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11 AS TRUSTEE OF THE PHILIP K. DICK
12 TESTAMENTARY TRUST

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 LAURA ARCHER DICK COELHO,
16 AS TRUSTEE OF THE PHILIP K.
17 DICK TESTAMENTARY TRUST,

Case No. **V 11-8913** - *ADD*
SCG

18 Plaintiff,
19 vs.
20 MRC II DISTRIBUTION
21 COMPANY, L.P., a Delaware limited
22 partnership; MRC II HOLDINGS
23 L.P., a Delaware limited partnership;
24 OAKTREE ENTERTAINMENT,
25 INC., a Delaware corporation;
26 GEORGE NOLFI; and MICHAEL
27 HACKETT,

COMPLAINT FOR DECLARATORY
RELIEF REGARDING STATUS OF
COPYRIGHT RIGHTS,
DECLARATORY RELIEF
REGARDING RIGHTS UNDER
CONTRACT, BREACH OF
CONTRACT, MONEY HAD AND
RECEIVED, QUANTUM MERUIT,
UNJUST ENRICHMENT, AND
ACCOUNTING

[JURY TRIAL DEMANDED]

28 Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Laura Archer Dick Coelho, as Trustee of the Philip K. Dick
Testamentary Trust, alleges:

PRELIMINARY STATEMENT

1. This case is about defendants who wrongfully want something for
nothing.

1 2. Defendants exploited the work of plaintiff Philip K. Dick
2 Testamentary Trust (the "Trust") by making a film called *The Adjustment Bureau*
3 that centered on shadowy figures who "adjust" lives and events when things don't
4 go according to plan. Now, motivated solely by greed, defendants seek to establish
5 themselves as a de facto "Adjustment Bureau" of Hollywood. Using heavy handed
6 means, they seek to "adjust" agreements entered into long-ago agreed, "adjust"
7 determinations made long ago by the U.S. Copyright Office, and even "adjust"
8 history so as to hoard any and all monies rightfully earned by the estate of the man
9 whose genius inspired what is indisputably a highly successful film.

10 3. Philip K. Dick was the visionary author of science fiction novels and
11 stories that have provided the basis for nearly a dozen feature films, including the
12 classic *Blade Runner* and mega-hits like *Total Recall* and *Minority Report*. Dick
13 died in 1982, leaving a library of more than 200 written works that Hollywood
14 continues to mine for box office gold. The author's unique creative legacy is
15 safeguarded by the Trust, which is overseen by Dick's children.

16 4. In 2001, defendant George Nolfi was a writer without a major screen
17 credit to his name; defendant Michael Hackett had yet to produce his first feature
18 film; and Media Rights Capital and its subsidiaries and affiliates did not even exist.
19 That was the state of affairs when Hackett handed Nolfi the Philip K. Dick story
20 "Adjustment Team" and suggested it might make a good movie.

21 5. Nolfi approached the Trust, and negotiated a contract giving him the
22 option to acquire exclusive movie rights to "Adjustment Team." He was granted
23 the option at a bargain rate. In exchange, he committed to make substantial
24 payments to the Trust if and when a movie was created. As a condition to the deal
25 going forward, Nolfi and his representatives expressly signed off that he had
26 verified and approved the chain of title for "Adjustment Team."

27 6. Years passed. The Trust could have let the option expire. Instead, it
28 granted Nolfi one extension after another. In return, he agreed to improve the

1 Trust's compensation. If a motion picture ultimately resulted, the Trust would be
2 rewarded for its perseverance.

3 7. As Nolfi and Hackett attempted to develop "Adjustment Team,"
4 several more major motion pictures based on Dick works were released, and the
5 name and reputation of Philip K. Dick grew in Hollywood. Nolfi and Hackett
6 turned to the Trust, submitting draft after draft of the screenplay to receive creative
7 comments, thereby gaining the unique insights of Dick's heirs, who had long and
8 valuable experience in translating their father's visions to film.

9 8. Finally, in 2009, Nolfi and Hackett succeeded in getting their
10 adaptation of "Adjustment Team" set up at Media Rights Capital ("MRC"). Nolfi
11 got to write and make his feature film directorial debut. He and Hackett were both
12 producers of the film. ~~THE~~ Matt Damon was hired to star. Universal Pictures signed on
13 to distribute the picture. With the Trust's assistance, "Adjustment Team" had
14 become *The Adjustment Bureau*.

15 9. As with any studio-released project of this size—in such a high-risk
16 business and in such an uncertain economic climate—scores of attorneys, agents
17 and financiers were invariably involved along the way. It is inconceivable that each
18 and every detail of the project would not have been fully vetted before it was
19 greenlit and funds of the film's investors were put at risk.

20 10. In marketing the movie, the defendants took every opportunity to
21 exploit the valuable imprimatur of the Trust's blessing and the Dick name. As long
22 as defendants had a use for the Trust, they did everything they could to capitalize
23 on the fame, the cachet, the brand of being BASED UPON A STORY BY PHILIP
24 K. DICK.

25 11. *The Adjustment Bureau* was released worldwide in early 2011. By any
26 measure, it was a huge commercial success. Although the movie reportedly only
27 cost \$62 million to make, it took in over \$128 million at the U.S. box office and
28 internationally—making it the third highest-grossing adaptation of a Philip K. Dick

1 work, behind only *Minority Report* and *Total Recall*. Even after the theatrical
2 release was over, the revenues kept coming; aided by another round of publicity
3 provided by Mr. Dick's heirs, starting in June 2011, the movie sold \$10 million in
4 DVDs in the United States alone, and unknown millions more overseas.

5 12. Now is the time when the defendants are supposed to honor their
6 contractual obligations and pay the Trust the rest of what it is owed for its rights, its
7 patience, its labors. But, having squeezed what they needed from the Trust, now
8 the defendants seek to renege.

