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SHAMROCK ENTERTAINMENT, LTD.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SHAMROCK ENTERTAINMENT, LTD, a California corporation, Plaintiff, v. MASTER LICENSING, INC., a California corporation; and DOES 1-10, Defendants.	Case No. 2:19-cv-7001 COMPLAINT FOR DECLARATORY RELIEF DEMAND FOR JURY TRIAL

Plaintiff Shamrock Entertainment, Ltd. ("Shamrock") alleges:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), insofar as it arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, including by requiring a determination of the scope of copyright protection afforded Shamrock's works and defendants' claimed work.

2. Venue is proper in this District under 28 U.S.C. § 1400(a), insofar as defendants or their agents reside or may be found here, or, alternatively, under 28 U.S.C. § 1391(b)(1), insofar as at least one defendant resides in this District and all defendants are residents of the State of California, or, alternatively, under 28 U.S.C. § 1391(b)(2), insofar as a substantial part of the events or omissions giving rise to the claims occurred in this District, or, alternatively, under 28 U.S.C. § 1391(b)(3), insofar as at least one defendant is subject to the Court's personal jurisdiction here.

THE PARTIES

3. Shamrock is a California corporation with its principal place of business in Los Angeles County, California.

4. Shamrock is informed and believes, and upon that basis alleges, that Master Licensing, Inc. ("Master Licensing"), is an individual residing in Los Angeles County, California.

5. Shamrock is presently unaware of the true names and/or the involvement of the defendants sued herein by the fictitious designations Does 1-10 and for that reason sues them by those designations. Shamrock will seek leave of Court to amend this pleading to identify those defendants when their true names and involvement in the infringements hereinafter described are known.

BACKGROUND FACTS

The *Naked City* Television Series

6. In or about 1948, the late Mark Hellinger, directly or through a company that Mr. Hellinger owned or controlled, produced the motion picture titled *Naked City*

(the "Movie"), a gritty film noir depicting the investigation by New York Police Department detectives and beat cops of the murder of a young model.

7. On or about November 13, 1957, and after Mr. Hellinger's death, representatives of a trust formed under Mr. Hellinger's Will (the "Hellinger Trust") entered into a written agreement (the "1957 Agreement") with the corporation then known as Screen Gems, Inc. ("Screen Gems"), under which the Hellinger Trust granted Screen Gems the option to acquire, *inter alia*:

(a) The exclusive rights during the term initially beginning upon Screen Gems' exercise of the option and ending June 30, 1959, to produce half-hour television programs (the "Pictures") based upon or adapted in whole or in part from the Movie's general theme and characters, without remaking the Movie or otherwise using the Movie's stories, scripts or other literary or dramatic material, and including the right to use *Naked City* as the title of the Pictures and other programs produced under the 1957 Agreement and in connection with the advertising and exploitation of the Pictures and other programs; and

(b) The option to extend that term by up to an additional five years.

8. In the 1957 Agreement, the Hellinger Trust also agreed that upon the expiration of the term, Screen Gems would continue to retain various rights, including but not limited to the following rights, in perpetuity, to exploit the Pictures that had been produced during the term:

(a) The exclusive rights in perpetuity to broadcast and reproduce the Pictures and any adaptations or versions of the Pictures;

(b) The exclusive rights to remake the Pictures and broadcast and otherwise exploit them, in all manners and methods then known or thereafter devised;

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(c) The rights to use the title, *Naked City*, as the title of the Pictures and other programs produced under the 1957 Agreement and in connection with the advertising and exploitation of the Pictures and other programs; and

(d) The exclusive rights to claim copyright in the Pictures and other programs produced under the 1957 Agreement.

9. Screen Gems timely exercised its option under the 1957 Agreement, which also provided that the rights that Screen Gems acquired under the 1957 Agreement are freely assignable.

10. The late Herbert B. Leonard was a highly regarded television and motion picture producer and director and, individually or through entities he owned and controlled (collectively, "Leonard"), produced and owned various television series and other productions, including *The Adventures of Rin Tin Tin* and *Route 66*. In or about January 31, 1958, Screen Gems entered into a written Production Distribution Agreement (the "1958 Agreement") with an entity owned by Mr. Leonard, Shelle Productions, Inc. ("Shelle Productions"), and Briskin Productions, Inc., under which Screen Gems assigned Screen Gems' rights under the 1957 Agreement, in return for the right to distribute the Pictures produced by Shelle Productions.

