March 31, 1987 (hereinafter, the "1987
24 Settlement Agreement") at issue herein.

25 25. Waldron, financially depleted from the drawn-out Prior State Action,
26 settled the case for \$6.2 million and, in lieu of the remaining funds owed
27 (approximately \$6 million), agreed in the 1987 Settlement Agreement to a broad
28 gross revenue participation equal, collectively, to 6.5% of Defendants' gross

1 receipts in excess of \$276 million, from any source, from any exploitation of the
2 Dukes Series, including any exploitation of any rights in the Dukes Series, or any
3 exploitation of any of the literary or other material on which the Dukes Series was
4 based or adapted or included therein, in perpetuity throughout the universe.

5 26. Paragraph 5. a. of the 1987 Settlement Agreement states:

6 "In addition to the payments set forth in paragraph 3 hereof
7 [\$6,200,000], WBTV will pay, as hereinafter set forth, to Gy Waldron
8 and GWPI the following: (i) to Gy Waldron, 2.167% of 100% of all
9 gross receipts derived from Dukes [of Hazzard] after the first
10 \$276,000,000 of said gross receipts, and to GWPI, 4.333% of 100% of
11 all gross receipts derived from Dukes [of Hazzard] after the first
12 \$276,000,000 of gross receipts;"

13 27. Paragraph 5. c. of the 1987 Settlement Agreement states:

14 "c. 'Gross receipts' (i) for monies derived from Dukes in excess of
15 \$276,000,000. . . shall mean: All gross monies actually received by
16 WBTV and its affiliates or subsidiaries (which refer to companies 50%
17 or more of which are owned by Warner Bros., Inc.), except for any
18 monies directly received by affiliated retail entities from consumers,
19 from the beginning of time from the exploitation of the [Dukes of
20 Hazzard] series... and all rights therein (including without limitation,
21 any and all literary, musical, merchandising, cartoons (and it is hereby
22 specifically acknowledged that cartoons are not spin-offs) and other
23 material upon which it is based or from which it is adapted or which is
24 included therein) in perpetuity throughout the universe."

25 28. Waldron's 6.5% gross participation therefore applied and applies not
26 only to Defendants' gross revenues from the Dukes Series itself, but, as well, to
27 gross revenues from the exploitation of any works derived from the Dukes Series,
28 "all rights therein... and all literary... and other material upon which it [the Dukes
Series] is based or from which it is adapted... in perpetuity throughout the
universe." This necessarily included "any and all" "Dukes of Hazzard"
merchandising, motion pictures, cartoons, videogames, and other derivative works.

29. By written amendment to the 1987 Settlement Agreement dated
November 30, 1987, the aforesaid \$276,000,000 threshold was increased in
WBTV's favor to \$293,600,000. Thus, under the 1987 Settlement Agreement,
Waldron, collectively, were entitled to 6.5% of Defendants' "gross receipts" as

1 defined in the 1987 Settlement Agreement, after Defendants' "gross receipts"
2 equaled \$293,600,000 (hereinafter, the "6.5% Gross Participation").

3 30. In or about the late 1980's, Defendants' gross receipts from the
4 exploitation of the Dukes Series and all rights therein exceeded \$293,600,000, as
5 reflected in WBTV's own accounting statements to Waldron, triggering Waldron's
6 6.5% Gross Participation.

7 31. The 1987 Settlement Agreement also provided that Waldron would
8 receive 6.5% of monies derived from new television series that were "spin-offs" of
9 the Dukes Series (such as "Enos" [1980-1981]), but this profit participation was
10 much less valuable than Plaintiffs' 6.5% Gross Participation because it commenced
11 with the first dollar of "net profits" (as defined by WBTV), if any, computed
12 separately for each such television "spin-off" series ("Spin-off Net Participation").

13 32. Plaintiff is informed and believes and based thereon alleges that from
14 1987 through mid-2005, WBTV applied Waldron's 6.5% Gross Participation to the
15 gross receipts of any Warner Bros. entity, including gross receipts from the
16 exploitation of *derivative works* based on the Dukes Series (excluding television
17 "spin-offs" to which the Spin-Off Net Participation applied) such as, without
18 limitation, gross receipts from derivative "Dukes of Hazzard" merchandising
19 products, animated programming and videogames, all pursuant to the express terms
20 of the 1987 Settlement Agreement.