9 13. Only after the motion picture had been in theaters for a month did the
10 defendants claim they "discovered" an issue in the copyright chain of title for
11 "Adjustment Team." They contend the copyright is invalid, and that "Adjustment
12 Team" was, at all relevant times, in the public domain. Under this absurd new
13 theory in which they seek to act as a de facto "Adjustment Bureau," defendants
14 argue they never needed the Trust. So brazen are defendants, they claim that they
15 could have made and released the movie worldwide without having to pay *anything*
16 for the rights to the underlying Dick work, without having to pay *anything* for the
17 rights to use and leverage the Philip K. Dick name and goodwill, and without
18 having to pay *anything* for the benefits of the contributions from the Dick heirs.
19 So, despite having gotten *their* benefits of the bargain, defendants seek to deprive
20 the Trust of *its* side of the deal.

21 14. Thus, this Court is called upon to determine the validity of the Trust's
22 copyright in "Adjustment Team." A judicial declaration that the copyright is alive
23 and well defeats all of defendants' arguments against paying. A multitude of facts
24 confirms the copyright's health.

25 15. First, Nolfi—and, by succession, the MRC defendants—and each of
26 their representatives approved the chain of title back in 2001; they cannot challenge
27 it now. Second, given the major players involved and the money at stake, it is
28 simply not credible that defendants never performed their own copyright due

1 diligence, but instead *coincidentally* only found the supposed issue after they no
2 longer needed the Trust. Third, the “publication” on which their theory is based
3 was unauthorized, meaning it had no impact on the copyright status of “Adjustment
4 Team.” Fourth, the validity of the Trust’s copyright is confirmed by the U.S.
5 Copyright Office’s grant of a registration and a renewal, which are entitled to a
6 legal presumption of correctness. And fifth, even if the work were in the U.S.
7 public domain, it remains copyrighted internationally—meaning the defendants’
8 globally released movie required the rights granted by the Trust in any event.

9 16. Defendants also got their money’s worth, with or without copyright.
10 They benefited enormously from the commercial value of the Philip K. Dick name
11 and brand. They received the Trust’s creative and promotional labors, and in fact
12 worked with Universal to encourage publicity involving the heirs. Defendants’
13 unwillingness to pay for any of these benefits, which they requested and enjoyed to
14 their considerable financial betterment, is a cynical and unwarranted grab for more
15 money, plain and simple.

16 17. The Trust did not seek out this fight. It has always zealously guarded
17 the legacy of Philip K. Dick—but, until today, nearly three decades after the
18 author’s passing, it has never had to file a lawsuit. Some things, however, are worth
19 fighting for. The vindication of Mr. Dick’s rights, and those of his heirs, are worth
20 fighting for.

21 18. Throughout his vast body of work, Philip K. Dick returned again and
22 again to the challenges of differentiating between reality and illusion. Here, let
23 there be no mistake: like Mr. Dick’s enduring talent, the Trust’s rights, and its
24 entitlement to just compensation, are real. The defendants’ positions are poor
25 fiction, which should be rejected and forgotten.

THE PARTIES

26
27 19. Plaintiff, the Philip K. Dick Testamentary Trust (the “Trust”), by and
28 through its Trustee, Laura Archer Dick Coelho, is a testamentary trust formed to

1 maintain, promote, and develop the creative works of renowned science fiction
2 author Philip K. Dick.

3 20. The Trust is informed and believes, and on that basis alleges, that
4 Defendant MRC II Distribution Company, L.P. ("MRC Distribution") is a
5 Delaware limited partnership with its principal place of business in Los Angeles
6 County, California. The Trust is further informed and believes, and on that basis
7 alleges, that MRC Distribution at all times relevant hereto has engaged in business
8 within the State of California, both on a regular basis and specifically in connection
9 with the transactions and events alleged in this Complaint.

10 21. The Trust is informed and believes, and on that basis alleges, that
11 Defendant MRC II Holdings L.P. ("MRC Holdings") is a Delaware limited
12 partnership with its principal place of business in Los Angeles County, California.
13 The Trust is further informed and believes, and on that basis alleges, that MRC
14 Holdings at all times relevant hereto has engaged in business within the State of
15 California, both on a regular basis and specifically in connection with the
16 transactions and events alleged in this Complaint.

17 22. The Trust is informed and believes, and on that basis alleges, that
18 Defendant Oaktree Entertainment, Inc. ("Oaktree") is a Delaware corporation with
19 its principal place of business in Los Angeles County, California. The Trust is
20 further informed and believes, and on that basis alleges, that Oaktree at all times
21 relevant hereto has engaged in business within the State of California, both on a
22 regular basis and specifically in connection with the transactions and events alleged
23 in this Complaint.

24 23. The Trust is informed and believes, and on that basis alleges, that
25 Defendant George Nolfi ("Nolfi") is a resident of the State of New York who works
26 as a screenwriter and director of feature motion pictures. The Trust is further
27 informed and believes, and on that basis alleges, that Nolfi at all times relevant
28 hereto has engaged in business within the State of California, both on a regular

1 basis and specifically in connection with the transactions and events alleged in this
2 Complaint.

3 24. The Trust is informed and believes, and on that basis alleges, that
4 Defendant Michael Hackett ("Hackett") is a resident of the State of California who
5 works as a producer of feature motion pictures, and who was the producing partner
6 of Defendant Nolfi in connection with the transactions and events alleged in this
7 Complaint. The Trust is further informed and believes, and on that basis alleges,
8 that Hackett at all times relevant hereto was a resident of and has engaged in
9 business within the State of California, both on a regular basis and specifically in
10 connection with the transactions and events alleged in this Complaint.

