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MOTION PICTURE ASSOCIATION OF
11 AMERICA, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 WORLDWIDE SUBSIDY GROUP,
LLC, a Texas Limited Liability
16 Company, dba INDEPENDENT
PRODUCERS GROUP; WORLDWIDE
17 SUBSIDY GROUP, LLC, a California
Limited Liability Company, formerly
18 named ARTIST COLLECTIONS
GROUP, LLC,

19 Plaintiffs,

20 v.

21 MOTION PICTURE ASSOCIATION
22 OF AMERICA, INC., a New York
Corporation doing business in
23 California; and DOES 1 through 10,
inclusive,

24 Defendants.
25

CASE NO. **CV08-03701** **FMC**
NOTICE OF REMOVAL OF ACTION

(MANV)

1 PLEASE TAKE NOTICE that Defendant MOTION PICTURE
2 ASSOCIATION OF AMERICA, INC. ("Defendant") hereby removes to this Court
3 the state court action described below.

4 1. On April 29, 2008, Plaintiffs commenced an action in the Superior
5 Court of the State of California for the County of Los Angeles, entitled,
6 "Worldwide Subsidy Group, LLC, dba Independent Producers Group, et al.,
7 Plaintiffs, v. Motion Picture Association of America, Inc.; and Does 1 through 10,
8 inclusive, Defendants" as Case No. BC389895 ("State Court Action"). A true and
9 correct copy of the Complaint is attached as Exhibit 1. A true and correct copy of
10 the Summons is attached as Exhibit 2.

11 2. Defendant was served with a copy of the Complaint by personal
12 service on May 8, 2008. Defendant has not filed an Answer or any other
13 responsive document.

14 3. To Defendant's knowledge, no other pleadings or documents have
15 been filed in the State Court Action. Accordingly, Exhibits 1 and 2 attached hereto
16 constitute all of the process, pleadings, and orders received by Defendant in the
17 State Court Action. See 28 U.S.C. §1446(a).

18 4. This Notice of Removal is filed within thirty days of the date that the
19 Defendant was first served with process. Accordingly, Defendant's removal is
20 timely pursuant to 28 U.S.C. §1446(b). Murphy Bros., Inc. v. Michetti Pipe
21 Stringing Co., 526 U.S. 344, 349, 119 S. Ct. 1322, 143 L. Ed. 2d 448 (1999).

22 5. The Complaint is a civil action of which this Court has original
23 jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), and is one
24 which may be removed to this Court pursuant to 28 U.S.C. §1441(b). The Los
25 Angeles County Superior Court is located within the Central District of California.
26 Accordingly, removal to the Central District of California Central Division is
27 proper. See 28 U.S.C. §1441(a).

28

1 6. The Complaint purports to allege claims for a judicial declaration that
2 a three-party settlement agreement involving Plaintiffs, Defendant, and the United
3 States Librarian of Congress (“Librarian”) is void, and also for rescission of a
4 portion of the agreement. See Exh. 1, Compl. ¶¶ 21-29 (the two part, three-party
5 settlement agreement is hereinafter referred to as the “Contract”). Part 1 of the
6 Contract is between Plaintiffs and Defendant. Part 2 of the Contract is between
7 Plaintiffs, Defendant, and the Librarian. Although Plaintiffs make reference to the
8 Contract throughout the Complaint, see Exh. 1, Compl. ¶¶ 1-4, 12-16, 21-29, and
9 attached a letter to the Complaint that discusses the Contract and all three parties
10 thereto, Exh. 1, Compl. Exh. D at 1-2, Plaintiffs failed to identify the Librarian in
11 the Complaint as a party to the Contract. Defendants hereby attach a copy of the
12 Contract hereto as Exhibit 3, which Plaintiffs also failed to attach to the
13 Complaint.¹

14 6.1 Defendant is a trade association that represents the interests of motion
15 picture, home video, and television industries domestically and worldwide. More
16 pertinently, Defendant represents the interests of producers and distributors of
17 syndicated series, specials, and movies broadcast on television stations which are
18 entitled to receive compulsory license royalties paid by cable operators and
19 satellite carriers and collected by the United States Copyright Office (“Office”)
20 pursuant to 17 U.S.C. §§ 111 and 119 (“Royalties”). Plaintiffs are limited liability
21 corporations organized pursuant to the laws of California and Texas, representing
22 the interests of entities asserting claims to a portion of the Royalties.

