

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

TERRY HODGES, an Individual,) Jury Trial Demanded
)
Plaintiff,) Civil Action No. _____
)
vs.)
)
GORDON REES SCULLY MANSUKHANI LLP,)
D/B/A GORDON & REES LLP, a Limited Liability)
Partnership; ROGER M. MANSUKHANI, an;)
Individual; CHARLES ANTHONY MULRAIN, an)
Individual; RICHARD P. SYBERT, an Individual,)
and JONI B. FLAHERTY, an Individual,)
_____)
Defendants.)

COMPLAINT

COMES NOW Plaintiff, Terry Hodges (“Plaintiff”), and alleges as follows for his Complaint:

Parties

1. Plaintiff, a famous comedian and original host of SHOWTIME AT THE APOLLO, is and was at all times relevant hereto a resident of the State of Georgia.
2. Upon information and belief, Defendant Gordon Rees Scully Mansukhani, LLP d/b/a Gordon & Rees LLP (“Defendant GRSM”) is, and at all relevant times mentioned herein was, a California limited liability partnership with its principal place of business in California but with an office and engaged in the practice of law in Atlanta, Georgia. Service of process may be perfected upon Defendant GRSM by serving it

through its registered agent for service of process, to wit: Business Filings Incorporated, 1201 Peachtree Street, N.E., Atlanta, GA 30361.

3. Defendant Roger M. Mansukhani (“Defendant Mansukhani”) is, and at all relevant times mentioned herein was, an attorney licensed to practice law in California and a named partner of Defendant GRSM. Upon information and belief, Defendant Mansukhani resides in southern California and can be served at the firm’s office located at 633 West Fifth Street, 52nd Floor, Los Angeles, CA 90071, or at his residence address [to be determined].

4. Defendant Charles Anthony Mulrain (“Defendant Mulrain”) is, and at all relevant times mentioned herein was, an attorney licensed to practice law in Georgia and an office managing partner of Defendant GRSM. Upon information and belief, Defendant Mulrain resides in or around Atlanta, Georgia and can be served at the firm’s office located at 3455 Peachtree Road, Suite 1500, Atlanta, GA 30326, or at his residence address [1520 Lake Cove, Atlanta, GA 30338 (DeKalb County)].

5. Defendant Richard P. Sybert (“Defendant Sybert”) is, and at all relevant times mentioned herein was, an attorney licensed to practice law in California and a partner of Defendant GRSM. Upon information and belief, Defendant Sybert resides in southern California and can be served at the firm’s office located at 2701 Loker Avenue West, Suite 200, Carlsbad, CA 92010, or at his residence address [to be determined].

6. Defendant Joni B. Flaherty (“Defendant Flaherty”) is, and at all relevant times mentioned herein was, an attorney licensed to practice law in California and a senior counsel of Defendant GRSM. Upon information and belief, Defendant Flaherty resides in southern California and can be served at the firm’s office located at 101 W. Broadway, Suite 2000, San Diego, CA 92101, or at her residence address [to be determined].

7. At all relevant times mentioned herein, Defendants Mansukhani, Mulrain, Sybert and Flaherty were the employees and/or agents of Defendant GRSM acting within the purpose and scope of such employment and/or agency. Thus, Defendant GRSM is vicariously liable for the acts of the other Defendants as alleged herein.

Jurisdiction

8. Defendants are subject to the jurisdiction and venue of this Court.

Statement of Facts

A. Hodges' Underlying Dispute with Chris Tucker and Netflix:

9. Plaintiff is a prominent and much-beloved comedian. He was the original host of SHOWTIME AT THE APOLLO, and has appeared on the RUSSELL SIMMONS DEF COMEDY JAM and BET COMIC VIEW. He has performed with, among others, Luther Vandross, Patti Labelle, Anita Baker, Boys II Men, The O-Jays, and Chris Tucker ("Tucker").

10. In spring of 2015, Plaintiff was owed hundreds of thousands of dollars by comedian Tucker under a contract arising from Plaintiff's work as co-producer and writer of the movie CHRIS TUCKER LIVE, Tucker's first-ever full-length comedy special movie, which Netflix, Inc. ("Netflix") had purchased for, upon information and belief, several million dollars. Tucker refused to pay Plaintiff for the co-production and writing work Hodges had performed. Plaintiff had thus been denied significant compensation and co-producer credit – both of which Tucker had repeatedly promised him.

11. On or about May 12, 2015, Plaintiff retained Defendant GRSM to represent him in a lawsuit to be filed on Plaintiff's behalf to recover compensation due from his agreement with Tucker.

12. Plaintiff executed the retainer letter, sent Defendant GRSM a \$10,000 retainer check (which Defendant GRSM cashed), and trusted his lawyers to zealously advocate on his behalf. The retainer letter, sent from Defendant GRSM's Atlanta, Georgia

office, stated that the laws of the State of Georgia would govern the construction and interpretation of the parties' agreement.

B. Defendants Advise Plaintiff to Sue Netflix for Both Money Damages and to Stop The Release of CHRIS TUCKER LIVE:

13. At Defendants' urging, it was agreed that Netflix should be included as a defendant in the lawsuit, and that Plaintiff should seek both:

- (i) payment of money damages and
- (ii) an injunction preventing Netflix from streaming CHRIS TUCKER LIVE.