11 25. The Trust is informed and believes, and on that basis alleges, that
12 MRC Distribution and MRC Holdings are both owned, in whole or in part, by a
13 common entity, MRC II Sub GP, LLC (which is not a party hereto); that at all times
14 material hereto, there existed a unity of interests and ownership among MRC
15 Distribution, MRC Holdings, and Oaktree (collectively, the "MRC Defendants")
16 such that any individuality between them either ceased to exist or never existed in
17 the first instance; that the MRC Defendants are controlled, dominated, managed and
18 operated in such a manner that there is no separateness between them; and that they
19 are the alter egos of each other.

20 JURISDICTION AND VENUE

21 26. This Court has subject matter jurisdiction over this action pursuant to
22 28 U.S.C. § 1331, on the grounds that the Complaint asserts claims arising under
23 the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

24 27. The Trust is informed and believes, and on that basis alleges, that this
25 Court has personal jurisdiction over the MRC Defendants because at all times
26 relevant hereto each of them has regularly engaged in business in the State of
27 California; and specifically, by entering into, acquiring rights to, or assigning rights
28 to one or more of the agreements alleged herein with individuals and/or entities

1 residing in California, which agreement(s) specify California law as the applicable
2 law and California as the venue for resolution of disputes. The MRC Defendants
3 have purposely availed themselves of the rights and privileges of conducting
4 business in the State of California.

5 28. The Trust is informed and believes, and on that basis alleges, that this
6 Court has personal jurisdiction over Nolfi because Nolfi at all times relevant hereto
7 has regularly engaged in business in the State of California; and specifically, by
8 negotiating and entering into the agreement alleged herein with individuals and/or
9 entities residing in California, which specifies California law as the applicable law
10 and California as the venue for resolution of disputes.

11 29. The Trust is informed and believes, and on that basis alleges, that this
12 Court has personal jurisdiction over Hackett because Hackett at all times relevant
13 hereto was a resident of and has regularly engaged in business in the State of
14 California.

15 30. Venue is proper in the Central District of California pursuant to 28
16 U.S.C. § 1391(b) on the grounds that (i) the MRC Defendants are “residents” of the
17 State of California, as the term “resident” is defined in 28 U.S.C. § 1391(c); (ii)
18 Nolfi engaged in business and entered into contracts at issue in this matter in the
19 State of California; (iii) Hackett is a resident of the State of California and engaged
20 in business at issue in this matter in the State of California; and (iii) a substantial
21 part of the events giving rise to the Trust’s claims occurred in this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

A. The Life, Work, and Legacy of Philip K. Dick

24 31. The plaintiff in this matter, the Trust, has brought this lawsuit to
25 vindicate the rights and the genius of legendary science fiction author Philip K.
26 Dick.

27 32. Philip K. Dick lived a tragically short life. But in his 53 years, he
28 created an unprecedented body of work, authoring 45 published novels, 125 short

1 stories, and 30 essays. Like many great artists, Mr. Dick's brilliance and influence
2 were under-appreciated and under-compensated during his life. He wrote at a fever
3 pitch, laboring day and night, yet often was paid pennies per word. Traditional
4 publishers and editors resisted his works, with their troubling themes—questioning
5 what is real, and what it means to be human—viewed as too challenging and too
6 philosophical for mainstream audiences.

7 33. Again, like many great artists, Philip K. Dick's talent was only fully
8 appreciated after his death. Dick died on March 2, 1982. Less than three months
9 later, on June 25, 1982, the motion picture *Blade Runner*—director Ridley Scott's
10 iconic adaptation of Dick's dystopian novel "Do Androids Dream of Electric
11 Sheep?"—was released. Since then, no fewer than 10 additional motion pictures
12 have been based on Dick's works, including *Total Recall* (1990), *Minority Report*
13 (2002), and the movie at the core of the present dispute, *The Adjustment Bureau*,
14 which was released theatrically in the United States and around the world in
15 February-March 2011, and was released on DVD in June 2011.

16 34. As the defendants in this case have known and eagerly exploited,
17 "Philip K. Dick" is a Hollywood and global brand that carries cachet and attracts
18 audiences. It is estimated that motion pictures and other entertainment projects
19 based on Dick's works have grossed more than a billion dollars worldwide.

20 35. Like the Defendants here, other motion picture studios, directors, and
21 writers continue to see the enduring and substantial value, both creative and
22 financial, in the visionary works of Philip K. Dick. The late author's works,
23 administered by the Trust, continue to be prized as source material for motion
24 picture and television projects. Indeed, MRC has announced that it is producing a
25 TV series based on *The Adjustment Bureau*, for potential release as early as 2012—
26 and has prominently told the world that the series is based on Philip K. Dick's short
27 story "Adjustment Team."
28

1 **B. The Agreement with Defendant Nolfi**

2 36. Upon information and belief, in 2001, after Michael Hackett brought
3 the Philip K. Dick short story "Adjustment Team" to his attention and suggested it
4 as source material for a motion picture, George Nolfi approached the Trust seeking
5 the rights to develop "Adjustment Team" as a feature film. By agreement dated as
6 of May 23, 2001, the Trust granted to Nolfi the exclusive right to purchase the
7 motion picture rights to "Adjustment Team," which, upon information and belief,
8 was written by Dick in 1953 (the "Agreement").

9 37. Under the Agreement, Nolfi committed to numerous payment
10 obligations:

11 (a) Nolfi paid \$25,000 for a one-year initial option to purchase the motion
12 picture rights, and agreed to two additional one-year option extensions in exchange
13 for his payment of \$25,000 for each extension. (Section 1(a)-(c).)

14 (b) Nolfi agreed to pay a "Set-Up Bonus" if he succeeded in entering into
15 an agreement with a studio to develop and/or produce a movie based on
16 "Adjustment Team." (Section 1(d).)

17 (c) If Nolfi decided to exercise the option and buy the motion picture
18 rights, the Agreement obligated him to pay a purchase price that varied based upon
19 the approved budget for the movie: for a movie budgeted at less than \$50 million,
20 the purchase price was \$1,000,000; for a budget between \$50 million and \$75
21 million, the purchase price was \$1,500,000; and for a budget over \$75 million, the
22 purchase price was \$1,850,000. (Section 2(a).)

