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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 AMERICAN FEDERATION OF
16 MUSICIANS, AFL-CIO,

17 Plaintiff,

18 vs.

19 AMERICAN IDOL PRODUCTIONS,
20 INC., a California Corporation, TUCK
21 TOCK PRODUCTIONS, INC., a
22 California Corporation

23 Defendants.

Case No. CV08-03861 RGK

COMPLAINT FOR BREACH OF A
COLLECTIVE BARGAINING
AGREEMENT INCLUDING
INJUNCTION AND ACCOUNTING

PLA

[29 U.S.C. §§ 185(a) & 1132(g)(2)]

24 Plaintiff AMERICAN FEDERATION OF MUSICIANS, AFL-CIO, alleges as
25 follows:

26 [JURISDICTION AND VENUE]

27 1. This is an action to enforce a collective bargaining agreement, over
28 which this Court has original jurisdiction pursuant to the Labor Management
Relations Act (LMRA) § 301(a), 29 U.S.C. § 185(a). Venue is properly in this

I/S
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1 District as the contract was entered into and breached in this District, and the
2 Defendants reside in this District.

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[PARTIES]

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6 2. Plaintiff AMERICAN FEDERATION OF MUSICIANS, AFL-CIO
7 (hereinafter "the Union"), is an unincorporated association and is a labor organization
8 which represents employees for the purpose of collective bargaining regarding their
9 wages, hours, and conditions of employment, including employees engaged as
10 musicians in the production of television programming. The Union's principal place
11 of business is in New York, New York, and it has an office and members in the
12 County of Los Angeles, California.

13

14 3. Defendant AMERICAN IDOL PRODUCTIONS, INC. (hereinafter
15 "AIP") is a California corporation engaged in the production and distribution of
16 television video programs. Its principal place of business is in the County of Los
17 Angeles, California. AIP is an employer in an industry affecting interstate commerce.

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19 4. Defendant TICK TOCK PRODUCTIONS, INC. (hereinafter "Tick
20 Tock") is a California corporation engaged in the production and distribution of
21 television video programs. Its principal place of business is in the County of Los
22 Angeles, California. Plaintiff is informed and believes, and on that basis alleges, that
23 Tick Tock is a wholly owned subsidiary of AIP, under the complete control and
24 management of AIP, with no separate existence of its own, so that the actions of Tick
25 Tock may be attributed to its parent, and its parent is responsible for the actions and
26 obligations of its subsidiary. AIP and Tick Tock shall hereafter be referred to jointly
27 as the "Employer."

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[AGREEMENT]

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3 5. At all relevant times, AIP was signatory to a collective bargaining
4 agreement with the Union, known as the "Television Videotape Agreement"
5 ("Agreement"). The Agreement sets the wages, hours and working conditions of the
6 employees covered therein.

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8 6. Section 4 of the Agreement provides that, "During the term of this
9 Agreement, we shall utilize live music exclusively for all programs produced by or
10 for us in which any music is used."

11
12 7. Section 5(A) of the Agreement provides that "We will not use or deal
13 with sound track made hereunder for any purpose whatsoever except to accompany
14 the program for which such sound track was originally produced."

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16 8. Section 5(B) of the Agreement provides that "We will not use any sound
17 track in any program which is the subject of this Agreement unless such sound track
18 is recorded under the terms of this Agreement. No sound track recorded under the
19 terms of this Agreement may be augmented by sound tracks which are not recorded
20 under the terms of this Agreement."

21
22 9. Section 5(E) of the Agreement provides that "No part of any kinescopes,
23 videotapes or sound tracks made pursuant to this Agreement shall be extracted or
24 used for purposes other than those specifically permitted by this Agreement so long as
25 said kinescopes or videotapes remain in existence."