11. From approximately 1958 to 1959, Mr. Leonard's Shelle Productions produced thirty-nine half-hour Pictures, which were broadcast on network television as the *Naked City* television series in the United States and distributed by Screen Gems or Screen Gems' affiliates or licensees throughout the world.

12. Pursuant to an agreement dated November 12, 1959, with the Hellinger Trust and clarified by a signed acknowledgment dated April 1, 1960, the Hellinger Trust's grant of rights under the 1957 Agreement was extended to one-hour Pictures. From approximately 1959 to 1963, Mr. Leonard's Shelle Productions produced ninety-nine one-hour Pictures, which also were broadcast on network television as the

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Naked City television series in the United States and distributed by Screen Gems or Screen Gems' affiliates or licensees throughout the world.

13. Shelle Productions is the author of all 138 of the Pictures, and Shelle Productions' copyrights in the 138 Pictures were duly registered with the United States Copyright Office.

Shamrock's Ownership of the Exclusive Right under Copyright to Remake the 138 Episodes of the *Naked City* Television Series

14. Pursuant to a written Assignment of Copyrights dated as of May 29, 1963, and recorded with the United States Copyright Office, Shelle Productions assigned all of its rights, including all copyrights, in the Pictures to Herbert Leonard Enterprises, Inc. In 1965, Shelle Productions was merged into Mr. Leonard's Herbert Leonard Enterprises, Inc., also known as Herbert B. Leonard Enterprises, Inc. ("HBL"). The copyrights in the Pictures were timely renewed with the United States Copyright Office. A schedule setting forth the renewal registrations of the Pictures, as well as their respective original copyright registration numbers, is attached to this Complaint as Exhibit 1 and made a part hereof by this reference.

15. For valuable consideration and pursuant to a written Security Agreement dated as of March 23, 1994, Leonard, for himself and his entities, including HBL, granted to Shamrock's predecessor-in-interest, Mr. James P. Tierney, a security interest in the copyrights and other rights in connection with, among other things, the Pictures (the "Security Agreement"). The Security Agreement was duly recorded with the United States Copyright Office.

16. In July 2000 and after a duly noticed foreclosure sale, Shamrock's predecessor-in-interest acquired all copyrights and other rights in connection with the Pictures.

17. In order to confirm that Shamrock's predecessor-in-interest owned all copyrights and other rights in connection with the Pictures, and to transfer to Shamrock's predecessor-in-interest any and all of HBL's and Mr. Leonard's

remaining rights with respect to the Pictures, pursuant to a written Short Form Quitclaim of Rights dated December 15, 2000, and recorded with the United States Copyright Office, HBL and Mr. Leonard quitclaimed and assigned to Shamrock's predecessor-in-interest the copyrights and other rights related to the Pictures.

18. Pursuant to a written Quitclaim Agreement dated as of April 23, 2014, Shamrock's predecessor-in-interest assigned to a third party certain rights in the Pictures, but Shamrock's predecessor-in-interest expressly retained all remake and sequel rights in and to the Pictures.

19. Pursuant to a written Assignment dated August 11, 2014, Shamrock's predecessor-in-interest assigned to Shamrock all of Shamrock's predecessor-in-interest's rights, including under copyright, in the Pictures, and those rights included the right to remake the Pictures.

Shamrock's 2019 Attempt to Exercise its Rights to Remake the Episodes of the *Naked City* Television Series

20. The Pictures are classics of American television and police procedural dramas. The Pictures have enjoyed substantial critical acclaim, including by reason of the stellar quality of the Pictures' screenplays. For example, thirty-two of the Pictures' screenplays were written by Stirling Silliphant, who won the Academy Award for the screenplay of the movie, *In the Heat of the Night*, and other of the Pictures' screenplays were written by Frank Pierson, who won Academy Awards for the screenplays of the movies, *Ordinary People* and *Julia*. Further, with multiple new platforms for the broadcast or other exploitation of television programming, there is new and substantial demand for content, including production of quality dramatic programs.

21. As a result, Shamrock's rights, traceable back to the Hellinger Trust's 1957 Agreement, to remake the Pictures by producing new derivative works based on the Pictures and their respective screenplays is extremely valuable.

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22. In or about April 2019, Shamrock reached an agreement with the motion picture and television producer, Lawrence Mortoff, on the material terms of an agreement under which Shamrock would grant Mr. Mortoff an option to acquire Shamrock's rights to remake the Pictures.

