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9 EARL M. RAUCH (aka EARL MAC RAUCH);
10 WALTER D. RICHTER

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 MGM TELEVISION
14 ENTERTAINMENT INC., ORION
15 PICTURES CORPORATION, PFE
16 LIBRARY ACQUISITION COMPANY,
17 INC.,

18 Plaintiffs,

19 v.

20 EARL M. RAUCH (aka EARL MAC
21 RAUCH); WALTER D. RICHTER,

22 Defendants.

23 EARL M. RAUCH (aka EARL MAC
24 RAUCH); and WALTER D. RICHTER,

25 Counter-Claimants,

26 v.

27 MGM TELEVISION
28

Case No. 2:16-cv-08775 TJH-KSx

[CORRECTED]
**DEFENDANTS' ANSWER TO
COMPLAINT AND
COUNTERCLAIMS; DEMAND
FOR JURY TRIAL**

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ENTERTAINMENT INC., ORION
PICTURES CORPORATION, PFE
LIBRARY ACQUISITION COMPANY
INC.,

Counter-Defendants

Defendants and Counter-Claimants Earl M. Rauch (aka Earl Mac Rauch) (“Rauch”) and Walter D. Richter (“Richter”)(collectively where appropriate “Defendants”) respond to Plaintiffs MGM Television Entertainment Inc., Orion Pictures Corporation, and PFE Library Acquisition Company, Inc., (“Plaintiffs”) complaint and further counter-claim as follow:

ANSWER

- 1. As to Paragraph 1, Defendants deny the allegations contained therein.
- 2. As to Paragraph 2, Defendants admit that there is a controversy between Plaintiffs and Defendants regarding the ownership of the intellectual property rights in and to the world of BUCKAROO BANZAI, including but not limited to the characters, plots, themes, dialogue, mood, settings, pace, sequence of events and other protected elements therein and various copyrights and except for that admission, Defendants deny the allegations of Paragraph 2 and further deny Plaintiffs’ definition of *Buckaroo Banzai* as globally encompassing the world of Buckaroo Banzai.
- 3. As to Paragraph 3, on information and belief, Defendants admit that MGM Television is located at 245 N. Beverly Drive, Beverly Hills, CA 90210, but lack sufficient information or belief to admit or deny the remainder of this Paragraph and on that basis denies the remaining allegations contained therein.
- 4. As to Paragraph 4, on information and belief, Defendants admit that Orion Pictures is located at 245 N. Beverly Drive, Beverly Hills, CA 90210, but lack sufficient information or belief to admit or deny the remainder of this Paragraph and on that basis denies the remaining allegations contained therein.

1 5. As to Paragraph 5, on information and belief, Defendants admit that PFE
2 Library Acquisition Company is located at 245 N. Beverly Drive, Beverly Hills, CA
3 90210, but lack sufficient information or belief to admit or deny the remainder of this
4 Paragraph and on that basis denies the remaining allegations contained therein.

5 6. As to Paragraph 6, Defendants admit that Defendant Earl M. Rauch is
6 currently domiciled in the State of Texas and that Rauch was hired to write a
7 screenplay for the motion picture that was titled *The Adventures of Buckaroo Banzai*
8 *Across the 8th Dimension* but Defendants deny each and every remaining allegation of
9 Paragraph 6.

10 7. As to Paragraph 7, Defendants admit that Defendant Walter Richter is
11 currently domiciled in the State of Vermont and that he directed the motion picture
12 titled *The Adventures of Buckaroo Banzai Across the 8th Dimension* but Defendants
13 deny each and every remaining allegation of Paragraph 7.

14 8. As to Paragraph 8, Defendants do not contest the jurisdictional
15 allegations contained therein.

16 9. As to Paragraph 9, Defendants deny the allegations contained therein.

17 10. As to Paragraph 10, Defendants admit that venue is proper in this District
18 but deny that Plaintiffs have suffered any injury as a result of the Defendants acts or
19 otherwise, and further deny the remaining allegations contained therein.

20 11. As to Paragraph 11, Defendants admit the allegations of Paragraph 11 to
21 the extent they generally describe the movie titled *The Adventures of Buckaroo Banzai*
22 *Across the 8th Dimension* but Defendants deny the specific allegations of Paragraph
23 11.

24 12. As to Paragraph 12, Defendants admit that Rauch wrote the screenplay
25 for the movie titled *The Adventures of Buckaroo Banzai Across the 8th Dimension* but
26 Defendants deny the remaining allegations of Paragraph 12.

27 a. As to Paragraph 12(a), Defendants admit that Exhibit 1 to the
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complaint appears to be a copy of a Memorandum of Agreement, dated April 9, 1981, but deny the remainder of the allegations of Paragraph 12(a).