23 (d) If a motion picture based on "Adjustment Team" achieved
24 "Breakeven," *i.e.*, when its worldwide gross receipts minus certain deductions
25 equals twice the cost of production plus overhead, interest, and the cost of prints
26 and advertising, Nolfi was obligated to pay an additional \$100,000. (Section
27 2(b)(i).)

28

1 (e) Nolfi was obligated to pay the Trust a further \$100,000 for each
2 additional \$10 million in worldwide gross receipts in excess of Breakeven up to the
3 point the Trust received a total of \$2 million in payments. (Section 2(b)(ii).)

4 (f) Nolfi agreed to pay the Trust 2-1/2 percent of the "net profits" derived
5 from exploitation of a motion picture based on "Adjustment Team." (Section 2(c).)

6 38. In Section 3 of the Agreement, the Trust made a variety of
7 representations and warranties, including that it was the sole owner of the rights
8 granted, and that "Adjustment Team" was not in the public domain.

9 39. On its very first page, the Agreement expressly stated that it was
10 contingent upon Nolfi's approval, in his sole discretion, of the chain of title to
11 "Adjustment Team." In other words, not only did Nolfi have a contractual right to
12 verify the chain of title for the work, but the contract literally could not go forward
13 until after Nolfi had affirmatively satisfied himself about the chain of title to
14 "Adjustment Team" and approved it. The fact that the Agreement was signed, the
15 deal went forward, the option was ultimately exercised, and *The Adjustment Bureau*
16 was made all establish that, in 2001, Nolfi approved the chain of title to
17 "Adjustment Team." For that reason, among others, Nolfi and the other Defendants
18 could not have actually or reasonably relied on the Trust's representations and
19 warranties regarding copyright ownership or status.

20 40. By its terms, the original Agreement would have expired after three
21 years, *i.e.*, on May 23, 2004. Because of his ongoing strong interest in "Adjustment
22 Team," however, Nolfi continued to request and negotiate amendments to the
23 Agreement which gave him further extensions of the option. Nolfi and the Trust
24 entered into three letter agreements amending the Agreement, dated as of
25 November 10, 2004, January 25, 2007, and April 25, 2008. (Unless otherwise
26 specified, references to the Agreement hereafter shall refer to the Agreement, as
27 amended.) Each time, the Trust extended Nolfi's option period.

1 41. In return for those further extensions, the financial terms were also
2 amended in favor of the Trust. Among other things, the letter agreement dated as of
3 January 25, 2007 (the "2007 Amendment") obligates Nolfi to make an "Additional
4 Deferment" payment to the Trust, and improves the terms of the Trust's
5 participation rights.

6 **C. Nolfi Sets Up the Picture with MRC**

7 42. In early 2009, representative of the Trust learned from reading the
8 Hollywood trade papers that Nolfi had succeeded in setting up a motion picture
9 based on "Adjustment Team" with MRC, and subsequently learned that Nolfi's
10 deal with MRC was arranged by Michael Hackett, Nolfi's producing partner.

11 43. On June 19, 2009, MRC notified the Trust that by agreement dated
12 April 20, 2009, Nolfi had assigned all of his rights in the Agreement to Oaktree, a
13 production subsidiary of MRC. MRC further advised that Oaktree was exercising
14 the option and purchasing the motion picture rights, and had wired payment of
15 \$1,400,000 to the Trust.

16 44. According to MRC Distribution, through a series of written
17 assignments, Oaktree subsequently transferred its rights in the Agreement to MRC
18 Distribution. Upon information and belief, Oaktree transferred its rights in the
19 Agreement to MRC Holdings, which in turn transferred those rights to MRC
20 Distribution. The Trust has never received a copy of the agreement between Nolfi
21 and Oaktree, nor any of the assignments.

22 45. Upon information and belief, some or all of the MRC Defendants have
23 succeeded to some or all of Nolfi's rights and obligations under the Agreement.
24 Whether and to what extent Nolfi's obligations under the Agreement have been
25 assigned or otherwise transferred to others Defendants is information that is solely
26 in the knowledge and possession of Defendants.

27 46. All of the Defendants who succeeded to any of the rights under the
28 Agreement also succeeded to Nolfi's acknowledgment therein that he had had the

1 opportunity to examine and verify, and had affirmatively approved, the chain of
2 title for "Adjustment Team."

3 **D. Defendants' Breaches of the Financial Obligations Under the Agreement**

4 47. Pursuant to paragraph 7 of the 2007 Amendment, Nolfi's—now the
5 MRC Defendants'—obligation to start making the most significant Deferment
6 payment of \$500,000 is triggered once "Initial Actual Breakeven" is achieved,
7 which is defined as "the point when 'net profits' (as defined in Paragraph 2(c) of
8 the Agreement) are first available for distribution, provided that there shall be no
9 distribution fee charged." According to Paragraph 2(c) of the Agreement, "net
10 profits" are to be defined consistently with the standard net profits definition of "the
11 production, financing and/or distribution entity," subject to good faith negotiation
12 within the customary parameters of "the production, financing and/or distribution
13 entity." The MRC Defendants were thus contractually obligated to engage in
14 discussions with the Trust regarding net profit definitions. Relying on their
15 pretextual arguments about "Adjustment Team"'s copyright status, however, the
16 MRC Defendants have taken the position that they owe no obligations at all to the
17 Trust under the Agreement. Therefore, the Defendants have not even provided the
18 Trust with standard net profit definition forms, much less engaged in good faith
19 negotiations. Unless and until Defendants do so, they cannot comply with their
20 substantial ongoing payment obligations to the Trust.