21 The Dukes Films

22 33. On August 5, 2005, Warner Bros. initially released in theaters a
23 feature-length motion picture derived from the Dukes Series, entitled "The Dukes
24 of Hazzard" (hereinafter, the "Dukes Film"). The Dukes Film was thereafter
25 released on home video ("DVD") and free and pay television worldwide.

26 34. The Dukes Film constituted an exploitation of (i) motion picture
27 "rights" in the Dukes Series; (ii) the "literary material... upon which it is based"
28 (*i.e.*, the episodic scripts underlying the series); and (iii) the "material... included

1 therein" (*i.e.*, the episodes comprising the series), *each* of which alone plainly
2 triggered Plaintiffs' 6.5% Gross Participation under the express terms of the 1987
3 Settlement Agreement.

4 35. Warner Bros. nonetheless frivolously refused to pay Waldron's 6.5%
5 Gross Participation in the Dukes Film and related merchandising, in blatant
6 disregard of the 1987 Settlement Agreement.

7 36. Defendants first falsely claimed that the Dukes Film constituted a
8 "spin-off" of the Dukes Series, and on this basis frivolously claimed that Waldron
9 was only entitled to the Spin-off Net Participation, pursuant to Warner Bros.'
10 infamous "Hollywood accounting."

11 37. After Defendants were "reminded" that the Dukes Film was not a
12 "spin-off" of the Dukes Series (*i.e.*, a "spin-off" is a new television series such as
13 "Enos," based on a character from the original Series), Warner Bros. frivolously
14 claimed that Waldron's 6.5% Gross Participation applied solely to an undisclosed,
15 purported internal license fee paid by Warner Bros. to WBTB for theatrical film
16 and merchandising rights to the Dukes Series, instead of to Warner Bros.' "gross
17 receipts" from the Dukes Film and related "Dukes of Hazzard" merchandising.

18 38. Defendants' newly invented position was both contrary to the express
19 terms of the 1987 Settlement Agreement (*see* paragraphs 26-27 hereinabove) and
20 their past accounting to Waldron pursuant to the 1987 Settlement Agreement.

21 39. On or about March 13, 2007, Warner Bros. initially released on DVD a
22 second feature-length motion picture based on the Dukes Series, entitled "The
23 Dukes of Hazzard: The Beginning" (hereinafter, collectively with the first Dukes
24 Film, the "Dukes Films"), for which Defendants also did not pay Waldron's 6.5%
25 Gross Participation.

26 40. Plaintiff is informed and believes and thereon alleges that, as with
27 Waldron's profit participation under the 1980 Settlement Agreement, Defendants
28 have also consistently underpaid Waldron on their 6.5% Gross Participation, even

1 with respect to "Dukes of Hazzard" exploitations (e.g., distribution of the Dukes
2 Series) for which Defendants do not deny their accountability.

3 41. By written assignment, Waldron irrevocably transferred to The
4 Sequoia Charitable Trust, of which Plaintiff The First National Bank In Sioux Falls
5 is the Trustee, all of Waldron's right, title, claims or interest in the Dukes Series
6 and Dukes Films, including Waldron's 6.5% Gross Participation, and all rights and
7 claims against Defendants under the 1987 Settlement Agreement (all collectively,
8 "Claims"). Waldron has retained no financial or other interest in the Claims or this
9 lawsuit. The sole beneficiaries of The Sequoia Charitable Trust are charities,
10 qualified under 26 U.S.C. § 501(c)(3).

11 **FIRST CLAIM FOR RELIEF**

12 (Breach of Contract – Against all Defendants)

13 42. Plaintiff hereby realleges and incorporates by this reference, as though
14 set forth in full, the allegations in paragraphs 1 through 41, inclusive.

15 43. By executing the 1987 Settlement Agreement, Waldron and
16 Defendants entered into a valid, binding, and enforceable contract.

17 44. Waldron performed all conditions, covenants, and promises required to
18 be performed under the terms and conditions of the 1987 Settlement Agreement.

19 45. Defendants have breached the 1987 Settlement Agreement by failing
20 to perform their duties and obligations as required by the terms of the 1987
21 Settlement Agreement, including, but not limited to, their failure to pay to Waldron
22 the full amount of the 6.5% Gross Participation due Waldron under the 1987
23 Settlement Agreement, and now Plaintiff as Waldron's successor.