- b. As to Paragraph 12(b), Defendants admit that Exhibit 2 to the Complaint appears to be a copy of an agreement dated April 9, 1981, but deny the remainder of the allegations of Paragraph 12(b).
- c. As to Paragraph 12 (c), Defendants admit that Rauch signed an “Agreement of Writer” on or about September 9, 1981 but deny the remainder of the allegations of Paragraph 12(c).
- d. The complaint omits Paragraph 12(d), so no response is required of Defendants.
- e. As to Paragraph 12(e), the Defendants admit that the Standard Terms contain Paragraph 7 but deny the remainder of the allegations of Paragraph 12(e) and further deny that the “work” of Paragraph 7 of the Standard Terms was intended, understood or does cover anything beyond the screenplay that Rauch was hired to write.
- f. As to Paragraph 12(f), the Defendants admit that the Standard Terms contain Paragraph S (7) but deny the remainder of the allegations of Paragraph 12(f) and further deny the “work” of Paragraph 7 of the Standard Terms was intended, understood or does cover anything beyond the screenplay that Rauch was hired to write.
- g. As to Paragraph 12 (g), Defendants admit that Rauch signed a “Certificate of Authorship,” a copy of which appears to be attached to the Complaint as Exhibit 3, but deny the remaining allegations of Paragraph 12(g).

1 13. As to Paragraph 13, Defendants admit that Defendant Walter D. Richter
2 directed the 1984 motion picture titled *The Adventures of Buckaroo Banzai Across the*
3 *8th Dimension* and entered into certain agreements in connection therewith, but deny
4 the remaining allegations of Paragraph 13.

5 a. As to Paragraph 13(a), Defendants admit that Exhibit 4 to the
6 complaint appears to be a copy of a memorandum of agreement,
7 dated April 10, 1981, but deny the remainder of the allegations of
8 Paragraph 13(a).

9 b. As to Paragraph 13(b), Defendants admit that Exhibit 5 to the
10 Complaint appears to be a copy of a Director Contract—Loanout
11 (Principal Agreement) but deny the remainder of the allegations of
12 Paragraph 13(b).

13 c. As to Paragraph 13 (c), Defendants admit that the Standard Terms
14 contain Paragraph A(1) deny the remainder of the allegations of
15 Paragraph 13(c).

16 d. As to Paragraph 13(d), Defendants admit that the Standard Terms
17 contain Paragraph A(1) deny the remainder of the allegations of
18 Paragraph 13(d).

19 e. As to Paragraph 13(e), Defendants admit that the Standard Terms
20 contain Paragraph A(2) but deny the remainder of the allegations
21 of Paragraph 13(e).

22 f. The complaint contains a second Paragraph 13(e) and with respect
23 to the second Paragraph 13(e), Defendants admits that the Standard
24 Terms contain Paragraph S(6) but deny the remainder of the
25 allegations of Paragraph 13(e).

26 g. As to Paragraph 13(f), Defendants admit that the Standard Terms
27 contain Paragraph S(7) but deny the remainder of the allegations of
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1 Paragraph 13(f).

2 h. As to Paragraph 13 (g), Defendants admit that Richter served as
3 co-Producer of the movie titled *The Adventures of Buckaroo*
4 *Banzai Across the 8th Dimension* and signed a memorandum of
5 agreement dated April 10, 1981, a copy of which appears to be
6 attached to the complaint as Exhibit 6,, but deny the remaining
7 allegations of Paragraph 13(g).

8 i. As to Paragraph 13 (h), Defendants admit that a copy of a Producer
9 Contract-Loanout (Principal Agreement) appears to be attached to
10 the complaint as Exhibit 7, but deny the remaining allegations of
11 Paragraph 13(h).

12 14. Defendants lack sufficient information or belief to admit or deny the
13 allegations of Paragraph 14, and on that basis deny the allegations contained in
14 Paragraph 14.

15 15. Defendants lack sufficient information or belief to admit or deny the
16 allegations of Paragraph 15, and on that basis deny the allegations contained in
17 Paragraph 15.

18 16. Defendants lack sufficient information or belief to admit or deny the
19 allegations of Paragraph 16, and on that basis deny the allegations contained in
20 Paragraph 16.

21 17. Defendants lack sufficient information or belief to admit or deny the
22 allegations of Paragraph 17, and on that basis deny the allegations contained in
23 Paragraph 17.

24 18. Defendants lack sufficient information or belief to admit or deny the
25 allegations of Paragraph 18, and on that basis deny the allegations contained in
26 Paragraph 18.

27 19. As to Paragraph 19, Defendants deny the allegations contained therein.
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1 20. As to Paragraph 20, Defendants admit that they were generally aware in
2 2008 that certain of the Plaintiffs were considering pursuing a television series based
3 on “Buckaroo Banzai” but deny each and every remaining allegation of Paragraph 20.

4 21. As to Paragraph 21, on information and belief, Defendants admit that in
5 or about August 2011, Mark Lichtman communicated with certain of the Plaintiffs but
6 Defendants deny that Mark Lichtman was acting as Defendants’ agent or
7 representative at that time and further deny the remaining allegations of Paragraph 21.