21 48. Although the foregoing is the most significant Deferment payment, it
22 is not the only one. Paragraph 2(b)(i) and (ii) of the Agreement describes other
23 Deferment payments in \$100,000 installments, which begin to be triggered once the
24 Picture reaches "Breakeven," as defined in Paragraph 2(b)(i). Moreover,
25 Defendants owe participation obligations to the Trust, as provided in Paragraph 7 of
26 the 2007 Amendment and Paragraph 2(c) of the Agreement.

27 49. Notwithstanding the roughly \$128 million in reported worldwide
28 receipts generated by *The Adjustment Bureau* from box office, a reported \$10

1 million in domestic DVD sales, and unknown millions more in international DVD
2 sales, Defendants have not even issued a single accounting statement to the Trust
3 indicating whether any of the thresholds for the Deferment payments or
4 participation payments have been reached, much less made any payments.

5 50. Upon information and belief, Defendants' failure to issue any
6 accounting statements to the Trust is unrelated to whether those financial thresholds
7 have been reached; rather, the withholding of any and all financial reporting is
8 based on Defendants' pretextual position that they owe the Trust no obligation
9 whatsoever under the Agreement. Defendants have also affirmatively repudiated
10 any obligation under the Agreement on a going forward basis, and demanded the
11 return of prior payments. The failure to issue such statements, the failure to make
12 required payments and demand the return of payments, the failure to negotiate in
13 good faith regarding an appropriate net profits definition, and the repudiation of all
14 going-forward obligations, are all among the Defendants' breaches of their
15 obligations under the Agreement.

16 **E. The Publication and Registration History of "Adjustment Team"**

17 51. In a transparent effort to evade their clear and substantial ongoing
18 payment obligations to the Trust under the Agreement, Defendants have taken the
19 unfounded position that they owe the Trust nothing because of purported issues
20 with the copyright status of "Adjustment Team." But the publication and
21 registration history of "Adjustment Team" shows that it remains protected by
22 copyright, in the United States and throughout the world.

23 52. The Trust is informed and believes, and on that basis alleges, that
24 Philip K. Dick wrote "Adjustment Team" in 1953.

25 53. The Trust is informed and believes, and on that basis alleges, that the
26 story first appeared in issue # 4 of *Orbit Science Fiction* ("Orbit"), the September-
27 October 1954 edition, which hit newsstands on July 29, 1954. *Orbit* was a short-
28 lived, fly-by-night publication that was managed through pseudonyms and which

1 lasted only five issues. The contents of *Orbit* issue # 4 were registered with the
2 U.S. Copyright Office under Registration No. B00000486659 in the name of
3 *Orbit*'s owner, Hanro Corporation. No renewal of that registration has been found.

4 54. The Trust is informed and believes, and on that basis alleges, that
5 Philip K. Dick did not authorize the publication of "Adjustment Team" in *Orbit*—a
6 third-rate pulp—and, in fact, did not even learn of the publication until after it
7 occurred. It has been reported that *Orbit* and another similar publication were
8 "phonied up" by Dick's literary agent, Scott Meredith—with Donald Wollheim, an
9 editor and publisher of science fiction, having some apparent involvement—to
10 generate bogus, bargain-price "sales" of works by Meredith's clients that he had
11 failed to sell legitimately. The Trust is informed and believes, and on that basis
12 alleges, that all this information was concealed from Dick; the author did not know
13 about these sham "sales," but, had he known the truth about *Orbit*, under any
14 circumstances he would not have knowingly allowed them to occur.

15 55. The Trust has been able to locate no contemporaneous records
16 reflecting communication from Scott Meredith advising Dick of the publication of
17 "Adjustment Team" in *Orbit*, although the agent typically did convey news of story
18 sales to the author in writing. Dick's records from 1954 show no contemporaneous
19 payment for the story. Despite being a dedicated correspondent whose letters
20 provided friends with minute details of his publishing highs and lows, Dick's letters
21 from the period make no mention at all of a sale of "Adjustment Team" to *Orbit*, or
22 of its publication therein. And, when interviewed late in his life, Dick stated that he
23 had no contact with Donald Wollheim (the editor who apparently acquired
24 "Adjustment Team" for *Orbit*) until his agent sent Wollheim the manuscript for
25 Dick's novel "Solar Lottery" in 1954—evidencing that Dick was not aware of
26 *Orbit*'s purchase of "Adjustment Team." All the objective indicia point to the same
27 conclusion: Dick didn't even know "Adjustment Team" was sold to *Orbit*, much
28 less approve the sale before it occurred.

1 56. Because Dick did not know of or consent to the publication of
2 "Adjustment Team" in *Orbit*, for purposes of copyright law, the story's appearance
3 in that magazine did not constitute "publication" at all. Made without
4 authorization, the *Orbit* appearance did not trigger any requirement on Dick's part
5 to register the copyright in his story, and likewise did not trigger any need to renew
6 a 1954 registration.

7 57. The first *authorized* publication of "Adjustment Team"—and,
8 therefore, the first publication requiring copyright notice and registration—occurred
9 in 1973, in a collection of the author's stories entitled "The Book of Philip K.
10 Dick." That volume bore the notice "Copyright 1973 by Philip K. Dick." The
11 book, including "Adjustment Team," was duly registered with the U.S. Copyright
12 Office in the name of Philip K. Dick on February 9, 1973. It was assigned
13 registration number A490535. Although no renewal was then required, a valid
14 renewal registration was made for the book, and each of the stories it contained, on
15 January 2, 2002. The renewal registration was made in the names of Laura Coelho,
16 Christopher Dick, and Isolde Hackett—the deceased author's children—and
17 received registration number RE-861-409. The renewal registration was assigned
18 to the Trust and recorded with the U.S. Copyright Office on April 29, 2009.

19 58. The renewal registration remains valid and in effect, and "Adjustment
20 Team" retains its U.S. Copyright thereunder. It is not in the public domain, in the
21 United States or anywhere else.

