

1 LEWIS N. LEVY, Bar No. 105975
2 DANIEL R. BARTH, Bar No. 274009
3 Levy Phillips, APC
4 20700 Ventura Blvd.
5 Woodland Hills, CA 91364
6 Telephone: (818) 738-9532
7 Facsimile: (818) 792-5794
8 Email: LNLevy@LevyPhillipsLaborLaw.com
9 DBarth@LevyPhillipsLaborLaw.com

10 JEFFREY R. FREUND (Admitted pro hac vice)
11 ROBERT ALEXANDER (Admitted pro hac vice)
12 ABIGAIL V. CARTER (Admitted pro hac vice)
13 PHILIP C. ANDONIAN, Bar No. 222243
14 Bredhoff & Kaiser, PLLC
15 805 15th Street N.W., Suite 1000
16 Washington, D.C. 20005
17 Email: jfreund@bredhoff.com
18 ralexander@bredhoff.com
19 acarter@bredhoff.com
20 pandonian@bredhoff.com

21 *Attorneys for Plaintiff*

22 JOHN M. GATTI (State Bar No. 138492)
23 E-mail: jgatti@manatt.com
24 ALAN M. BRUNSWICK (State Bar No. 052253)
25 Email: abrunswick@manatt.com
26 MAURA GIERL (State Bar No. 287430)
27 E-mail: mgierl@manatt.com
28 MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Defendants

METRO-GOLDWYN-MAYER PICTURES INC. and
COLUMBIA PICTURES INDUSTRIES, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED
STATES AND CANADA

Plaintiff,

v.

WARNER BROS.
ENTERTAINMENT, INC.,
PARAMOUNT PICTURES
CORPORATION, METRO-
GOLDWYN-MAYER PICTURES,
INC., and COLUMBIA PICTURES
INDUSTRIES, INC.

Defendants.

CASE NO.:
2:15-cv-03069-DMG(PJWx)

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth
5 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
6 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
7 procedures that must be followed and the standards that will be applied when a
8 party seeks permission from the court to file material under seal.
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11 B. GOOD CAUSE STATEMENT

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13 Discovery in this action is likely to involve commercial, financial, and other
14 proprietary and confidential materials and information for which special protection
15 from public disclosure and from use for any purpose other than the prosecution of
16 this action is warranted. Such proprietary and confidential materials and
17 information are likely to consist of, among other things, confidential business or
18 financial information, information regarding confidential business practices,
19 information (including intellectual property) regarding the development,
20 production, scoring, and distribution of theatrical motion pictures—including
21 information that might implicate the privacy rights of third parties—or other
22 confidential information otherwise generally unavailable to the public, or which
23 may be privileged or otherwise protected from disclosure under state or federal
24 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
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1 flow of information, to facilitate the prompt resolution of disputes over
2 confidentiality of discovery materials, to adequately protect information the parties
3 are entitled to keep confidential, to ensure that the parties are permitted reasonable
4 necessary uses of such material in preparation for and in the conduct of trial, to
5 address their handling at the end of the litigation, and serve the ends of justice, a
6 protective order for such information is justified in this matter. It is the intent of
7 the parties that information will not be designated as confidential for tactical
8 reasons and that nothing be so designated without a good faith belief that it has
9 been maintained in a confidential, non-public manner, and there is good cause why
10 it should not be part of the public record of this case.
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14 2. DEFINITIONS

15 2.1 Action: The instant litigation, styled *American Federation of Musicians of*
16 *the United States and Canada v. Warner Bros. Entertainment, Inc.,*
17 *Paramount Pictures Corporation, Metro-Goldwyn-Mayer Pictures, Inc.,*
18 *and Columbia Pictures Industries, Inc., 2015-cv-03069-DMG-PJW.*
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21 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
22 information or items under this Order.
23

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
25 it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified
27 above in the Good Cause Statement.
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2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a

1 law firm which has appeared on behalf of that party, and includes support
2 staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record
5 (and their support staffs).
6

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.
9

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or
13 medium) and their employees and subcontractors.
14

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”
17

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.
20

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material.
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1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
8 with or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of
11 time pursuant to applicable law.

12 13 14 15 5. DESIGNATING PROTECTED MATERIAL

16 17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to
4 impose unnecessary expenses and burdens on other parties) may expose the
5 Designating Party to sanctions.
6

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.
10

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.
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18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
23 contains protected material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the
25 protected portion(s) (e.g., by making appropriate markings in the margins).
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1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and
4 before the designation, all of the material made available for inspection shall be
5 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
6 documents it wants copied and produced, the Producing Party must determine
7 which documents, or portions thereof, qualify for protection under this Order.
8 Then, before producing the specified documents, the Producing Party must affix
9 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
10 only a portion or portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s) (e.g., by making
12 appropriate markings in the margins).
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17 (b) for testimony given in depositions that the Designating Party identify the
18 Disclosure or Discovery Material on the record, before the close of the deposition
19 all protected testimony.
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21 (c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent place on the
23 exterior of the container or containers in which the information is stored the legend
24 “CONFIDENTIAL.” If only a portion or portions of the information warrants
25 protection, the Producing Party, to the extent practicable, shall identify the
26 protected portion(s).
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.
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9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.
13

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.
16

17 6.3 The burden of persuasion in any such challenge proceeding shall be on
18 the Designating Party. Frivolous challenges, and those made for an improper
19 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
20 parties) may expose the Challenging Party to sanctions. Unless the Designating
21 Party has waived or withdrawn the confidentiality designation, all parties shall
22 continue to afford the material in question the level of protection to which it is
23 entitled under the Producing Party's designation until the Court rules on the
24 challenge.
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28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending, or attempting to settle this Action. Such
4 Protected Material may be disclosed only to the categories of persons and under
5 the conditions described in this Order. When the Action has been terminated, a
6 Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION).
8
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10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.
13