23 6.2 The United States Library of Congress (“Library”), headed by the
24 Librarian, is an agency of the legislative branch of the United States government.
25 The Office is a department within the Library. At all times relevant to this case,
26 administering the Royalties scheme, including authorizing distribution of the

27 ¹ For confidentiality purposes, Defendant has redacted the amount paid to Plaintiffs
28 under the Contract.

1 Royalties, fell within the jurisdiction of the Office. See 17 U.S.C. § 801 (1995).
2 Pursuant to the statutory scheme in effect during the relevant period, when parties
3 asserting a claim to the compulsory license royalty fund for a given year were
4 unable to reach an agreement regarding the distribution of the royalty funds, the
5 Office convened a Copyright Royalty Arbitration Panel (“CARP”) to resolve the
6 dispute. See id.; see also 17 U.S.C. § 802(c) (1995). Upon petition by one of the
7 parties to the distribution proceedings, the CARP’s decision was subject to review
8 by the Librarian, who thereafter issued the final agency determination as to the
9 royalty distribution. 17 U.S.C. § 802(f) (1995). Exclusive jurisdiction over any
10 appeal of the Librarian’s decision was vested in the United States Court of Appeals
11 for the District of Columbia Circuit. 17 U.S.C. § 802(g) (1995).²

12 6.3 On November 1, 2000, the Office initiated a CARP proceeding to
13 arbitrate a dispute between the Plaintiffs and the Defendant regarding the
14 distribution of cable royalties collected for the 1997 royalty year. See 65 Fed. Reg.
15 65335 (2000). The CARP’s initial findings, dated April 16, 2001, were rejected by
16 the Librarian on June 5, 2001. See 66 Fed. Reg. 66433, 66434 (2001). The CARP
17 issued revised findings on June 20, 2001, which the Librarian again rejected. The
18 Librarian then remanded the proceeding for consideration by a new CARP in a
19 final order dated December 26, 2001 (“Agency Determination”). See 66 Fed. Reg.
20 at 66434. Both Plaintiffs and Defendant appealed the Agency Determination to the
21 District of Columbia Circuit Court of Appeals. See Exh. 1, Compl. at ¶ 3, Compl.
22 Exh. A at 1, Compl. Exh. D at 1. The Librarian was named as the Respondent in
23 both appellate cases.

24
25 ² Pursuant to the Copyright Royalty Distribution and Reform Act of 2004
26 (“CRDRA”), which was enacted on November 30, 2004, See P. L. 108-419
27 (Nov. 30, 2004), authority to order distribution of the Royalties is currently vested
28 in the Copyright Royalty Judges, a newly-created independent entity within the
Library. See 17 U.S.C. § 801 (2004).

1 6.4 On March 31, 2004, following court-directed mediation, Plaintiffs,
2 Defendant, and the Librarian executed the Contract, in two parts, settling not only
3 the pending appellate cases, but also resolving all disputes between the parties as to
4 the 1997, 1998, and 1999 cable and satellite royalty funds.³ See Exh. 3. The
5 Complaint seeks a declaratory judgment that the Contract is void, and inexplicably
6 seeks to rescind only Part 2 of the Contract. Exh. 1, Compl. at ¶¶ 21-29.

7 7. The United States Supreme Court has held that certain disputes
8 involving “uniquely federal interests” are so important to the federal government
9 that “federal common law” related to those areas will supplant state law either
10 partially or entirely. Boyle v. United Technologies Corp., 487 U.S. 500, 504, 108
11 S. Ct. 2510, 101 L. Ed. 2d 442 (1988). In such disputes federal common law
12 replaces state law regardless of whether Congress has shown any intent to preempt
13 the area. Id. When a cause of action arises under federal common law, federal
14 question jurisdiction is appropriate under 28 U.S.C. § 1331. See Arizona
15 Oddfellow-Rebekah Housing, Inc. v. U.S. Dept. of Housing and Urban
16 Development, 125 F.3d 771, 774 n.4 (9th Cir. 1997); see also Patrickson v. Dole
17 Food Company, 251 F.3d 795, 800 (9th Cir. 2001) (citing Illinois v. City of
18 Milwaukee, 406 U.S. 91, 100, 92 S. Ct. 1385, 31 L. Ed. 2d 712 (1972)).