22 59. Even if the printing of "Adjustment Team" in *Orbit* in 1954 had
23 constituted "publication" under the copyright laws, that appearance would have
24 resulted in the work being protected, from 1954 and to the present day, in a host of
25 countries internationally. The Table of Contents page of *Orbit* issue # 4 quotes
26 different subscription rates for the U.S. (\$2.00), Canada (\$2.50), and "foreign"
27 (\$3.00), indicating that the magazine (including "Adjustment Team") was
28 simultaneously published internationally. Under the Berne Convention, such

1 simultaneous international publication entitles “Adjustment Team” to copyright
2 protection in certain Berne signatory countries for a minimum term of the author’s
3 life plus fifty years, *i.e.*, until at least 2032.

4 60. For those reasons, among others, even if “Adjustment Team” were in
5 the U.S. public domain (which it is not), it is unquestionably protected by copyright
6 in countries around the world. Anyone wanting to make a major motion picture
7 based on “Adjustment Team” and to release it in theaters worldwide—in other
8 words, anyone wanting to do what Defendants did—would require a grant of the
9 movie rights from the Trust.

10 **F. The Additional Benefits Conferred Upon Defendants by the Trust**

11 61. By entering into the Agreement with the Trust, Defendants obtained
12 far more than just a grant of motion picture rights in “Adjustment Team.”

13 62. Defendants obtained the assistance and creative participation of Isa
14 Dick Hackett, Laura Archer Dick Coelho, and the staff of Electric Shepherd
15 Productions, LLC (“Electric Shepherd”), the company established by Mr. Dick’s
16 heirs that is dedicated to stewardship and adaptation into entertainment product of
17 their father’s library of works. Ms. Hackett and Electric Shepherd have extensive
18 experience in helping translate Mr. Dick’s unique creative literary visions to film.
19 Among other contributions, Ms. Hackett and the staff of Electric Shepherd read and
20 gave input on the many iterations of the script for *The Adjustment Bureau*, and
21 ultimately Ms. Hackett received Executive Producer credit and Electric Shepherd
22 also received credit on the film.

23 63. Defendants further received substantial marketing support from the
24 Trust and the Dick heirs for their motion picture. In particular, Defendants
25 benefited by having Ms. Hackett, at the request of distributor Universal, perform a
26 series of publicized interviews in connection with the theatrical and DVD release of
27 *The Adjustment Bureau*.

1 64. By entering into (and/or succeeding to) the Agreement and obtaining
2 the imprimatur of the Trust, Defendants also were able to exploit the very
3 substantial goodwill associated with the name "Philip K. Dick." By advertising,
4 marketing, and promoting their movie's theatrical and DVD releases with the
5 "BASED UPON A STORY BY PHILIP K. DICK" banner, Defendants
6 immediately connected themselves in the minds of the movie-going public with
7 famous and successful works like *Blade Runner*, *Total Recall*, and *Minority Report*.
8 They promoted their association with the valuable Philip K. Dick brand in
9 advertising, on the film's prints, and on the DVDs. Under applicable right of
10 publicity laws, Defendants would have been prohibited from making those uses of
11 the Dick name, image, and persona had they not paid the Trust for, and been
12 granted, the rights to do so.

13 65. The MRC Defendants continue to exploit the valuable Philip K. Dick
14 name and brand. They do so on the MRC web site, and on posters and all other
15 promotional material for *The Adjustment Bureau*. In addition, when it announced
16 its television series, MRC emphasized that the series would be based on a Philip K.
17 Dick work.

18 66. Defendants have profited enormously from these benefits, none of
19 which has anything to do with copyright. Under any circumstance—with
20 "Adjustment Team" fully protected by copyright worldwide, or protected
21 internationally, or not protected at all—Defendants still received the full value they
22 have paid under the Agreement. And, as they continue to exploit *The Adjustment*
23 *Bureau* and derivative works based on it, Defendants continue to receive and profit
24 from these significant benefits.

25 67. Nor have Defendants been damaged in any respect. Even if their
26 pretextual copyright theory were entirely correct, no one has seized on the
27 purported public domain status of "Adjustment Team" and made a competing
28 motion picture that cannibalized the market for *The Adjustment Bureau*. And

1 Defendants' claim that they might have had to pay less had they known about the
2 purported copyright status issue is rank speculation.

3 **G. Nolfi's Apparent Concealment of the Copyright "Issue" from MRC**

4 68. On January 7, 2010, through their respective counsel, Nolfi contacted
5 the Trust and inquired whether the U.S. copyright for "Adjustment Team" might be
6 in the public domain. Five days later, on January 12, 2010, the Wikipedia entry for
7 "Adjustment Team" was modified by an anonymous user to state that "Adjustment
8 Team" is in the public domain in the United States based upon the 1954 publication
9 in *Orbit*.

10 69. This issue was unknown to the Trust at the time it entered into the
11 Agreement. In March 2010, the Trust explained to Nolfi that the "public domain"
12 issue was unfounded because, as described above, the 1954 publication was
13 unauthorized.

14 70. According to the MRC Defendants, despite knowing about this
15 claimed issue since at least January 2010, and despite having received the Trust's
16 explanation in March 2010, Nolfi and his producing partner, Michael Hackett, sat
17 on the issue and concealed it from the MRC Defendants for more than a year. And
18 in the meantime, Defendants requested and knowingly accepted benefits from the
19 relationship with the Trust created by the Agreement, including but not limited to:
20 receiving creative assistance from representatives of the Trust; using representatives
21 of the Trust to promote the release of the film theatrically and on home video; and
22 using the "Philip K. Dick" name, brand, and associated goodwill in promoting the
23 film theatrically, on home video, and for further derivative projects. Only after
24 receiving these and other benefits from the Trust under the Agreement have
25 Defendants taken the position that the Trust is entitled to nothing.

