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BY: _____

1 Gerald L. Sauer (SBN 113564)
2 Eve Wagner (SBN 126471)
3 SAUER & WAGNER LLP
4 1801 Century Park East, Suite 1150
5 Los Angeles, CA 90067
6 310-712-8102 (Tel)
7 310-712-8108 (Fax)

8 Bruce P. Keller
9 Michael R. Potenza
10 James J. Pastore, Jr.
11 DEBEVOISE & PLIMPTON LLP
12 919 Third Avenue
13 New York, NY 10022
14 (212) 909-6000 (Tel)
15 (212) 909-6836 (Fax)

16 Attorneys for Defendant
17 Sony Pictures Entertainment Inc.

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 MARVEL ENTERPRISES, INC.,)
22 MARVEL CHARACTERS, INC. and)
23 TWENTIETH CENTURY FOX FILM)
24 CORPORATION,)

25 Plaintiffs,)

26 v.)

27 REVOLUTION STUDIOS)
28 DEVELOPMENT COMPANY, LLC,)
29 REVOLUTION STUDIOS)
30 DISTRIBUTION COMPANY, LLC,)
31 REVOLUTION STUDIOS HOLDING)
32 COMPANY, LLC and SONY PICTURES)
33 ENTERTAINMENT INC.,)

34 Defendants.)

Case No. CV05-4440 (AHM)(MCX)

SONY PICTURES
ENTERTAINMENT INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS PURSUANT TO
RULE 12(b)(6)

[Notice of Motion filed
concurrently]

Date: August 1, 2005
Time: 10:00 a.m.
Department: 14
Judicial Officer: Hon. A. Howard
Matz

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17 U.S.C. § 1024

17 U.S.C. § 1066

17 U.S.C. § 3013

STATE STATUTES

California Business & Professions Code § 17200passim

1 distributor of motion pictures produced by Revolution”). In fact, by admitting that
2 filming on ZOOM has not even begun, Compl. ¶ 22 n.4, the Complaint
3 underscores that Sony Pictures has nothing to distribute.

4 For those reasons, even if the allegations of the Complaint are accepted as
5 true and construed in the light most favorable to Fox and Marvel, *Selby v. New*
6 *Line Cinema Corp.*, 96 F. Supp. 2d 1053, 1055 (C.D. Cal. 2000) (Matz, J.), they
7 still fail to state any cause of action against Sony Pictures.

- 8 • As for the Section 17200 cause of action, it fails to state a claim
9 because it is completely preempted by the Copyright Act. The
10 conduct challenged – the future release of a purportedly infringing
11 work in close proximity to *X3* – simply restates, in unfair competition
12 terms, facts that also form the basis for the infringement claim. As a
13 matter of black letter law, it is preempted. *See pp. 3-4.*
- 14 • As against Sony Pictures, the Complaint also fails to state a claim for
15 copyright infringement. Because the only work alleged to infringe is
16 a draft script written and controlled by Revolution, there is nothing for
17 Sony Pictures to distribute until *next year* at the earliest and how this
18 lawsuit is resolved controls whether there ever will be a ZOOM film
19 for Sony Pictures to distribute. Accordingly, no infringing act
20 (whether direct or contributory) has occurred or will soon occur for
21 which Sony Pictures can be liable. *See pp. 4-9.*
- 22 • The Complaint is fatally flawed in yet a third way: Although
23 Plaintiffs claim entitlement to punitive damages, that remedy is not
24 permitted under either the Copyright Act or Section 17200. *See p 9.*

25 For these reasons and as set forth more fully below, the Complaint should be
26 dismissed with prejudice.
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STATEMENT OF FACTS

For purposes of this motion, the key allegations of the Complaint are as follows: Revolution owns the right to produce a motion picture based on a graphic novel and comic books with the common title, *Zoom*. Compl. ¶¶ 8, 33. Sony Pictures has the right to distribute motion pictures produced by Revolution, if and when they actually are delivered to Sony Pictures. Compl. ¶ 12 n.2. Revolution has not yet produced a final script or commenced principal photography on ZOOM, let alone produced and delivered a completed movie to Sony Pictures. Compl. ¶ 22 n.4.