8 22. As to Paragraph 22, on information and belief Defendants admit that their
9 counsel communicated with Plaintiffs’ counsel on or about September 13, 2106 but
10 deny the remaining allegations of Paragraph 22.

11 23. As to Paragraph 23, on information and belief, Defendants admit that
12 Mark Lichtman contacted certain of Plaintiffs on or about July 25, 2016 but
13 Defendants deny that Mark Lichtman was acting as Defendants’ agent or
14 representative at that time and further deny the remaining allegations of Paragraph 23.

15 24. As to Paragraph 24, on information and belief, Defendants admit the
16 allegations contained therein.

17 25. As to Paragraph 25, on information and belief, Defendants admit that
18 their counsel communicated with Plaintiffs’ counsel on or about August 3, 2016 but
19 deny the remaining allegations of Paragraph 25.

20 26. As to Paragraph 26, on information and belief, Defendants admit that
21 there were communications between Plaintiffs’ counsel and Defendants counsel on or
22 about August 10-11, 2016 but deny the remaining allegations of Paragraph 26.

23 27. As to Paragraph 27, on information and belief, Defendants admit that
24 there were communications were communications between Plaintiffs’ counsel and
25 Defendants counsel on or about August 12, 2016 but deny the remaining allegations
26 of Paragraph 27.

27 28. As to Paragraph 28, on information and belief, Defendants admit that
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1 there were communications were communications between Plaintiffs’ counsel and
2 Defendants counsel on or about August 18, 2016 but deny the remaining allegations
3 of Paragraph 28.

4 29. As to Paragraph 29, Defendants admit the allegations contained therein.

5 30. As to Paragraph 30, Defendants admit that Defendants counsel
6 communicated with Plaintiffs’ counsel on September 13, 2016 which communication
7 is quoted in part in Paragraph 30 but deny the remaining allegations of Paragraph 30.

8 31. As to Paragraph 31, Defendants deny the allegations contained therein.

9 32. As to Paragraph 32, Defendants admit that Richter gave an interview to
10 “Film Buff Online” on or about October 4, 2016 and that certain statements are quoted
11 in Paragraph 32, but deny that any such statement are or were false and further deny
12 the remaining allegations of Paragraph 32.

13 33. As to Paragraph 33, Defendants admit that they made certain statements
14 on the Banzai Institute Facebook website page on or about October 13, 2016 but deny
15 that any such statements were false and further deny the remaining allegations of
16 Paragraph 33.

17 34. As to Paragraph 34, Defendants deny the allegations contained therein.

18 **COUNT I**

19 **(DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP)**

20 35. As to Paragraph 35, Defendants reallege their responses to Paragraphs 1-
21 34 as set forth herein.

22 36. As to Paragraph 36, Defendants admit that there is a controversy between
23 Plaintiffs and Defendants but deny the remaining allegations of Paragraph 36.

24 37. As to Paragraph 37, Defendants deny the allegations contained therein.

25 38. As to Paragraph 38, Defendants deny the allegations contained therein.

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COUNT II

(DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP)

39. As to Paragraph 39, Defendants reallege their responses to Paragraphs 1-34 as set forth herein.

40. As to Paragraph 40, Defendants admit that there is a controversy between Plaintiffs and Defendants but deny the remaining allegations of Paragraph 40.

41. As to Paragraph 41, Defendants deny the allegations contained therein.

42. As to Paragraph 42, Defendants deny the allegations contained therein.

43. As to Paragraph 43, Defendants deny the allegations contained therein.

44. As to Paragraph 44, Defendants deny the allegations contained therein

45. As to Paragraph 45, Defendants deny the allegations contained therein.

COUNT III

(DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP)

46. Defendants reallege their responses to Paragraphs 1-34 as set forth herein.

47. As to Paragraph 47, Defendants admit that there is a controversy between Plaintiffs and Defendants but deny the remaining allegations of Paragraph 47

48. As to Paragraph 48, Defendants admit that they have asserted that Plaintiffs do not own the copyrights to the world of Buckaroo Banzai but deny the remaining allegations of Paragraph 48.

49. As to Paragraph 49, Defendants deny the allegations contained therein.

50. As to Paragraph 50, Defendants deny the allegations contained therein.

51. As to Paragraph 43, Defendants deny the allegations contained therein
Defendants deny the allegations of Paragraph 51.

52. As to Paragraph 43, Defendants deny the allegations contained therein
Defendants deny the allegations of Paragraph 52.

53. As to Paragraph 43, Defendants deny the allegations contained therein

1 Defendants deny the allegations of Paragraph 53.

2 54. As to Paragraph 43, Defendants deny the allegations contained therein
3 Defendants deny the allegations of Paragraph 54.

4 **COUNT IV**

5 **(DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP)**

6 55. As Paragraph 55, Defendants reallege their responses to Paragraphs 1-34
7 as set forth herein.

8 56. As to Paragraph 56, Defendants deny the allegations contained therein.

9 57. As to Paragraph 57, Defendants deny the allegations contained therein.

10 58. As to Paragraph 58, Defendants deny the allegations contained therein.