26 71. For the reasons set forth herein, Defendants have no legitimate
27 concerns or basis for complaint. But to the extent the MRC Defendants contend
28 otherwise, their claims should be directed to Defendants Nolfi and Hackett, who

1 apparently did not tell the MRC Defendants what they knew, and who, in any
2 event, expressly approved chain of title for "Adjustment Team" at the outset.

3 **FIRST CLAIM FOR RELIEF**

4 **(Declaratory Relief Regarding Status of Copyright Rights –**

5 **Against MRC Defendants and Nolfi)**

6 72. The Trust realleges and reincorporates all preceding allegations in this
7 Complaint.

8 73. There exists an actual and present controversy between the Trust, on
9 the one hand, and Nolfi and the MRC Defendants, on the other hand, as to whether
10 "Adjustment Team" existed in the public domain in the United States and other
11 international territories at the time that the Trust and Nolfi (now effectively the
12 MRC Defendants, based on the reported assignment) entered into the Agreement
13 (and thereafter). The Trust claims that at the time the Agreement was made,
14 "Adjustment Team" was not (and at all times thereafter has not been) in the public
15 domain in the United States or any other international territories. The Trust is
16 informed and believes, and on that basis alleges, that Nolfi and the MRC
17 Defendants dispute this claim.

18 74. Accordingly, the Trust is entitled to a judicial declaration that at the
19 time of the Agreement "Adjustment Team" was not (and at all times thereafter has
20 not been) in the public domain in the United States or any other international
21 territories.

22 **SECOND CLAIM FOR RELIEF**

23 **(Declaratory Relief Regarding Rights Under Contract –**

24 **Against MRC Defendants and Nolfi)**

25 75. The Trust realleges and reincorporates all preceding allegations in the
26 Complaint.

27 76. There exists an actual and present controversy between the Trust, on
28 the one hand, and Nolfi and the MRC Defendants, on the other hand, as to whether

1 the Trust is entitled to receive full performance by Nolfi (now effectively the MRC
2 Defendants, based on the reported assignment) of the obligations set forth in the
3 Agreement. The Trust claims that it has fulfilled all of its obligations under the
4 Agreement—including that its representations and warranties in the Agreement
5 relating to the copyright in "Adjustment Team" were accurate—and that it is
6 entitled to complete performance of Nolfi (now effectively the MRC Defendants,
7 based on the reported assignment) of his/their obligations set forth in the
8 Agreement. The Trust further claims that the representations and warranties in the
9 Agreement relating to the copyright in "Adjustment Team" were not material to the
10 Agreement for all of the reasons described in the foregoing paragraphs (including,
11 without limitation, because: Nolfi [now effectively the MRC Defendants, based on
12 the reported assignment] satisfied himself/themselves about the chain of title to
13 "Adjustment Team" and approved it; Nolfi and the other Defendants could not have
14 actually or reasonably relied on the Trust's representations and warranties regarding
15 copyright ownership or status; all of the other consideration Defendants received
16 based on the Agreement; and Defendants would have suffered absolutely no
17 damage even if the representations and warranties were inaccurate). In addition,
18 the Trust claims that even if the Court were to determine that at the time the
19 Agreement was made (or at any or all times thereafter) the "Adjustment Team" was
20 in the public domain in the United States or any other international territories,
21 and/or that the Trust's representations and warranties in the Agreement relating to
22 the copyright in "Adjustment Team" were not accurate, and/or that the Trust did not
23 fulfill some other of its obligations under the Agreement, the Trust would still be
24 entitled to receive full performance by Nolfi (now effectively the MRC Defendants,
25 based on the reported assignment) of his/their obligations set forth in the
26 Agreement for all of the reasons described in the foregoing paragraphs (including,
27 without limitation: Defendants received the benefit of being able to distribute the
28 motion picture in international territories where copyright protection for the Trust

1 would have still existed even if "Adjustment Team" had been in the public domain
2 in the United States; Defendants requested and received the benefit of creative
3 assistance from representatives of the Trust; Defendants requested and received the
4 benefit of help from representatives of the Trust to promote the release of the film
5 theatrically and on home video; and Defendants requested and received the benefit
6 of permission to use the "Philip K. Dick" name, brand, and associated goodwill in
7 promoting the film theatrically, on home video, and for further derivative projects).
8 The Trust is informed and believes, and on that basis alleges, that the MRC
9 Defendants and Nolfi dispute each of these claims.

10 77. Accordingly, the Trust is entitled to a judicial declaration that:

11 (a) The Trust has fulfilled all of its obligations under the Agreement—
12 including that its representations and warranties in the Agreement relating to the
13 copyright in "Adjustment Team" were accurate—and it is entitled to complete
14 performance of Nolfi (now effectively the MRC Defendants, based on the reported
15 assignment) of his/their obligations set forth in the Agreement;

16 (b) The Trust's representations and warranties in the Agreement relating
17 to the copyright in "Adjustment Team" were not material; and

18 (c) Even if at the time the Agreement was made (or at any or all times
19 thereafter) "Adjustment Team" was in the public domain in the United States or any
20 other international territories, and/or the Trust's representations and warranties in
21 the Agreement relating to the copyright in "Adjustment Team" were not accurate,
22 and/or the Trust did not fulfill some other of its obligations under the Agreement,
23 the Trust would still be entitled to receive full performance by Nolfi (now
24 effectively the MRC Defendants, based on the reported assignment) of his/their
25 obligations set forth in the Agreement.

1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Contract –**

3 **Against MRC Defendants and Nolfi)**

4 78. The Trust realleges and reincorporates all preceding allegations in the
5 Complaint.

6 79. The Trust and Nolfi (now effectively the MRC Defendants, based on
7 the reported assignment) entered into the Agreement on or about May 23, 2001.
8 The Agreement was subsequently amended (by letter agreements dated as of
9 November 10, 2004, January 25, 2007, and April 25, 2008).