Defendants' Interference with Shamrock's Remake Rights

23. Defendant Master Licensing claims to have succeeded to the rights of the Hellinger Trust in the 1948 Movie.

24. On or about May 14, 2019, defendant Master Licensing, by and through Master Licensing's sole officer, Andrew Garroni, disputed Shamrock's right to remake the Pictures, claiming in writing to Mr. Mortoff that Shamrock does not in fact own the right to remake the Pictures; that any remakes of the Pictures would contain protectable elements of the Movie and, as a result, anyone desiring to remake the Pictures must obtain a new grant of rights from the Movie's current owner; and that, as a result, Shamrock cannot proceed with or authorize remakes of the Pictures without defendant Master Licensing's consent.

25. As a direct result of defendant Master Licensing's claims, Mr. Mortorff has declined to pursue the possible exercise of his option to acquire Shamrock's rights to remake the Picture, and defendant Master Licensing has placed a cloud on Shamrock's rights.

FIRST CLAIM FOR RELIEF

(For Declaratory Relief)

(Against Defendants)

26. Shamrock refers to and re-alleges each and every allegation contained in paragraphs 1 through 25, inclusive, above, as if set forth herein.

27. Shamrock contends, *inter alia*, that:

(a) Shamrock, as owner of the remake rights in the Pictures, owns the exclusive rights under copyright to create derivative versions of the

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Pictures and to publicly perform and publicly distribute those derivative versions;

(b) The 1957 Agreement does not limit Shamrock's rights under copyright to create derivative versions of the Pictures and to publicly perform and publicly distribute those derivative versions, including with the title *Naked City*;

(c) Shamrock, in order to exercise the foregoing rights, need not obtain the consent of the current owner of the Movie's copyright, including because:

(1) the Pictures incorporate, at most, only the Movie's general theme and characters, which are not protected by the Movie's copyright, and are lawfully titled *Naked City*; or

(2) to the extent the Pictures incorporate general theme or characters of the Movie that are protected by the Movie's copyright, which is disputed, the 1957 Agreement provides Shamrock the right to incorporate the Movie's general theme and characters in derivative versions of the Pictures and to publicly perform and publicly distribute those derivative versions, including with the title, *Naked City*.

Shamrock is informed and believes and upon that basis alleges that defendants dispute the foregoing contentions, and each of them.

28. A judicial declaration of the respective rights and obligations of Shamrock and defendants is necessary and appropriate.

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PRAYER

WHEREFORE, plaintiff Shamrock Entertainment, Ltd., prays for judgment as follows:

1. On the First Claim for Relief for declaratory relief against defendants, a judicial declaration in accordance with plaintiff's contentions, including that:

(a) Shamrock, as owner of the remake rights in the Pictures, owns the exclusive rights under copyright to create derivative versions of the Pictures and to publicly perform and publicly distribute those derivative versions;

(b) The 1957 Agreement does not limit Shamrock's rights under copyright to create derivative versions of the Pictures and to publicly perform and publicly distribute those derivative versions, including with the title, *Naked City*;

(c) Shamrock, in order to exercise the foregoing rights, need not obtain the consent of the current owner of the Movie's copyright, including because:

(1) the Pictures incorporate, at most, only the Movie's general theme and characters, which are not protected by the Movie's copyright, and are lawfully titled *Naked City*; or

(2) to the extent the Pictures incorporate general theme or characters of the Movie that are protected by the Movie's copyright, which is disputed, the 1957 Agreement provides Shamrock the right to incorporate the Movie's general theme and characters in derivative versions of the Pictures and to publicly perform and publicly distribute those derivative versions, including with the title, *Naked City*;

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2. For plaintiff's costs of suit and attorneys' fees; and

3. For such other and further relief as the Court deems just and proper.

Dated: August 12, 2019

/s/ Peter Anderson
Peter Anderson, Esq.
DAVIS WRIGHT TREMAINE LLP
Attorneys for Plaintiff
SHAMROCK ENTERTAINMENT, LTD.

DEMAND FOR JURY TRIAL

Plaintiff Shamrock Entertainment, Ltd., respectfully demands trial by jury.

Dated: August 12, 2019

/s/ Peter Anderson
Peter Anderson, Esq.
DAVIS WRIGHT TREMAINE LLP
Attorneys for Plaintiff
SHAMROCK ENTERTAINMENT, LTD.