11 59. As to Paragraph 59, Defendants deny the allegations contained therein.

12 **COUNT V**

13 **(DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP)**

14 60. As Paragraph 60, Defendants reallege their responses to Paragraphs 1-34
15 as set forth herein.

16 61. As to Paragraph 61, Defendants deny the allegations contained therein.

17 62. As to Paragraph 62, Defendants deny the allegations contained therein.

18 63. As to Paragraph 63, Defendants deny the allegations contained therein.

19 64. As to Paragraph 64, Defendants deny the allegations contained therein.

20 **RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF**

21 Defendants deny that Plaintiffs are entitled to any and all relief sought in their
22 Complaint, and/or any other relief.

23 **AFFIRMATIVE DEFENSES**

24 In further response to the Complaint, Defendants assert the following defenses.

25 **First Affirmative Defense**

26 **(Waiver and/or Estoppel)**

27 Plaintiffs’ Complaint is barred in whole or in part based on the doctrine of
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1 waiver and/or estoppel.

2 **Second Affirmative Defense**

3 **(Unclean Hands)**

4 Plaintiffs' Complaint is barred in whole or in part based on the doctrine of
5 unclean hands.

6 **Third Affirmative Defense**

7 **(Copyright Infringement)**

8 Plaintiffs' Complaint is barred in whole or in part because Plaintiffs have
9 infringed upon the Defendants copyrights.

10 **Fourth Affirmative Defense**

11 **(Laches)**

12 Plaintiffs' complaint is barred by the doctrine of laches.

13 **Fifth Affirmative Defense**

14 **(Copyright Misuse)**

15 Plaintiffs' complaint is barred by the doctrine of copyright misuse.

16 **Sixth Affirmative Defense**

17 **(Acquiescence)**

18 Plaintiffs' complaint is barred by the doctrine of acquiescence.

19 **Seventh Affirmative Defense**

20 **(Implied Consent)**

21 Plaintiffs' complaint is barred by the doctrine of implied consent.

22 Defendants reserve the right to amend their Answer with additional defenses as
23 further information is determined.

24 **PRAYER FOR RELIEF AS TO COMPLAINT**

25 WHEREFORE, Defendants respectfully pray for the entry of judgment as
26 follows:

27 A. That the Complaint be dismissed with prejudice in its entirety;

1 B. That Plaintiffs take nothing as a result of the Complaint;

2 C. That Plaintiffs be denied any other relief including, but not limited to,
3 any claim for declaratory relief;

4 D. That Defendants be awarded their reasonable attorneys' fees in an
5 amount to be determined at trial, all costs of suit herein incurred, and pre- and post-
6 judgment interest as provided by law; and

7 E. That any such further relief as deemed just and proper by the Court, or
8 that Defendants may be entitled as a matter of law or equity, be awarded.

9 **COUNTERCLAIMS**

10 For its counterclaim against counter-defendants, MGM Television
11 Entertainment Inc., Orion Pictures Corporation, PFE Library Acquisition Company,
12 Inc. ("Counter-defendants"), Counterclaimants Earl M. Rauch ("Rauch") and Walter
13 D. Richter ("Richter") (collectively where appropriate "Counter-claimants") allege as
14 follows:

15 **PARTIES**

16 1. Counter-Claimant Earl M. Rauch ("Rauch") is the creator of the world of
17 Buckaroo Banzai ("BUCKAROO BANZAI") and its characters, themes, plots, stories,
18 dialogue, mood, settings, pace, sequence of events and other protected elements and
19 the copyrights alleged herein. BUCKAROO BANZAI, its' world and all of its
20 protected elements were created, protected and/or registered by Rauch long before
21 April 1, 1981.

22 2. Counter-Claimant Walter D. Richter ("Richter") was involved in the
23 development of certain aspects and elements of BUCKAROO BANZAI and Counter-
24 Claimants jointly and separately own the intellectual property rights in and to the
25 word of Buckaroo Banzai, and its characters, themes, plots, stories, dialogue, mood,
26 settings, pace, sequence of events and other protected elements, and the copyrights
27 alleged herein.

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3. Counter-Defendant MGM Television Entertainment Inc. (“MGM”) is a Delaware corporation with its principal place of business at 245 N. Beverly Dr., Beverly Hills, CA 90210.

4. Counter-Defendant Orion Pictures Corporation (“Orion”) is a Delaware corporation with its principal place of business at 245 N. Beverly Dr., Beverly Hills, CA 90210. Orion Pictures Corporation is an indirect, wholly-owned subsidiary of MGM Holdings Inc.

5. Counter-Defendant PFE Library Acquisition Company, Inc. (“PFE”) is a Delaware corporation with its principal place of business at 245 N. Beverly Dr., Beverly Hills, CA 90210. PFE Library Acquisition Company, Inc. is an indirect, wholly-owned subsidiary of Orion Pictures Corporation.