19 7.1 Courts utilize a two-part test for determining the applicability of
20 federal common law to a given case. First, the matter must involve a uniquely
21 federal interest. Boyle, 487 U.S. at 507. Determination of whether a significant
22 federal interest exists in a dispute requires the court to ascertain whether the
23 dispute “touches the rights and duties of the United States.” Id. at 506 (quoting
24 Bank of America Nat. Trust & Sav. Ass’n v. Parnell, 352 U.S. 29, 33, 77 S. Ct.

25 _____
26 ³ An agreement to settle a legal dispute is a contract. United States v. ITT
27 Continental Banking Co., 420 U.S. 223, 238, 95 S. Ct. 926, 43 L. Ed. 2d 148
(1975).

1 119, 1 L. Ed. 2d 93 (1956)). Second, a “significant conflict” must exist between an
2 identifiable federal policy or interest and the effect of state law. Boyle, 487 U.S. at
3 507; see also Empire Healthchoice Assur., Inc. v. McVeigh, 547 U.S. 677, 693,
4 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006). As discussed in detail below, both
5 Boyle factors are established in the instant matter, and afford subject matter
6 jurisdiction over this matter in this Court pursuant to 28 U.S.C. § 1331.

7 7.2 Because uniquely federal interests are implicated when the
8 government is a party to a contract, federal common law governs the contract’s
9 interpretation. Boyle, 487 U.S. at 504 (“The obligations and rights of the United
10 States under its contracts are governed exclusively by federal law.”); see also
11 Clearfield Trust Co. v. United States, 318 U.S. 363, 366-67, 63 S. Ct. 573, 87
12 L.Ed. 838 (1943); Saavedra v. Donovan, 700 F.2d 496, 498 (9th Cir. 1983); Wright
13 v. Foreign Service Grievance Board, 503 F.Supp.2d 163, 173 (D.D.C. 2007). Even
14 when a dispute over a government contract involves private parties, federal
15 common law still displaces state law if the litigation directly affects a federal
16 interest. Id. at 507; see also Almond v. Capital Properties, Inc., 212 F.3d 20, 23-24
17 (1st Cir. 2000) (citing Price v. Pierce, 823 F.2d 1114, 1119-20 (7th Cir. 1987), cert.
18 denied, 485 U.S. 960, 108 S. Ct. 1222, 99 L.Ed. 2d 422 (1988)).

19 7.3 Notwithstanding Plaintiffs’ failure to name the Librarian as a party in
20 the Complaint, the Librarian is a party to the Contract. Therefore, uniquely federal
21 interests are implicated. Indeed, the Librarian’s rights and obligations – including
22 all actions taken by the Librarian pursuant to and in reliance upon the Contract –
23 are directly affected by the two causes of action in the Complaint.

24 7.4 First, the instant action directly affects the Librarian’s interest in
25 maintaining the resolution of the two appellate cases against him that were
26 dismissed pursuant to the Contract. The Contract required Plaintiffs and
27 Defendant to dismiss their respective appellate cases that were pending against the
28 Librarian in the District of Columbia Circuit Court of Appeals. See Exh. 1,

1 Compl. at ¶ 3; Exh. 3 at Part 2, p. 2 ¶ 3. If the Contract is deemed void or
2 rescinded, the Librarian will be directly affected because Defendant (and perhaps
3 Plaintiffs) could seek to reinstate the appellate cases against the Librarian.