24 46. As a direct and proximate result of Defendants' breach of the 1987
25 Settlement Agreement, Plaintiff has suffered damages in an amount to be proven at
26 trial.

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1 intent to induce Waldron to enter into the 1987 Settlement Agreements and settle
2 the Prior State Action for millions of dollars less than what Defendants owed
3 Waldron.

4 54. Defendants' representations and promises alleged hereinabove were
5 false, and were known by Defendants to be false when they were made to Waldron,
6 in that, when WBTV entered into the 1987 Settlement Agreement, Defendants
7 never intended to properly account to and pay Waldron the full 6.5% Gross
8 Participation promised in the 1987 Settlement Agreement.

9 55. Waldron actually, reasonably and justifiably relied upon Defendants'
10 misrepresentations, false promises and concealment of material facts. But for the
11 misrepresentations, false promises and concealment alleged hereinabove, Waldron
12 would not have consented to, entered into, or consummated the 1987 Settlement
13 Agreement.

14 56. Defendants' misrepresentations, false promises and concealment
15 alleged hereinabove with respect to Waldron's 6.5% Gross Participation were made
16 with the intent to defraud, deceive and manipulate Waldron and to induce Waldron
17 to consent to, ratify and consummate the 1987 Settlement Agreement for a
18 substantially lower cash payment than Defendants already owed to Waldron.

19 57. As a proximate cause and direct result of Defendants'
20 misrepresentations, false promises and concealment, Plaintiff has suffered damages
21 in a sum not less than \$15 million.

22 58. The wrongful acts and omissions of Defendants as alleged hereinabove
23 were conducted in an intentional, malicious, cold, callous, calculated and
24 oppressive manner in conscious disregard for the rights of Waldron, injuring and
25 damaging Waldron, which conduct was despicable and entitles Plaintiff to punitive
26 damages in an amount sufficient to punish Defendants, to be proven at trial,
27 together with pre-judgment interest.

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ON THE THIRD CLAIM FOR RELIEF

73. For restitution in an amount to be determined according to proof at trial;

ON THE FOURTH CLAIM FOR RELIEF

74. For an accounting by the Defendants of 6.5% of any and all gross receipts from the exploitation of the Dukes Series and any and all derivative works based, in whole or in part on the Dukes Series, including, but not limited to, all revenues from the exploitation of merchandising, television programs, feature motion pictures, videogames, "new media," soundtracks, and other derivative products;

75. For the imposition of a constructive trust for the benefit of Plaintiff on all sums received and to be received by the Defendants from such exploitations;

ON THE FIFTH CLAIM FOR RELIEF

76. For a declaration that Plaintiff's 6.5% Gross Participation entitles it to 6.5% of the gross revenues from all sources received by WBTV, Warner Bros., or any entity 50% or more of which is owned by Warner Bros., from the exploitation of derivative works of any kind based in whole or in part on the Dukes Series, including, without limitation, "Dukes of Hazzard" merchandising, derivative television programs, feature motion pictures, videogames, soundtracks and "new media" exploitations.

ON ALL CLAIMS FOR RELIEF

77. For interest at the maximum legal rate;

78. For Plaintiff's costs of suit, including allowable attorneys' fees incurred herein; and

79. For such other and further relief as the Court may deem just and proper.

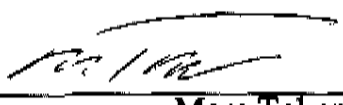
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DATED: January 28, 2009

TOBEROFF & ASSOCIATES, P.C.

By: 

Marc Toberoff

Attorneys for Plaintiff THE FIRST NATIONAL
BANK IN SIOUX FALLS, Trustee for THE
SEQUOIA CHARITABLE TRUST.


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JURY TRIAL DEMANDED

Plaintiff hereby requests a trial by jury on each claim for relief alleged in the Complaint.

DATED: January 28, 2009

TOBEROFF & ASSOCIATES, P.C.

By: 

Marc Toberoff

Attorneys for Plaintiff THE FIRST NATIONAL BANK IN SIOUX FALLS, Trustee for THE SEQUOIA CHARITABLE TRUST.