6. Counterclaimants are informed and believes, and on that basis allege, that during all times mentioned herein, each of the Counter-Defendants was the duly authorized agent, servant or representative of each other Counter-Defendant and was acting at all times both on its own behalf and on behalf and within the course and scope of its agency or representative capacity, with the knowledge and consent of the other Counter-Defendant.

NATURE OF THE ACTION

7. In late summer of 1973, Rauch pitched to Richter— then a principal of Harry Bailly Productions, Inc.— an original story idea for a series of interlocking, but stand-alone, episodic adventures featuring a multi-talented country-western singer and jet-car driver then named “Buckaroo Bandy.”

8. On September 27, 1973, Harry Bailly Productions entered into a one-year option agreement with Rauch for a serio comic screenplay entitled “JET CAR” that he was to write based upon a single episode from his own proposed Buckaroo Bandy series.

9. When Rauch began to write “JET CAR”, he retitled it “THE STRANGE

1 CASE OF MISTER CIGARS: A BUCKAROO BANDY MYSTERY.” At this point,
2 he introduced several key elements of what would become the world of Buckaroo
3 Banzai. The proposed plot line for this episode was to be Buckaroo’s race to defeat
4 Mister Cigars before that villain assassinated dozens of world leaders with exploding
5 cigars at a global conference.

6 10. Rauch immediately began to work on a second Buckaroo episode, what
7 would become a complete 57-page treatment for a proposed screenplay entitled
8 “LEPERS FROM SATURN — A BUCKAROO BANZAI ADVENTURE.” In this
9 treatment, Rauch changed Buckaroo’s surname from “Bandy” to “Banzai,” and
10 continued to introduce elements of his world.

11 11. Having finished the treatment for “LEPERS FROM SATURN — A
12 BUCKAROO BANZAI ADVENTURE”, Rauch at once began work on a third
13 original script embodying a different episode that he called “A BUCKAROO
14 BANZAI THRILLER — ‘FIND THE JET CAR,’ SAID THE PRESIDENT.” Here
15 Rauch introduced more details about his complex fictional world and its heroes,
16 Buckaroo Banzai and the Hong Kong Cavaliers.

17 12. Rauch then set aside this episode after completing 67 pages of the
18 screenplay and turned his attention to yet another individual episode in his proposed
19 series of BUCKAROO BANZAI adventures, beginning work on a fourth screenplay
20 entitled “SHIELDS AGAINST THE DEVIL — A BUCKAROO BANZAI
21 THRILLER.” He completed this 109-page screenplay in 1975.

22 13. In “SHIELDS AGAINST THE DEVIL”, Rauch continued to introduce
23 elements and characters. Rauch changed the name of “The Shields” to “Knights of
24 The Blue Shield” (precursors of “The Blue Blaze Irregulars” who appear in
25 subsequent episodes).

26 14. Two major plots are entwined in the episode entitled “SHIELDS
27 AGAINST THE DEVIL,” one concerning a gigantic weaponized robot steered by
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1 crude gears, levers, and sophisticated computers being operated by villains from a
2 cockpit in its head. This King-Kong-like robot is owned by a vicious cartel that
3 Buckaroo has battled before, “The World Crime League,” whose headquarters is a
4 “Fascist Fortress ... a super-secret hideout in an unknown Asian land” and whose
5 “sinister members” are “like a criminal United Nations,” their “reigning chairman” in
6 this episode “the semi-Oriental villain, HOT FAT FROM SINGAPORE.”

7 15. This first narrative thread in “SHIELDS AGAINST THE DEVIL”
8 concerns America’s race to finish the prototype Jet Car before The World Crime
9 League, who has stolen all its plans, builds one of its own and uses it for evil
10 purposes. The melodrama plays out against a second interwoven plot as Buckaroo
11 figures out that Adolf Hitler did not die in a Berlin bunker, but escaped disguised as a
12 woman and is now possibly hiding in a forbidding Ecuadorian jungle populated by
13 gigantic, hairy humans. In a short prose piece at the conclusion of “SHIELDS
14 AGAINST THE DEVIL,” Mr. Rauch laid out plans for his next Buckaroo episode,
15 “FORBIDDEN VALLEY”, and set his hero off for Ecuador in the Jet Car, heading
16 toward that mysterious, remote jungle locale in search of Adolf Hitler.

17 16. These five stories written and created by Rauch—(1) “THE STRANGE
18 CASE OF MISTER CIGARS: A BUCKAROO BANDY MYSTERY,” (2) “LEPERS
19 FROM SATURN — A BUCKAROO BANZAI ADVENTURE,” (3) “A
20 BUCKAROO BANZAI THRILLER — ‘FIND THE JET CAR,’ SAID THE
21 PRESIDENT,” (4) “SHIELDS AGAINST THE DEVIL — A BUCKAROO BANZAI
22 THRILLER,” and (5) “FORBIDDEN VALLEY”— are all discreet episodes from
23 Rauch’s original serialized story idea and were written by Mr. Rauch between 1973
24 and 1975. As such, Rauch owns and registered the copyrights to each of these
25 individual written works as well as to the overarching world of Buckaroo Banzai, the
26 characters, themes, plots, stories, dialogue, mood, settings, pace, sequence of events
27 and other protected elements (the “Buckaroo Banzai Copyrights”) and these
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1 copyrights are in full force and effect today.