26
27 10. Section 8(A)(i) of the Agreement provides that "Upon a second or
28 subsequent showing of any programs made during the term of this Agreement, in any

1 market in the United States, its territories and possessions (including Puerto Rico) and
2 in Canada; the following percentages of the scale payment set forth in Exhibits I and
3 II hereto, shall be paid within fifteen (15) business days of such reuse to each
4 Instrumentalist, Leader, Contractor and Music Sound Consultant who originally
5 performed services in connection with such program (including but not limited to
6 rehearsal services rendered prior to performance)" with exceptions not relevant here.
7 The "following percentages" specify 75% of scale to be paid for the second and third
8 showing, and decreasing percentages for subsequent showings.

9
10 11. Section P of Exhibit I of the Agreement provides for progressive
11 penalties for late payment of amounts due any musician covered by the Agreement.

12
13 12. Section 7 of the Agreement further provides that signatory companies
14 "shall contribute (10) percent of all earnings of whatever nature covered by this
15 Agreement, . . . to the American Federation of Musicians and Employers Pension
16 Fund . . ." The American Federation of Musicians and Employers Pension Fund
17 (Pension Fund) is an employee benefit plan and multi-employer plan, as defined in 29
18 U.S.C. §§ 1002(3) and 1002(37)(A), respectively.

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20 13. The Agreement does not have a grievance or arbitration procedure.

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22 [AMERICAN IDOL PROGRAM]

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24 14. AIP produced television programs entitled "American Idol" for live
25 television, using the performances of musicians covered by the Agreement. Those
26 performances and the programs were produced and recorded pursuant to the terms of
27 the Agreement.

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1 recording process.

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[BREACHES OF AGREEMENT]

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5 20. The showing of the programs of the second season of American Idol,
6 which were shown again as American Idol Rewind in the United States television
7 market, without paying re-use compensation to the musicians employed in the
8 original performance (including rehearsals), is a violation of Section 8(A)(i) of the
9 Agreement.

10

11 21. Pursuant to the Agreement, the Employer is required to pay 75% of scale
12 to each musician employed in the original performance (including rehearsals), plus
13 10% of such compensation to the Pension Fund, plus payment of the progressive
14 penalties specified in Section P of Exhibit I of the Agreement for such re-use.

15

16 22. The acts of using altered programs of the second season and of extracting
17 the soundtrack for the rerun of the second season programs of American Idol are in
18 violation of Section 5(E) of the Agreement.

19

20 23. In addition, interest, liquidated damages, attorney fees and costs are due
21 to the Pension Fund, for the contributions due as described above, pursuant to 29
22 U.S.C. § 1132(g)(2).

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[DEMAND FOR PAYMENT OF REUSE FEES]

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26 24. On or about March 6, 2008, the Union presented to the Employer a
27 demand for payment of re-use fees.

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[PRAYER FOR RELIEF]

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WHEREFORE, Plaintiff prays that judgment be entered against Defendants AIP and Tick Tock, jointly and severally, as follows:

A. A determination that Defendants AIP and Tick Tock breached the Agreement by extracting the sound track, and re-using programs produced under the Agreement with sound track not produced under the Agreement;

B. Monetary damages to each musician employed in the original performance of the second season of American Idol (including rehearsals) in the amount of 75% of scale for each such musician, plus payment of the progressive penalties specified in Section P of Exhibit I of the Agreement for re-use of the second season programs in accordance with proof;

C. Monetary damages to the Union for the aforesaid violations of the Agreement;

D. Contributions to the Pension Fund in the amount of ten percent (10%) of the payments in (B) above, plus interest, liquidated damages, attorney fees and costs, as required by 29 U.S.C. § 1132(g)(2);

E. An injunction against further extraction of the original musical performances made under this Agreement and against re-use of the second or subsequent seasons of American Idol, unless broadcast in accordance with the terms of the Agreement;

F. That an accounting be given by AIP and Tick Tock to the Union and

1 Pension Fund of all re-use of programs from the second and subsequent seasons of
2 American Idol;

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- G. Attorney fees and costs of suit; and
- H. Such other relief as this Court deems just and proper.

Respectfully Submitted,

Dated: June 12, 2008

HIRSCH ADELL,
J. DAVID SACKMAN, and
WILLIAM Y. SHEH, Members of
REICH, ADELL & CVITAN
A Professional Law Corporation

By: 
HIRSCH ADELL
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