Revolution, not Sony Pictures, is alleged to have creative control over ZOOM. Compl. ¶ 22. Sony Pictures' role is described as the distributor of the "finished film." *Id.* See also Compl. ¶¶ 12 n.2, 21, 63, 65.

ARGUMENT

I. The State Law Claims Are Preempted.

The alleged violation of Section 17200 reveals the true motive behind this lawsuit: Plaintiffs do not like the release date chosen for ZOOM and, wishing to eliminate potential competition for their upcoming movie, X3, have labeled that competition "unfair." They should not be allowed to misuse Section 17200 in this way.

Plaintiffs' sole factual allegation in support of this claim is that ZOOM's distribution date is too close "in proximity to the release of X3." Compl. ¶ 78. Putting aside that there is nothing at all "unfair" about releasing one movie within two weeks of another, or even deliberately choosing a simultaneous release date, this state law cause of action fails because the Copyright Act preempts it. See 17 U.S.C. § 301 (preempting "all legal or equitable rights that are equivalent to any of the exclusive rights" under Section 106).

1 State law claims are preempted when: (1) the work at issue comes within
2 the subject matter of copyright and (2) the rights asserted under state law are
3 equivalent to any of the exclusive rights within the general scope of copyright set
4 forth in the Act. *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1212-13 (9th
5 Cir. 1998) (California unfair competition claims based on Section 17200
6 preempted where plaintiff sought redress for unauthorized creation of derivative
7 work, and copying, distribution and public display of work). The ZOOM script,
8 and any finished motion picture produced as a result of it, clearly are works within
9 the subject matter of copyright, 17 U.S.C. § 102(a)(1), satisfying the first element.
10 *See Anderson v. Stallone*, No. 87-0592 WDK (Gx), 1989 U.S. Dist. LEXIS 11109,
11 at *12 (C.D. Cal. Apr. 26, 1989) (unfair competition claim preempted where action
12 was “grounded on the defendants’ alleged use of a written script”).

13 As to the second element, the state law claim must allege “an ‘extra element’
14 which changes the nature of the action” in order to avoid preemption. *Selby*, 96 F.
15 Supp. 2d at 1057. Here, Fox’s and Marvel’s state law claim is predicated entirely
16 on the future distribution to the public of a completed ZOOM motion picture that
17 allegedly might infringe; no additional substantive elements are alleged, as
18 underscored by the words in the Complaint itself. *See* Compl. ¶ 79 (“Defendants’
19 . . . use of X-MEN characters, and/or elements, and/or concepts, and/or themes,
20 and/or story lines, *coupled with* Defendants’ decision to move up, and subsequent
21 movement of, ZOOM’s release date near the release date of X3, constitute unfair
22 business acts . . .”) (emphasis added). The affirmative allegation that the release
23 date dispute would not be actionable, absent the “coupled” contention that ZOOM
24 infringes, says it all: The state law cause of action does nothing more than recast
25 the copyright law claim, and, therefore, is preempted by Section 301 of the Act.
26 *See Motown Record Corp. v. George A. Hormel & Co.*, 657 F. Supp. 1236, 1239-
27 40 (C.D. Cal. 1987) (claims based on Section 17200 preempted). Certainly, the
28 extra element test cannot be satisfied by simply “coupl[ing]” substantive

1 allegations of copyright infringement with the circular allegation that the timing of
2 the infringement is somehow unfair.