2 17. In 1981, Richter formed an independent production company, Atlantic
3 Films with producer Neil Canton, and Richter provided Canton with over 200 pages
4 of the Buckaroo Banzai saga — the screenplays and prose that Mr. Rauch wrote
5 between 1973 and 1975. Mr. Canton loved the elaborate Buckaroo Banzai story idea,
6 likening the property’s concept to the distinct, separate adventures of the Indiana
7 Jones series.

8 18. On March 25, 1981, Richter and Canton sent a bound volume of
9 Buckaroo Banzai material that they called “A Buckaroo Banzai Sampler” to producer
10 Sydney Beckerman. The next day, on March 26, 1981, Canton and Richter met with
11 Sydney Beckerman, who had by then read the sampler. Mr. Beckerman told Mr.
12 Canton and Mr. Richter that he thought the material might be perfect for David
13 Begelman, then head of MGM.

14 19. On March 27, 1981, Messrs. Beckerman, Canton, and Richter met with
15 Mr. Begelman at MGM and pitched to him the entirety of Mr. Rauch’s “The
16 Adventures of Buckaroo Banzai,” leaving with him a copy of “A Buckaroo Banzai
17 Sampler.”

18 20. Their pitch to Begelman and MGM was not a typical single-story-idea
19 pitch, but rather a detailed presentation of a larger, wholly original, multi-episode
20 idea: “The Adventures of Buckaroo Banzai.” Five episodes of that proposed series, as
21 noted, already existed in written form and were included in “A Buckaroo Banzai
22 Sampler” which was left with Mr. David Begelman for his consideration.

23 21. The very next day, Begelman told Beckerman that MGM was not
24 interested in acquiring or developing Mr. Rauch’s larger property and only wanted to
25 hire Mr. Rauch to write a screenplay based upon only a single episode from “The
26 Adventures of Buckaroo Banzai.” Specifically, Mr. Begelman had chosen from the
27 five episodes in the “Sampler”, to make Rauch an offer to write a screenplay based
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1 upon the single episode “LEPERS FROM SATURN — A BUCKAROO BANZAI
2 ADVENTURE.” Counter-Defendants’ predecessors thus specifically passed on
3 acquiring any rights in any of Rauch’s larger intellectual property rights, which
4 included the five specific episodes he had copyrighted and Rauch did not transfer,
5 assign or convey to Counter-Defendants any rights in the overall world of
6 BUCKAROO BANZAI, or its characters, themes, plots, stories, dialogue, mood,
7 settings, pace, sequence of events and other protected elements, or any copyrights
8 which Counter-Claimants owned therein, including the Buckaroo Banzai Copyrights.

9 22. All that Counter-Defendants’ predecessors acquired was memorialized
10 in an April 9, 1981 agreement, which specifically provides for Counter-Defendants’
11 predecessor in interest to “borrow” Rauch as a writer-for-hire from his personal
12 holding company, Johnny B. Good Inc., to write a screenplay and two revisions based
13 on a single episode he had previously referenced in the Agreement as the “Property.”
14 No other rights of any kinds were granted to Counter-Defendants’ predecessors in
15 interest to the underlying rights which Rauch owned in World of BUCKAROO
16 BANZAI, or its characters, themes, plots, stories, dialogue, mood, settings, pace,
17 sequence of events and other protected elements.

18 23. The “work” which Rauch was specifically hired to write pursuant to this
19 agreement, and related agreements was only this screenplay based upon only one of
20 Rauch’s original stories from the world of Buckaroo Banzai, which he previously
21 created.

22 24. Rauch entered into the “Writer’s Deal Contract-Standard Terms”, which
23 specifically defined:

- 24 a. “Item of Work”: Any of the various items which writer is engaged
25 to write ... such as treatment, revised treatment, first draft
26 screenplay, etc. (emphasis added)
- 27 b. “Work”: the material which the writer is engaged to write

(emphasis added)

25. Paragraph 4 of the Standard Terms provides

a. “During each respective writing period, the writer shall write the respective work... (emphasis added).

26. When Counter-Defendants’ predecessors in interest acquired the rights to the film, which became entitled the Adventures of *Buckaroo Banzai across the 8th Dimension*, the only rights which Counter –Defendants could and did acquire were those granted to Counter-Defendants’ predecessor in interest which specifically did not include any rights to the world of Buckaroo Banzai, and its characters, themes, other plots, other stories, dialogue, mood, settings, pace, sequence of events and other protected elements, or the Buckaroo Banzai.

