

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WARNER BROS. ENTERTAINMENT, INC., and DOES 1-20,
inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ROGUE MARBLE PRODUCTIONS, INC., a Nevada corporation,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CONFORME COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 12 2017

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Stanley Mosk Courthouse
111 N. Hill St. Los Angeles, 90012

CASE NUMBER:
(Número del Caso):

BC657271

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Neville L. Johnson, 439 N. Canon Dr. Suite 200, Beverly Hills, CA 90210, (310) 975-1080

DATE:
(Fecha)

APR 12 2017 SHERRI R. CARTER

Clerk, by
(Secretaria)

, Deputy
(Adjunto)

SHAUNYA BOLDEN

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 Neville L. Johnson (SBN 66329)
2 Douglas L. Johnson (SBN 209216)
3 James T. Ryan (SBN 210515)
4 JOHNSON & JOHNSON LLP
5 439 North Canon Drive, Suite 200
6 Beverly Hills, California 90210
7 Telephone: (310) 975-1080
8 Facsimile: (310) 975-1095
9 Email: njohnson@jllplaw.com
10 djohnson@jllplaw.com
11 jryan@jllplaw.com

12 Attorneys for Plaintiff,
13 ROGUE MARBLE PRODUCTIONS, INC.

14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 BC 657271

17 ROGUE MARBLE
18 PRODUCTIONS, INC., a Nevada
19 corporation,

20 Plaintiff,

21 vs.

22 WARNER BROS.
23 ENTERTAINMENT, INC., and
24 DOES 1-20, inclusive,

25 Defendants.

26 CASE NO.

27 COMPLAINT FOR:

- 28 1. BREACH OF WRITTEN CONTRACT;
- 1 2. ACCOUNTING;
- 2 3. MONEY DUE ON OPEN BOOK ACCOUNT;
- 3 4. FRAUD; AND
- 4 5. UNFAIR BUSINESS PRACTICES.

5 DEMAND FOR JURY TRIAL

COPY

1 Plaintiff Rogue Marble Productions, Inc., by and through its undersigned
2 attorneys, believes and alleges upon knowledge as to itself and its own acts, and as
3 to all other matters upon information and belief of its undersigned attorneys, brings
4 this Complaint against Defendants. With respect to the facts that are specifically
5 alleged herein on information and belief, Plaintiff and its undersigned attorneys are
6 informed and believe that those facts are likely to have evidentiary support after a
7 reasonable opportunity for further investigation or discovery, because, among other
8 reasons, the evidence to support those facts is exclusively in Defendants'
9 possession.

10 **PLAINTIFF**

11 1. Plaintiff Rogue Marble Productions, Inc. ("Rogue Marble") is a
12 corporation organized under the laws of the Nevada whose principal place of
13 business is located in the County of Los Angeles. Rogue Marble is the loan-out
14 company for the services of Sylvester Stallone ("Mr. Stallone").

15 **DEFENDANTS**

16 2. Defendant Warner Bros. Entertainment, Inc. ("WB"), on information
17 and belief, is, and at all relevant times was, a Delaware corporation whose principal
18 place of business is located in the County of Los Angeles. On information and
19 belief Warner Bros. Entertainment, Inc. acquired the rights and obligations of
20 Warner Bros. Inc., including the rights and obligations with respect to the film at
21 issue herein.

22 3. Defendants, Does 1 through 20, are sued herein by fictitious names for
23 the reason that their true names are unknown to Plaintiff. Plaintiff will seek leave
24 to amend this complaint to allege the true names and capacities of these Defendants
25 when the same have been ascertained. Plaintiff is informed and believes and based
26 thereon alleges that these fictitiously named Defendants are responsible in some
27 manner for the actions and damages alleged herein.
28

1 4. Plaintiff is further informed and believes and based thereon alleges
2 that Defendants at all times herein alleged were the agents, employees, servants,
3 joint venturers and/or co-conspirators of each of the other remaining Defendants,
4 and that in doing the things herein alleged were acting in the course and scope of
5 such agency, employment, joint venture and/or conspiracy.