3 **II. Plaintiffs' Copyright Claim Fails To State A Cause Of Action.**

4 A. Sony Pictures Is Not A Direct Infringer.

5 Although Fox and Marvel generally allege that Sony Pictures has “violated
6 . . . copyrights in X-MEN,” Compl. ¶ 72, that bare allegation is insufficient to state
7 an infringement claim. Instead, Plaintiffs “must demonstrate that the alleged
8 infringers violate[d] at least one exclusive right granted to copyright holders under
9 17 U.S.C. § 106.” See *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th
10 Cir. 2001); see also *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 n.3 (9th Cir.
11 1989) (“The word ‘copying’ is shorthand for the infringing of any of the copyright
12 owner’s . . . exclusive rights, described at 17 U.S.C. § 106.”); *Locke v. Times*
13 *Mirror Magazine, Inc.*, No. 82 Civ. 4274 (MJL), 1985 U.S. Dist. LEXIS 23202, at
14 *7 (S.D.N.Y. Jan. 23, 1985) (“[A]n infringement may arise only when there is a
15 violation of any of the exclusive rights of the copyright owner as provided by
16 Sections 106 through 108 of the Act.”) (quotation and citation omitted).

17 The Complaint identifies only one allegedly infringing work, a June 15
18 version of the ZOOM script, see Compl. ¶¶ 12-13, 39, 41, and is completely silent
19 as to what Section 106 right(s) that script supposedly violates. Moreover, the
20 Complaint describes Sony Pictures’ role as the distributor of the “finished film,”
21 once it has been produced and delivered to Sony Pictures. Compl. ¶ 22. See also
22 Compl. ¶ 12 n.2 (“It is Plaintiffs’ understanding that . . . Sony is engaged
23 contractually to distribute Revolution’s properties, including the ZOOM film.”).

24 The Complaint does not – and indeed cannot – allege that Sony Pictures
25 violated Plaintiffs’ Section 106(3) distribution rights or Section 106(5) display
26 rights, the rights normally associated with allegations that a motion picture is
27 infringing, because no movie yet exists. As for the supposedly infringing script (a
28 violation, if at all, of Plaintiffs’ Section 106(2) derivative work right), the

1 Complaint affirmatively pleads it is Revolution's work, under Revolution's
2 control. Compl. ¶ 22. It is thus factually and legally impossible for Sony Pictures
3 to be liable for a direct violation of those, or any of Plaintiffs' other, Section 106
4 rights. See 17 U.S.C. §§ 106(1)-(6).

5 That Sony Pictures ultimately might distribute this yet-to-be-created film,
6 Exhibit A, does not change this result. Absent a finished motion picture to
7 distribute or display, Plaintiffs cannot bootstrap themselves into a direct
8 infringement claim. See *UMG Recordings, Inc. v. Hummer Winblad Venture*
9 *Ptnrs.*, No. C MDL-00-1369 MHP, 2005 U.S. Dist. LEXIS 11500, at *17 (N.D.
10 Cal. June 1, 2005) (violation of the distribution right requires an act tantamount to
11 distribution of copies); see also *National Car Rental Sys., Inc. v. Computer Assocs.*
12 *Int'l, Inc.*, 991 F.2d 426, 434 (8th Cir. 1993) (“[I]nfringement of [the distribution
13 right] requires an actual dissemination of either copies or phonorecords.”)
14 (quotation and citation omitted); *Obolensky v. G.P. Putnam's Sons*, 628 F. Supp.
15 1552, 1555-56 (S.D.N.Y. 1986) (no violation of distribution right where “there was
16 neither copying nor a sale”). In the absence of any allegation that Sony Pictures
17 has distributed, or even is about to distribute, an infringing finished motion picture,
18 Fox and Marvel fail to state a claim against Sony Pictures for direct copyright
19 infringement.

20 Fox's and Marvel's claims of direct infringement against Sony Pictures also
21 fail for the related, but independent, reason that they are so premature as to be pure
22 speculation. At this stage, they are based entirely on the hypothetical distribution
23 of a movie that does not now exist and, by virtue of this lawsuit, can never exist in
24 an infringing form. See *MAI Sys. Corp. v. UIPS*, 856 F. Supp. 538, 541-42 (N.D.
25 Cal. 1994) (dismissing Section 17200 claim for lack of standing where alleged
26 “injury does not rise to the level of ‘distinct and palpable’ harm required for
27 Article III justiciability” because it was “far too speculative) (citation omitted); see
28 also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119

1 L. Ed. 2d 351, 364 (1992) (for standing to exist, injury must be “actual or
2 imminent, not ‘conjectural’ or ‘hypothetical’”) (quotation and citations omitted);
3 *Schmier v. U.S. Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 821 (9th Cir.
4 2001) (granting motion to dismiss pursuant to Rule 12(b)(6) because injury must
5 be actual or “imminent[] . . . hypothetical, speculative, or other ‘*possible future*’
6 injuries do not count”) (citation omitted) (emphasis supplied).