27. As a result of various machinations by Begelman, the “rights” to the motion picture for which Rauch was writing the screenplay, changed hand on several occasions, passing through, among others, the merged companies of MGM and United Artist, Sherwood Productions, Gladden Entertainment, Credit Lyonnais Bank-Netherlands, Polygram Filmed Entertainment, Seagrams Universal and finally back to MGM, who in 1998 purchased a library of film titles, including the film *The Adventures of Buckaroo Banzai Across the 8th Dimension*.

28. Counter-Claimants are informed and believe and thereon allege that in 2008, however, attorneys for Warner Bros. Animation (who at the time were considering partnering with MGM on a Buckaroo Banzai animated television series) concluded that Counter-Defendants did not even have a clear and clean chain of title to the rights in the motion picture entitled *The Adventures of Buckaroo Banzai Across the 8th Dimension* and Warner Bros. Animation withdrew from this proposed joint project and MGM never pursued it further.

29. Counter-Claimants own all the rights in and to the world of Buckaroo Banzai, and its characters, themes, other plots, other stories, ,dialogue, mood, settings,

1 pace, sequence of events and other protected elements, including but not limited to the
2 copyrights in the documented episodes from that world, described above, and the
3 Buckaroo Banzai Copyrights and these copyrights are in full force and effect.

4 30. In or about July, 2106, Counter-Claimants learned that Counter-
5 Defendants were developing a television series based upon, incorporating and
6 misusing their intellectual property rights and protected copyrights without the
7 approval or consent of Counter-Claimants. In that regard, Counter-Defendants were
8 asserting, without justification, that they owned all the rights in and to the world of
9 Buckaroo Banzai and its characters, themes, other plots, other stories, ,dialogue,
10 mood, settings, pace, sequence of events and other protected elements in connection
11 with a proposed television series based upon and misusing Counter-Defendants
12 intellectual property, including the Buckaroo Banzai Copyrights.

13 31. Counter-Claimants are informed and believe and thereon allege that
14 Counter-Defendants knew or should have known of Counter-Claimants intellectual
15 property rights, including their ownership of the Buckaroo Banzai Copyrights.

16 32. In that regard, on or about July 27, 2017, Counter-Claimants advised
17 Counter-Defendants of their intellectual property rights in and to the world of
18 Buckaroo Banzai and its characters, themes, other plots, other stories, ,dialogue,
19 mood, settings, pace, sequence of events and other protected elements, including the
20 Buckaroo Banzai Copyrights.

21 33. Thereafter, Counter-Defendants denied that Counter-Claimants owned
22 any rights in and to the world of Buckaroo Banzai and its characters, themes, other
23 plots, other stories, ,dialogue, mood, settings, pace, sequence of events and other
24 protected elements, including but not limited to copyrights and instead asserted that
25 they owned and controlled all such rights.

26 34. Therefore, a controversy exists between Counter-Defendants and Counter
27 Claimants as to the ownership of the rights in and to the world of Buckaroo Banzai
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1 and its characters, themes, other plots, other stories, ,dialogue, mood, settings, pace,
2 sequence of events and other protected elements, including but not limited to
3 copyrights.

4 35. As a result of the actions of Counter-Defendants, they are and unless
5 enjoined will continue to infringe upon the Counter-Claimants copyrights.

6 36. As a result of Counter-Defendants' misconduct, Counter-Claimants have
7 suffered and will continue to suffer monetary or economic damage or harm.

8 **JURISDICTION AND VENUE**

9 37. Jurisdiction of this action is premised upon 15 U.S.C. § 1121, 17 U.S.C.
10 § 101 et seq., and 28 U.S.C. §§1331, 1332(a)(1), 1338(a) and 1338(b). The amount in
11 controversy as alleged herein exceeds \$75,000, the jurisdictional limit of this Court.

12 38. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
13 Counter-defendants principal place of business is in this district, Counter-defendants
14 conducts business within this District, and a substantial part of the events or omissions
15 given rise to the claim occurred within this District

16 **COUNT I**

17 **(DECLARATORY JUDGMENT FOR**
18 **COPYRIGHT OWNERSHIP AGAINST ALL DEFENDANTS)**

19 39. Counter-Claimants incorporate by reference each and every allegation set
20 forth in Paragraphs 1-33.

21 40. An actual and justiciable controversy exists between the parties as to the
22 ownership of the copyrights at issue herein and whether Counter-Claimants have a
23 right to prevent the production by Counter-Defendants of the television series
24 described herein as well as any ancillary rights in connection therewith.

25 41. Counter-Claimants are entitled to a declaratory judgment, pursuant to
26 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57 that they are the
27 legal owners of the copyrights alleged herein, with the full right, title and interest to
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1 assert those copyrights against Counter-Defendants in connection with their
2 production of the television series described herein and with respect to any other
3 improper use of Counter-Claimants' copyrights.

4 42. Counter-Claimants are entitled to their attorney's fees and full costs,
5 including under 17 U.S. C. §505.

6 **COUNT II**
7 **(COPYRIGHT INFRINGEMENT 17 U.S.C. §101, *et. seq.*)**
8 **(AGAINST ALL DEFENDANTS)**

9 43. Counter-Claimants incorporate by reference each and every allegation set
10 forth in Paragraphs 1-37.