6 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 Background

8 5. Mr. Stallone is one of the greatest American talents of the last and
9 present century. He is an actor, filmmaker, producer, director and screenwriter,
10 well-known for his Hollywood action roles, including boxer Rocky Balboa, the title
11 character of the Rocky series' seven films from 1976 to 2015; soldier John Rambo
12 from the four Rambo films, released between 1982 and 2008; and Barney Ross in
13 the three The Expendables films from 2010 to 2014. He wrote or co-wrote most of
14 the 14 films in all three franchises, and directed many of the films. He has been
15 nominated for three Academy Awards.

16 6. “Demolition Man” is a 1993 American science fiction action film and
17 stars Mr. Stallone, Wesley Snipes and Sandra Bullock (the “Film”). The Film was
18 theatrically released in the United States on October 8, 1993. WB released it on
19 VHS in March 1994, on DVD in October 1997 and 2014, and on Blu-ray in August
20 2011.

21 7. The motion picture studios are notoriously greedy. This one involves
22 outright and obviously intentional dishonesty perpetrated against an international
23 iconic talent. Here, WB decided it just wasn't going to account to Rogue Marble on
24 the Film. WB just sat on the money owed to Rogue Marble for years and told
25 itself, without any justification, that Rogue Marble was not owed any profits. When
26 a representative of Rogue Marble asked for an accounting, WB balked and then
27 sent a bogus letter asserting the Film was \$66,926,628 unrecouped. When
28 challenged about this false accounting, it made a double-talk excuse, then prepared

1 an actual profit participation statement for the same reporting period, and sent a
2 check for \$2,820,000 because the Film had in fact recouped its deficit.

3 8. Mr. Stallone is entitled to, among other things, a full accounting, an
4 explanation of how this practice came to be, interest, damages, and an end to this
5 practice for all talent who expect to be paid by WB for the fruits of their labor.

6 Overview of Agreement Between Plaintiff and WB

7 9. Rogue Marble and WB entered into an Artist Loanout Agreement
8 dated as of February 25, 1992 with respect to the services of Mr. Stallone for the
9 Film (the "Artist Loanout Agreement").

10 10. According to Paragraph 3(g) of the Artist Loanout Agreement, WB
11 "shall" pay Rogue Marble "a sum equal to 15% of 100% of the Defined Gross of
12 the Picture, (computed, determined, and payable in accordance with Exhibit "B"
13 attached hereto and incorporated herein by this reference) from and after the point
14 at which the Defined Gross of the Picture exceeds \$125 million; escalating to
15 17.5% of 100% of Defined Gross from and after the point at which the Defined
16 Gross exceeds \$200 million; and further escalating to 20% of 100% of Defined
17 Gross from and after the point at which Defined Gross exceeds \$250 million."

18 11. The term "Defined Gross" is defined in Paragraph 2 of Exhibit B of
19 the Artist Loanout Agreement.

20 12. Because "Demolition Man" achieved at least \$125 million in Defined
21 Gross, Rogue Marble is entitled to at least 15% of the Defined Gross.

22 WB Has Continuously Received Revenue

23 On the Film But Did Not Bother to Issue a Statement

24 13. WB has continuously received revenue generated by the Film.
25 Notwithstanding, WB did not send Rogue Marble a profit participation statement
26 after the period ending December 31, 1997 until recently.

1 33. In addition, Plaintiff requests that a constructive trust be imposed on
2 all monies wrongfully withheld by Defendants, in accordance with common law
3 and California Civil Code §§2223-2224, for the benefit of Plaintiff and Plaintiff's
4 interests.

5 **FOURTH CAUSE OF ACTION**

6 **FRAUD**

7 **(Against All Defendants)**

8 34. All previous allegations are realleged and incorporated herein by
9 reference, as though fully set forth herein.

10 35. Defendants have committed at least two variations of fraud.

11 **Common Law Misrepresentation**

12 36. WB did not send Rogue Marble a profit participation statement for
13 reporting periods between December 31, 1997 and September 30, 2014 even though
14 WB owed Rogue Marble contingent compensation.

15 37. According to Paragraph 6 of Exhibit B of the Artist Loanout
16 Agreement: "No statements need be rendered for any accounting period during
17 which no receipts are received." Thus, by not providing Rogue Marble with
18 statements since 1997, WB was affirmatively representing that Rogue Marble was
19 not entitled to any contingent compensation. In addition, by letter dated January
20 30, 2015, WB stated that Rogue Marble was not entitled to any contingent
21 compensation.