7 B. Sony Pictures Is Not A Contributory Infringer.

8 The Complaint vaguely recites that “Defendants have violated and
9 contributed to each others’ violation of copyrights in X-MEN.” Compl ¶ 72. To
10 the extent it is intended to state a claim against Sony Pictures for contributory
11 copyright infringement, that generalized, purely conclusory statement is inadequate
12 to the task.

13 Contributory infringement requires (a) an infringing act; (b) defendant’s
14 knowledge of that infringing act; and (c) inducement, encouragement, or material
15 contribution to that infringing act. *See MGM, Inc. v. Grokster, Ltd.*, No. 04-480,
16 2005 U.S. LEXIS 5212, at *38-*40, 545 U.S. __ (June 27, 2005) (discussing
17 inducement); *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1022 (9th Cir.
18 2001) (discussing material contribution); *see also Perfect 10, Inc. v. Visa Int’l*
19 *Serv. Ass’n*, No. C 04-0371 JW, 2004 U.S. Dist. LEXIS 15895, at *7-*8 (N.D. Cal.
20 Aug. 5, 2004). To state this claim, Plaintiffs must allege specific facts. Isolated
21 and entirely conclusory allegations of the sort sprinkled through this Complaint are
22 not sufficient. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th
23 Cir. 1994) (“[T]he court is not required to accept legal conclusions cast in the form
24 of factual allegations if those conclusions cannot reasonably be drawn from the
25 facts alleged.”) (citation omitted); *see also Smith & Hawken, Ltd. v. Gardendance,*
26 *Inc.*, No. C 04-1664 SBA, 2004 U.S. Dist. LEXIS 22934, at *5 (N.D. Cal. Nov. 5,
27 2004) (“The court does not accept as true unreasonable inferences or conclusory
28 legal allegations cast in the form of factual allegations.”) (citation omitted); *Sobini*

1 *Films v. Tri-Star Pictures, Inc.*, No. CV 01-06615 ABC (RNBx), 2001 U.S. Dist.
2 LEXIS 23509, at *12 (C.D. Cal. Nov. 26, 2001) (“[T]he Court need not accept as
3 true any unreasonable inferences, unwarranted deductions of fact, and/or
4 conclusory legal allegations cast in the form of factual allegations.”) (citation
5 omitted).

6 Measured against this standard, the Complaint completely fails to articulate
7 any basis for a contributory infringement claim. Other than a single,
8 impermissibly vague allegation of “support,” Compl. ¶ 10, the Complaint contains
9 not one allegation, let alone any specific facts, that would sustain a claim of
10 contributory infringement. Instead, Plaintiffs focus on allegedly infringing acts
11 wholly within Revolution’s control, without adducing even an attenuated link
12 between Sony Pictures and any of those acts. *See, e.g.*, Compl. ¶¶ 35-37 (alleging
13 that **Revolution** disregarded warnings against infringing X-MEN copyrights
14 without any demonstration of how Sony Pictures induced, caused, or materially
15 contributed to that act); Compl. ¶¶ 45-61 (listing purportedly infringing similarities
16 between X-MEN and the ZOOM script without identifying any involvement by
17 Sony Pictures).

18 Once again, the agreement between Sony Pictures and Revolution for
19 finished films, Compl. ¶¶ 12 n.2, 21, cannot substitute for specific allegation that
20 Sony Pictures has induced, encouraged, or materially contributed to the alleged
21 infringing acts. *Compare Perfect 10, Inc.*, 2004 U.S. Dist. LEXIS 15895, at *8
22 (requiring “substantial” and “direct relationship”) *with UMG Recordings, Inc. v.*
23 *Bertelsmann AG*, 222 F.R.D. 408, 413-14 (N.D. Cal. 2004) (“extensive
24 allegations” that financial backers allegedly exercised full operational control of
25 Napster and ordered the infringing activity to take place were sufficient to state a
26 claim). The allegations against Sony Pictures stand in sharp contrast to those pled
27 in *UMG Recordings*. *See UMG Recordings*, 222 F.R.D. at 413-14. When the sole
28 “factual” basis for the contributory infringement claim is the generalized assertion

1 of “support,” Compl. ¶ 10, even if accepted as true, that is insufficient to state a
2 contributory infringement claim.