11 44. At all times relevant herein, Counter-Claimants have been the owners of
12 the all of the intellectual property rights in and to the world of Buckaroo Banzai and
13 its characters, themes, other plots, other stories, ,dialogue, mood, settings, pace,
14 sequence of events and other protected elements, including but not limited the
15 Buckaroo Banzai Copyrights.

16 45. Counter-defendants had access to Counter-Claimants intellectual
17 property in and to the world of Buckaroo Banzai and its characters, themes, other
18 plots, other stories, dialogue, mood, settings, pace, sequence of events and other
19 protected elements, including but not limited the Buckaroo Banzai Copyrights.

20 46. In its creation, production, marketing, and advertising of the television
21 series described herein, Counter-Defendants have copied the protectable elements of
22 Counter-Claimants' intellectual property rights in and to the world of Buckaroo
23 Banzai and its characters, themes, other plots, other stories, ,dialogue, mood, settings,
24 pace, sequence of events and other protected elements, including but not limited the
25 Buckaroo Banzai Copyrights.

26 47. Counter-Defendants' conduct infringes Counter-Claimants Buckaroo
27 Banzai Copyright under the Copyright Act, as amended, 17 U.S.C. § 101 *et seq.* and
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1 particularly § 501(a) thereof.

2 48. Counter-Defendants' misconduct has harmed Counter-Claimants,
3 including but not limited to causing lost profits and goodwill, monetary damage, and
4 damage to their reputation, in an amount to be ascertained at the time of trial and
5 exceeding \$75,000.

6 49. Counter-Claimants are entitled to recover its actual damages from
7 Counter-Defendants, and Counter-Defendants' profits under 17 U.S.C. § 504.
8 Alternatively, Counter-Claimants may elect statutory damages under 17 U.S.C. §
9 504(c). In addition, Counter-Defendants' willful use of Counter-Claimants Buckaroo
10 Banzai Copyrights constitutes willful infringement pursuant to 17 U.S.C. § 504(c).

11 50. Counter-Claimants are also entitled to its full costs and its reasonable
12 attorney's fees under 17 U.S.C. § 505.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Counter-Claimants demand judgment jointly and severally
15 against the Counter-Defendants as follows:

- 16 1. On Count I, a declaration that Counter-Claimants own all exclusive rights
17 to the intellectual property rights in and to the world of Buckaroo Banzai
18 and its characters, themes, other plots, other stories, dialogue, mood,
19 settings, pace, sequence of events and other protected elements, including
20 but not limited the Buckaroo Banzai Copyrights;
- 21 2. On Counts I & II, an order for permanent injunction enjoining Counter-
22 Defendants, their owners, members, partners, officers, agents,
23 representatives, servants, employees, distributors, licensees, corporate
24 affiliates, successors and assigns, parents, subsidiaries, divisions, and all
25 those acting in concert, privity, and/or participation therewith, from
26 directly and/or indirectly infringing upon the Counter-Claimants
27 intellectual property rights in and to the world of Buckaroo Banzai and its
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1 characters, themes, other plots, other stories, ,dialogue, mood, settings,
2 pace, sequence of events and other protected elements, including but not
3 limited the Buckaroo Banzai Copyrights;

- 4 3. On Count II, an award of Counter-Claimants actual damages and
5 Counter-Defendants' profits under 17 U.S.C. § 504, in an amount to be
6 determined at trial;
- 7 4. On Count II, alternatively, an award of statutory damages, at Counter-
8 Claimants election, under 17 U.S.C. § 504(c);
- 9 5. On Count II, An award of Counter-Claimants allowable costs and
10 reasonable attorney's fees under 17 U.S.C. § 505;
- 11 6. On Count II, an award of Counter-Claimants actual damages, Counter-
12 Defendants' profits, and Counter-Claimants allowable costs of suit under
13 15 U.S.C. § 1117(a), in an amount to be determined at trial;
- 14 7. On Count II, an award of three times the amount of Counter-Claimants'
15 actual damages and its reasonable attorneys' fees under 15 U.S.C. §
16 1117(a);
- 17 8. On Count II, an award of compensatory damages as allowed by law;
- 18 9. On Counts I & II, an award of allowable costs as provided by law;
- 19 10. On Counts' I & II, an award of Counter-Claimants' reasonable attorney's
20 fees; and
- 21 11. On Counts I & II, all such further relief as the Court may deem just and
22 proper.

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Dated: March 15, 2017

KELLER, SLOAN & ROMAN LLP

By: _____/S/ Kenneth E. Keller_____

KENNETH E. KELLER
Attorneys for Defendants and
Counter-Claimants EARL M. RAUCH
(aka EARL MAC RAUCH) and
WALTER D. RICHTER

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is hereby made for trial by jury on all issues trial to a jury.

Dated: March 15, 2017

KELLER, SLOAN & ROMAN LLP

By: _____/S/ Kenneth E. Keller_____

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