10 80. The Trust has performed all conditions, covenants, and promises
11 required of it by the Agreement.

12 81. Starting in March 2011, Nolfi and the MRC Defendants breached the
13 Agreement in all of the ways described in the foregoing paragraphs, including by
14 failing to issue any accounting statements to the Trust, failing to make required
15 payments and demanding the return of prior payments, failing to negotiate in good
16 faith regarding an appropriate net profits definition, and repudiating any obligation
17 to the Trust under the Agreement on a going forward basis.

18 82. As a direct and proximate result of the breaches of the Agreement by
19 Nolfi and the MRC Defendants, the Trust has been damaged in an amount that is no
20 less than the jurisdictional minimum, according to proof, including without
21 limitation the \$500,000 Deferment payment as alleged above, along with interest at
22 the legal rate.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Money Had and Received –**

25 **Against MRC Defendants and Nolfi)**

26 83. The Trust realleges and reincorporates all preceding allegations in the
27 Complaint.

1 100. By virtue of the Agreement alleged herein and its entitlement to
2 receive contingent compensation, the Trust is entitled to an accounting from Nolfi
3 (now effectively the MRC Defendants, based on the reported assignment). The
4 amount of contingent compensation due from Nolfi (now effectively the MRC
5 Defendants, based on the reported assignment) to the Trust is unknown to the Trust
6 and cannot be determined without an accounting. Nolfi (now effectively the MRC
7 Defendants, based on the reported assignment) is/are in the best position to know
8 the true and correct amount of profits derived from exploitation of “Adjustment
9 Team” because the books and records necessary to make such a determination are
10 in the possession, custody, and control of Nolfi (now effectively the MRC
11 Defendants, based on the reported assignment).

12 101. The Trust is informed and believes, and on that basis alleges, that it is
13 entitled to contingent compensation contemplated by the Agreement as alleged
14 herein.

15
16 Wherefore, the Trust prays for judgment as follows:

17 On the First Claim for Relief

18 1. For a judicial declaration that at the time of the Agreement
19 “Adjustment Team” was not (and at all times thereafter has not been) in the public
20 domain in the United States or any international territories;

21 On the Second Claim for Relief

22 2. For a judicial declaration that: (1) the Trust has fulfilled all of its
23 obligations under the Agreement—including that its representations and warranties
24 in the Agreement relating to the copyright in “Adjustment Team” were accurate—
25 and it is entitled to complete performance of Nolfi (now effectively the MRC
26 Defendants, based on the reported assignment) of his/their obligations set forth in
27 the Agreement; (2) the Trust’s representations and warranties in the Agreement
28 relating to the copyright in “Adjustment Team” were not material; and (3) even if at

1 the time the Agreement was made (or at any or all times thereafter) "Adjustment
2 Team" was in the public domain in the United States or any international territories,
3 and/or the Trust's representations and warranties in the Agreement relating to the
4 copyright in "Adjustment Team" were not accurate, and/or the Trust did not fulfill
5 some other of its obligations under the Agreement, the Trust would still be entitled
6 to receive full performance by Nolfi (now effectively the MRC Defendants, based
7 on the reported assignment) of his/their obligations set forth in the Agreement;

8 On the Third Claim for Relief

9 3. For an award of compensatory damages from Nolfi and the MRC
10 Defendants in an amount that is no less than the jurisdictional minimum, according
11 to proof at trial, including without limitation the \$500,000 Deferment payment as
12 alleged above;

13 On The Fourth Claim for Relief

14 4. For an award of monetary damages from Nolfi and the MRC
15 Defendants in an amount that is no less than the jurisdictional minimum, according
16 to proof at trial, including without limitation the \$500,000 Deferment payment as
17 alleged above;

18 On the Fifth Claim for Relief

19 5. For an award of compensatory damages from Defendants in an amount
20 that is no less than the jurisdictional minimum, according to proof at trial;

21 On the Sixth Claim for Relief

22 6. For restitution from Defendants in an amount that is no less than the
23 jurisdictional minimum, according to proof at trial;

24 On the Seventh Claim for Relief

25 7. For an accounting under Court supervision to determine the Deferment
26 payments and contingent compensation owed under the Agreement, and the
27 amounts due and payable in accordance with the Agreement;

28

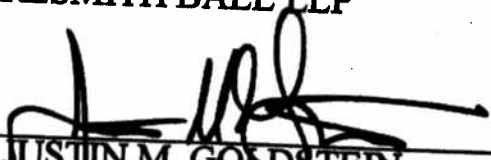
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On All Claims for Relief

- 8. For the Trust's attorneys' fees and costs of suit incurred herein;
- 9. For an award of pre-judgment and post-judgment interest; and
- 10. For such other, further or different relief as may be just and proper.

Dated: October 27, 2011

CARLSMITH BALL LLP

By: 
 JUSTIN M. GOLDSTEIN
 JAY S. HANDLIN
 Attorneys for Plaintiff
 LAURA ARCHER DICK COELHO,
 AS TRUSTEE OF THE PHILIP K.
 DICK TESTAMENTARY TRUST

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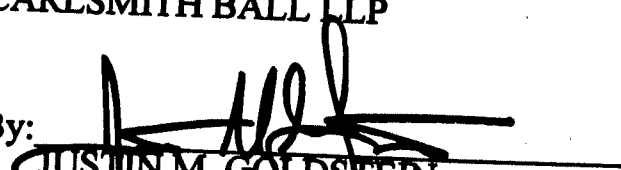
DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all claims for relief that may be tried by jury.

Dated: October 27, 2011

CARLSMITH BALL LLP

By:


JUSTIN M. GOLDSTEIN
JAY S. HANDLIN
Attorneys for Plaintiff
LAURA ARCHER DICK COELHO,
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