3 For all of these reasons, it is clear that Fox and Marvel fail to state a
4 copyright claim against Sony Pictures under either a direct or contributory theory
5 of liability.

6 **III. Plaintiffs Are Not Entitled To Punitive Damages.**

7 Neither the Copyright Act nor Section 17200 authorizes the recovery of
8 punitive damages. Fox and Marvel’s blithe assertions to the contrary are as flawed
9 as the two substantive causes of action they pled against Sony Pictures.

10 Punitive damages are unavailable as a matter of law under the Copyright
11 Act. *See Design Art v. National Football League Props., Inc.*, No. 00CV593 JM
12 (JAH), 2000 U.S. Dist. LEXIS 20172, at *14 (S.D. Cal. Nov. 27, 2000) (“Punitive
13 damages are not available under the Copyright Act.”) (*citing Oboler v. Goldin*, 714
14 F.2d 211, 213 (2d Cir. 1983) (“Punitive damages are not available in statutory
15 copyright infringement actions.”)); *see also Polar Bear Prods., Inc. v. Timex*
16 *Corp.*, 384 F.3d 700, 705 (9th Cir. 2004) (Dismissal of state law tort claims
17 “effectively precluded [Plaintiff] from seeking punitive damages” where only
18 copyright claim remained).

19 It is also well-settled that punitive damages are not available for violations
20 of Section 17200. *See, e.g., Smith & Hawken*, 2004 U.S. Dist. LEXIS 22934, at
21 *31 (“[P]unitive damages are not available under section 17200 of the Business
22 and Professions Code”) (citation omitted); *see also Newport Components, Inc. v.*
23 *NEC Home Elecs., Inc.*, 671 F. Supp. 1525, 1551 (C.D. Cal. 1987) (rejecting claim
24 for punitive damages based on California Business and Professions Code).
25 Accordingly, whether viewed as requested relief that should be dismissed, *Newport*
26 *Components*, 671 F. Supp. at 1551, or stricken from the Complaint, *Design Art*
27 2000 U.S. Dist. LEXIS 20172, at *14, no claim for punitive damages may be
28 maintained.

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CONCLUSION

For the foregoing reasons, the Court should dismiss in its entirety Plaintiffs' Complaint as against Sony Pictures.

Dated: July 8, 2005

By: Gerald L. Sauer
Gerald L. Sauer
Eve Wagner
SAUER & WAGNER LLP
1801 Century Park East, Suite 1150
Los Angeles, CA 90067
310-712-8102 (Tel)
310-712-8108 (Fax)

Bruce P. Keller
Michael R. Potenza
James J. Pastore, Jr.
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000; (212) 909-6836 (fax)

Attorneys for Defendant Sony Pictures Entertainment Inc.



Leonard D. Venger
Executive Vice President
Litigation Division

10202 West Washington Boulevard
Culver City, California 90232-3195

Tel: 310 244 6949 Fax: 310 244 1557
leonard_venger@spc.sony.com

June 2, 2005

Via Fax (212) 446-4900 & First Class Mail

Yosef J. Riemer, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022-4611

Re: "Zoom"

Dear Mr. Riemer:

This responds to your May 25, 2005 letter, and is written solely on behalf of Sony Pictures Entertainment Inc. ("SPE"). Before responding to the substance of your correspondence, I wish to indicate immediately that your firm, Kirkland & Ellis ("K&E"), may have a conflict regarding this matter. Please conduct a thorough conflict check with all K&E offices before taking any further action.