22 38. Rogue Marble actually and justifiably relied on the representation that
23 no payments were due for the periods that profit participation statements were not
24 provided because Defendants have a contractual duty to properly account to Rogue
25 Marble for the revenue it was receiving and to act in good faith in the computation
26 of Defined Gross.

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Concealment per Cal. Civil Code §§1572 & 1710

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2 39. WB concealed and/or suppressed facts from Rogue Marble, including:
3 (a) that contingent compensation is owing to Rogue Marble in connection with the
4 Film, and (b) any prior representations about the inability of the Film to recoup the
5 deficit were no longer true due to a change in circumstances, namely that sufficient
6 revenue had been earned to not only cover the deficits but also to achieve positive
7 profits.

8 40. WB was under a duty to disclose those facts to Rogue Marble because
9 (a) WB had exclusive knowledge of the foregoing material facts, which WB knew
10 were not known or readily available to Rogue Marble because WB did not provide
11 profit participation statements (reflecting WB's accounting), and (b) the Artist
12 Loanout Agreement requires WB to provide accountings and pay contingent
13 compensation to Rogue Marble when money is owed.

14 41. WB intentionally concealed or suppressed the material facts with the
15 intent to defraud Rogue Marble because, by concealing or suppressing the facts,
16 WB was able to maintain control over a significant amount of money for its own
17 benefit.

18 42. Rogue Marble was completely unaware of the material facts and
19 would not have acted as it did if it had known of the material facts.

20 43. As a direct and proximate result of Defendants' fraud, Rogue Marble
21 has suffered damages in an amount that is in excess of the minimum jurisdiction of
22 the Superior Court.

23 44. Defendants' conduct as described herein was done with a conscious
24 disregard of the rights of Rogue Marble, with the intent to vex, annoy, and/or harass
25 Rogue Marble and to unjustly profit at Rogue Marble's expense. Such conduct was
26 unauthorized and constitutes oppression, fraud, and/or malice under California Civil
27 Code §3294, entitling Rogue Marble to an award of punitive damages in an amount
28 appropriate to punish or set an example of the Defendants in an amount to be

1 determined at trial.

2 45. Rogue Marble may elect to rescind contractual provisions in lieu of
3 seeking damages for fraud. Plaintiff will make an election of remedies at trial.
4
5

6 **FIFTH CAUSE OF ACTION**

7 **UNFAIR BUSINESS PRACTICES [Cal. Bus. & Prof. § 17200 et. seq.]**

8 **(Against All Defendants)**

9 46. All previous allegations are realleged and incorporated herein by
10 reference, as though fully set forth herein.

11 47. Defendants have engaged in unfair, unlawful and fraudulent business
12 practices as described in California Business & Professions Code § 17200 et seq.
13 for many years with respect to the calculation of contingent compensation.

14 48. Defendants' actions constitute unfair business practices because,
15 among other things, Defendants' accounting practices are devised in such a way to
16 hide income owed to profit participants. The benefits of Defendants' accounting
17 practices do not outweigh the harm caused to Rogue Marble. Defendants' conduct
18 is unscrupulous, unethical and offensive, and causes substantial injury to
19 consumers. Defendants' conduct also significantly threatens or harms competition
20 because other studios (that compete with WB) have their own agreements with
21 profit participants and account using their own accounting methods. WB believes
22 that its accounting methods, including the ones employed with respect to Plaintiff,
23 are proprietary and confidential. WB attempts to keep its accounting methods
24 hidden from competitors and the public at large because revealing such methods
25 will have an impact on competition.

26 49. Defendants' actions constitute unlawful business practices because,
27 among other things, their actions constitute a breach of contract, money due on an
28 open account, and fraud.

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withheld;


8. For punitive damages on the Fourth Cause of Action; and

9. For such other, further, and different relief as the Court deems proper under the circumstances.

Dated: April 17, 2017

JOHNSON & JOHNSON LLP

By


Neville L. Johnson
Douglas L. Johnson
James T. Ryan
Attorneys for Plaintiff, ROGUE
MARBLE PRODUCTIONS, INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: April 17, 2017

JOHNSON & JOHNSON LLP

By


Neville L. Johnson
Attorneys for Plaintiff, ROGUE
MARBLE PRODUCTIONS, INC.