4 7.5 Second, this action directly affects the action taken by the Librarian to
5 vacate the Agency Determination and to terminate the royalty distribution
6 proceeding that gave rise to that Agency Determination. Exh. 3 at Part 2, p. 2 ¶ 4
7 and Appendix A. In compliance with the Contract, on April 2, 2004, the Librarian
8 entered an order vacating the Agency Determination terminating the proceeding
9 that gave rise to the appellate cases. See Notice, 69 Fed. Reg. 2381, 23822 (2004).
10 Further, in reliance on the terminated proceeding, the Librarian distributed all cable
11 royalties held in reserve for 1997. See id. If the Contract is deemed void or
12 rescinded, the Librarian has an interest in addressing the status of its April 2, 2004
13 order. Moreover, the Librarian has an interest in addressing the legality of full
14 distribution of the 1997 cable royalties.

15 7.6 Third, this action raises the question of which department within the
16 Library would have jurisdiction over a new 1997 royalty distribution proceeding if
17 the appellate cases were unsuccessful and the Agency Determination reinstated).
18 As noted above, see ¶ 6.2, with the enactment of the CRDRA in 2004, Congress
19 substantially modified the compulsory license statutory scheme that was in place at
20 the time the Contract was negotiated. Following the enactment of the CRDRA, all
21 cable and satellite compulsory license distribution proceedings must be
22 commenced before the Copyright Royalty Judges. See 17 U.S.C. § 801 (2004).
23 The CRDRA also contains transitional provisions which require the Librarian to
24 retain jurisdiction over any cable or satellite distribution proceeding that
25 commenced prior to the effective date of the CRDRA, and allow any appellate
26 proceeding commenced prior to its effective date to continue until such matters can
27 be terminated or resolved. See P. L. 108-419, Sec. 6(b) (Nov. 30, 2004). On
28 August 10, 2007, the Librarian announced the end of the CRDRA transitional

1 period by terminating all outstanding cable and satellite distribution proceedings
2 and announcing that jurisdiction over any undistributed royalties would now vest
3 in the Copyright Royalty Judges. See 72 Fed. Reg. 45071, 45071 (2007). Thus,
4 pursuant to the intent of the CRDRA, it would appear the Librarian has
5 relinquished its jurisdiction over cable and satellite royalty distribution
6 proceedings.

7 7.7 However, each of the copyright royalty distribution proceedings
8 referenced in the Contract (i.e., proceedings to resolve the distribution of the 1997,
9 1998, and 1999 cable and satellite royalty funds) commenced prior to the effective
10 date of the CRDRA. Moreover, the appellate cases against the Librarian that were
11 settled in the Contract also commenced prior to the CRDRA, and were seeking
12 review of the Agency Determination under the pre-CRDRA statutory scheme. If
13 the Contract is void or is rescinded, the Librarian will be forced to not only defend
14 the Agency Determination in two pre-CRDRA appellate cases but also, depending
15 on the outcome of those cases, exercise jurisdiction over a new 1997 cable royalty
16 distribution proceeding brought under the pre-CRDRA statutory scheme. If there
17 has to be a royalty distribution proceeding, there is a jurisdictional question as to
18 whether the proceeding should be conducted by the Librarian through the Office,
19 which oversaw the initial royalty distribution proceeding, or the Copyright Royalty
20 Judges, who are currently authorized to do so under the CRDRA. The Librarian
21 has an interest in determining the internal jurisdictional issues that would result
22 from having to administer a royalty distribution proceeding.

23 7.8 Consequently, the possible reinstatement of the appellate cases, the
24 status of the Librarian's April 2, 2004 order vacating the Agency Determination,
25 and internal jurisdictional issues within the Library constitute unique federal
26 interests.

27 8. In addition to the clear implication of federal interests, a significant
28 conflict exists in this matter between federal interests and the effect of state law.

1 See Boyle, 487 U.S. at 507. Plaintiffs seek to void or rescind a settlement
2 agreement with a federal agency pursuant to state law in a state forum. Exh. 1,
3 Compl. at ¶¶ 21-29. As the United States Supreme Court has recognized,
4 “dealings which may be ‘ordinary’ or ‘local’ as between private citizens raise
5 serious questions of national sovereignty when...transactions undertaken by the
6 Federal Government are involved.” See United States v. Little Lake Misere Land
7 Co., Inc., 412 U.S. 580, 592, 93 S. Ct. 2389, 37 L. Ed. 2d 187 (1973). In such
8 cases, state law must give way to federal law. See id. Moreover, as Boyle
9 recognized, the mere possibility of a conflict and any attendant damage to federal
10 interests is sufficient to allow federal common law to displace state law. Boyle,
11 487 U.S. at 507-08. Here, because the Librarian is a party to the Contract,
12 significant federal interests are implicated to require the displacement of state law
13 in favor of federal common law.