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:
18

19 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
20 as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this Action;
22

23 (b) the officers, directors, and employees (including House Counsel) of the
24 Receiving Party to whom disclosure is reasonably necessary for this Action;
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing
13 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
14 they will not be permitted to keep any confidential information unless they sign the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
16 agreed by the Designating Party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material may
18 be separately bound by the court reporter and may not be disclosed to anyone
19 except as permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions.
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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:
6

7 (a) promptly notify in writing the Designating Party. Such notification shall
8 include a copy of the subpoena or court order;
9

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena
12 or order is subject to this Protective Order. Such notification shall include a copy
13 of this Stipulated Protective Order; and
14

15 (c) cooperate with respect to all reasonable procedures sought to be pursued
16 by the Designating Party whose Protected Material may be affected.
17

18 If the Designating Party timely seeks a protective order, the Party served
19 with the subpoena or court order shall not produce any information designated in
20 this action as “CONFIDENTIAL” before a determination by the court from which
21 the subpoena or order issued, unless the Party has obtained the Designating Party’s
22 permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this Action
25 to disobey a lawful directive from another court.
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9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving

1 Party may produce the Non-Party's confidential information responsive to the
2 discovery request. If the Non-Party timely seeks a protective order, the Receiving
3 Party shall not produce any information in its possession or control that is subject
4 to the confidentiality agreement with the Non-Party before a determination by the
5 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.
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9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has
11 disclosed Protected Material to any person or in any circumstance not authorized
12 under this Stipulated Protective Order, the Receiving Party must immediately (a)
13 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
14 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
15 the person or persons to whom unauthorized disclosures were made of all the terms
16 of this Order, and (d) request such person or persons to execute the
17 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
18

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21 A.

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**
24

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in Federal
28

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review. Pursuant to Federal Rule of Evidence
4
5 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
6 of a communication or information covered by the attorney-client privilege or
7 work product protection, the parties may incorporate their agreement in the
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9 stipulated protective order submitted to the court.

10 12.MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
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13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
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16 Protective Order no Party waives any right it otherwise would have to object to
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18 disclosing or producing any information or item on any ground not addressed in
19
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
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22 any ground to use in evidence of any of the material covered by this Protective
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24 Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
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27 Protected Material must comply with Civil Local Rule 79-5. Protected Material
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may only be filed under seal pursuant to a court order authorizing the sealing of the
specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court.

3 13.FINAL DISPOSITION
4

5 After the final disposition of this Action, as defined in paragraph 4, within
6 60 days of a written request by the Designating Party, each Receiving Party must
7 return all Protected Material to the Producing Party or destroy such material. As
8 used in this subdivision, “all Protected Material” includes all copies, abstracts,
9 compilations, summaries, and any other format reproducing or capturing any of the
10 Protected Material. Whether the Protected Material is returned or destroyed, the
11 Receiving Party must submit a written certification to the Producing Party (and, if
12 not the same person or entity, to the Designating Party) by the 60 day deadline that
13 (1) identifies (by category, where appropriate) all the Protected Material that was
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or any other format reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel
17 are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
19 and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain Protected Material. Any such archival
21 copies that contain or constitute Protected Material remain subject to this
22 Protective Order as set forth in Section 4 (DURATION).
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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
6

7 DATED: December 2, 2015

/s/ Lewis N. Levy

8 LEWIS N. LEVY, Bar No. 105975
9 DANIEL R. BARTH, Bar No. 274009
10 Levy Phillips, APC
11 20700 Ventura Blvd.
12 Woodland Hills, CA 91364
13 Telephone: (818) 738-9532
14 Facsimile: (818) 792-5794
15 Email: LNLevy@LevyPhillipsLaborLaw.com
16 DBarth@LevyPhillipsLaborLaw.com

17 JEFFREY R. FREUND (*Admitted pro hac*
18 *vice*)
19 ROBERT ALEXANDER (*Admitted pro hac*
20 *vice*)
21 ABIGAIL V. CARTER (*Admitted pro hac*
22 *vice*)
23 PHILIP C. ANDONIAN, Bar No. 222243
24 Bredhoff & Kaiser, PLLC
25 805 15th Street N.W., Suite 100
26 Washington, D.C. 20005
27 Email: jfreund@bredhoff.com
28 ralexander@bredhoff.com
acarter@bredhoff.com
pandonian@bredhoff.com

Attorneys for Plaintiff

/s/ John M. Gatti

JOHN M. GATTI (State Bar No. 138492)
E-mail: jgatti@manatt.com
ALAN M. BRUNSWICK (State Bar
No. 052253)
Email: abrunswick@manatt.com
MAURA GIERL (State Bar No. 287430)
E-mail: mgierl@manatt.com
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064-1614

Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Defendants
METRO-GOLDWYN-MAYER PICTURES
INC. and
COLUMBIA PICTURES INDUSTRIES,
INC.

FOR GOOD CAUSE SHOWN, IT
IS SO ORDERED.



DATED: December 2, 2015

Judge Patrick J. Walsh
United States Magistrate Judge

Attestation Regarding Signatures

I, Lewis Levy, attest that all signatories listed, and on whose behalf the filing
is submitted, concur in the filing's content and have authorized the filing.

DATED: December 2, 2015

By: /s/ Lewis Levy
Lewis Levy

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *AFM v. Paramount Pictures Corporation*, 2:15-cv-04302-
8 DMG-PJW. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print
18 or type full name] of _____ [print or
19 type full address and telephone number] as my California agent for service of
20 process in connection with this action or any proceedings related to enforcement of
21 this Stipulated Protective Order.
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1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____

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5 Signature: _____

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