Moving to the substance of your letter, it would be wholly improper for Marvel or Fox to initiate any litigation against SPE regarding the motion picture project you call "Zoom." Although your correspondence contains a number of false statements and incorrect assumptions, and I cannot address all of them here, the most fundamental is that, as your clients know, SPE is not a producer of "Zoom" and does not have any creative control over this project. "Zoom" is a Revolution Studios project. SPE is merely a co-investor in Revolution, along with Fox. Also like Fox, SPE is only a potential future distributor of "Zoom." My understanding is that Revolution has not commenced principal photography, and that it does not even have a shooting script. For these reasons, it is simply incorrect to assert that SPE has engaged in *any* infringing act. To the contrary, any copyright claim your clients might bring against SPE not only would be speculative and premature, but also would subject them to damages and SPE's attorney's fees under 17 U.S.C. § 505.

Sony Pictures Entertainment
www.sonypictures.com

Exhibit A
Page 11

Yosef J. Riemer, Esq.
June 2, 2005
Page 2

Your allegations regarding any improper behavior by SPE regarding release dates are also wholly without merit. With all motion pictures, producers and distributors use their independent business judgment to select appropriate dates and all release dates are subject to change depending on a multitude of factors. We regard your clients' threats regarding "Zoom" as an improper attempt to influence our release schedule.

I encourage your firm and your clients to behave with extreme caution with respect to SPE and its involvement in "Zoom." With respect to Revolution Studios, we trust that you will be receiving a separate response to your letter directly from Revolution.

This letter is not a waiver of any rights or remedies of SPE, all of which are expressly reserved.

Very truly yours,



Leonard Venger

LV/vw

cc: Dan Ferleger, Esq., Revolution Studios

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 1801 Century Park East, Suite 1150, Los Angeles, California 90067.


On July 8, 2005, I served the foregoing document(s) described as: **SONY PICTURES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)** on the interested party(ies) in this action, enclosed in a sealed envelope, addressed as follows:

Bertram Fields, Esq.
Greenberg Glusker Fields Claman
Machtinger & Kinsella LLP
1900 Avenue of the Stars
Suite 2100
Los Angeles, CA 90067

- I am readily familiar with the business practice for collection and processing of correspondence for mailing within the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices in the United States mailed at Los Angeles, California.
- By Federal Express, I caused to be delivered such envelope via Federal Express to the office(s) of the addressee(s) noted above.
- By facsimile machine, I caused the above-referenced document(s) to be transmitted to the party(ies) listed above.
- By personal service, I delivered such envelope by hand to the offices of the addressee(s) noted above.

Executed this 8th day of July 2005, at Los Angeles, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Brian Hüber

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 1801 Century Park East, Suite 1150, Los Angeles, California 90067.

On July 8, 2005, I served the foregoing document(s) described as: **SONY PICTURES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)** on the interested party(ies) in this action, enclosed in a sealed envelope, addressed as follows:

Yosef J. Riemer, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022

- I am readily familiar with the business practice for collection and processing of correspondence for mailing within the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices in the United States mailed at Los Angeles, California.
- By Federal Express, I caused to be delivered such envelope via Federal Express to the office(s) of the addressee(s) noted above.
- By facsimile machine, I caused the above-referenced document(s) to be transmitted to the party(ies) listed above.
- By personal service, I delivered such envelope by hand to the offices of the addressee(s) noted above.

Executed this 8th day of July 2005, at Los Angeles, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Brian Huber

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Corporate Legal Service, 1655 Beverly Blvd., Echo Park, CA 90026.

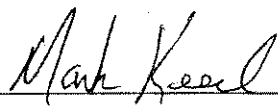
On July 8, 2005, I served the foregoing document(s) described as : **SONY PICTURES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)** on the interested party(ies) in this action, enclosed in a sealed envelope, addressed as follows:

Robert Boldt, Esq.
Kirkland & Ellis LLP
777 South Figueroa Street
Suite 3700
Los Angeles, CA 90017

- I am readily familiar with the business practice for collection and processing of correspondence for mailing within the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices in the United States mailed at Los Angeles, California.
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- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



MARK Kesel