14 9. Because federal common law governs the Contract that Plaintiffs seek
15 to rescind in its Complaint, Plaintiffs’ cause of action arises under federal common
16 law. Therefore, jurisdiction is appropriate in this Court under 28 U.S.C. § 1331.
17 See Arizona Oddfellow-Rebekah Housing, Inc. v. U.S. Dept. of Housing and
18 Urban Development, 125 F.3d 771, 774 n.4 (9th Cir. 1997); see also Patrickson v.
19 Dole Food Company, 251 F.3d 795, 800 (9th Cir. 2001) (citing Illinois v. City of
20 Milwaukee, 406 U.S. 91, 100, 92 S. Ct. 1385, 31 L. Ed. 2d 712 (1972)).

21 10. Plaintiffs cannot escape the preemption of federal common law by the
22 “artful pleading” of state law contract claims. See Rivet v. Regions Bank of
23 Louisiana, 522 U.S. 470, 474, 118 S. Ct. 921, 139 L. Ed. 2d 912 (1998). This is
24 true even though the Complaint omits reference to the fact that the Librarian is a
25 party to the Contract and purports to base claims only on state law. Id.; see Laws
26 v. Calmat, 852 F.2d 430, 432 (9th Cir. 1988), overruled in part Cramer v. Consol.
27 Freightways, 255 F.3d 683 (9th Cir. 2001) (the “artful pleading” doctrine requires
28 re-characterizing the alleged state law claims as arising under federal law); see

1 generally Schroeder v. Trans World Airlines, Inc., 702 F.2d 189, 191 (9th Cir.
2 1983) (“Artful pleading by the Plaintiff will not be allowed to conceal the true
3 nature of a complaint,” when a plaintiff has attempted to avoid a federal claim by
4 relying solely on state law in the complaint).

5 11. This Court need not and should not, at this time, determine the
6 underlying merits of Plaintiffs’ claims. This Court need and should determine only
7 that resolving these claims requires an interpretation of a federal government
8 contract, and thus arise under federal common law. Such a determination suffices
9 to establish subject matter jurisdiction under 28 U.S.C. § 1331. See Arizona
10 Oddfellow-Rebekah Housing, Inc., supra, 125 F.3d at 774, n.4.

11 12. Should the Court determine that it has subject matter jurisdiction over
12 only one count of the Complaint, Plaintiffs’ other cause of action is also
13 removable. The two claims in the Complaint arise out of the same common
14 nucleus of operative facts, and thus if one claim is preempted, both claims are
15 removable pursuant to 28 U.S.C. § 1367. Moreover, considerations of judicial
16 economy, convenience and fairness to the litigants require that all of the claims
17 alleged in the Complaint be tried in one forum. See United Mine Workers v.
18 Gibbs, 383 U.S. 715, 725-26, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966) (pendent
19 jurisdiction exists if the state and federal claims “derive from a common nucleus of
20 operative facts” or are such that a plaintiff “would ordinarily be expected to try
21 them all in one judicial proceeding”).

22 13. Written notice of the filing of this Notice of Removal and of the
23 removal of the State Court Action is being delivered to all parties through their
24 counsel of record. A copy of this Notice of Removal will be filed promptly with
25 the Clerk of the Superior Court, County of Los Angeles, California.

26 14. The undersigned has read this Notice of Removal, and, to the best of
27 the undersigned’s knowledge, information and belief, formed after reasonable
28 inquiry, it is well-grounded in fact, is warranted by existing law, and is not

1 interposed for any improper purpose, such as to harass, to cause unnecessary delay,
2 or needlessly to increase the cost of litigation.

3 Therefore, Defendant hereby removes the State Court Action from the
4 Superior Court of the State of California for the County of Los Angeles to this
5 Court.

6
7 DATED: June 6, 2008

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