However, Defendants initially failed either to conduct a conflicts check and/or notice that Netflix was an active client of the Defendant GRSM and advise Plaintiff of same.

14. Indeed, Defendant Mulrain suggested that suing Netflix might also open doors toward a favorable settlement of the entire dispute, due to Defendant Mulrain's personal association with a manager of the famous singer and actor Dana Owens p/k/a "Queen Latifah," who was well-connected with an in-house lawyer at Netflix.

15. On or about July 2, 2015, Defendants filed suit on Plaintiff's behalf against Tucker and Netflix. The Verified Complaint included claims against Tucker for breach of contract, fraud and breach of covenant of good faith and fair dealing and against Netflix for monetary damages sounding in unjust enrichment and quantum meruit.

16. Thus, the Complaint filed by Defendants on behalf of Plaintiff contained causes of action against Netflix for:

- A Declaratory Judgment that Plaintiff was a co-producer of CHRIS TUCKER LIVE (Fourth Cause of Action), and
- Monetary damages in the form of "actual damages ... consequential and special damages ... disgorgement of profits ... attorneys' fees ... interest ... costs of suit..." (Sixth Cause of Action and Prayer for Relief)

17. The Verified Complaint failed to include claims for (i) copyright infringement and (ii) unauthorized use of Plaintiff's name, image, and likeness as he appeared in CHRIS TUCKER LIVE. These claims would have obviously strengthened a motion for immediate injunctive relief as well as the financial value of Plaintiff's claims.

18. Defendants also prepared a set of motion papers which sought a TRO against Netflix preventing distribution of CHRIS TUCKER LIVE.

19. Defendants advised Plaintiff that the threat of an injunction would bring substantial pressure on Netflix and thus would result in substantial leverage for Plaintiff. Netflix had aggressively promoted CHRIS TUCKER LIVE, and significant pressure would have been brought to bear if injunctive relief were granted.

C. **After Delaying For Nine (9) Weeks, Gordon & Rees Sue To Restrain Distribution Of The Movie Just Two (2) Days Before Release:**

20. Although Defendant GRSM was retained and received Hodges' \$10,000 retainer check on May 12, 2015, Defendants allowed almost two (2) months to pass before they finally had the initiating pleadings and TRO motion ready to file.

21. Indeed, Defendants failed to file a motion for a temporary restraining order and a preliminary injunction at or about the time they filed the Verified Complaint. They inexcusably waited until July 8 – only two (2) days before the release of CHRIS TUCKER LIVE -- to file the TRO papers.

22. By letting the TRO issue linger and leaving so little time, Defendants risked the possibility that some intervening event might hamper their TRO, leaving no margin for error if the aim of the injunction was to prevent the movie's initial release.

23. That is precisely what happened: on July 8, 2015—the same day that Defendants belatedly filed the TRO application—Tucker filed to remove the case to federal court.

D. Sybert Offers Netflix The Chance To Settle The TRO, But Not Hodges' Monetary Claims:

24. Defendants' filing of the case resulted in massive nationwide publicity in well-known outlets such as VARIETY and TMZ. The press was so pervasive that Defendants sought input from Plaintiff concerning how to handle media inquiries and what comment to make, if any.

25. On July 8, 2015, Defendant Sybert notified Netflix of Defendants' intent to seek a temporary restraining order ("TRO") the following day.

26. When Defendant Sybert contacted Netflix, he knew that Plaintiff's claims against Netflix were for both injunctive relief and monetary damages in the form of "actual damages ... consequential and special damages ... disgorgement of profits ... attorneys' fees ... interest ... costs of suit..." as noted above.

27. First, Defendant Sybert drafted a Verified Complaint for monetary damages against Netflix and filed it as an officer of the court. Second, at 5:54 p.m. on July 8, 2015, Defendant Sybert sent an email to Netflix's counsel, Linda Burrow, confirming telephone discussions between the lawyers. In that email (true and correct copy annexed hereto as Exhibit "A"), Defendant Sybert offered Netflix a settlement of Plaintiff's injunctive relief claims—but expressly promised that Defendants would continue to pursue the monetary damages claims against Netflix (emphasis added):

As you know, our client Terry Hodges earlier this week filed a complaint against Chris Tucker *and your client Netflix* in Los Angeles Superior Court seeking injunctive relief *and damages*....

* * *

[A]s I stated in my voicemail left you around noon today, returning your call, if Netflix will give Mr. Hodges co-production credit on the movie credits, we will not proceed with the TRO and will not object to release of the subject movie as planned this Friday. *We will of course proceed with the remaining portions of the claims and causes of action in the Complaint.*

E. Defendants' Awareness of the Conflict:

28. When attorney Burrow and Defendant Sybert spoke by phone in the minutes after the above-referenced email, attorney Burrow expressly advised Defendant Sybert that Netflix was a client of Defendant GRSM.

29. Once Defendants realized that they had sued a major client of Defendant GRSM worth, upon information and belief, \$41 billion, and that an actual, un-waived conflict existed, mayhem broke loose inside GRSM. Defendants Sybert and Mulrain were under internal attack from other GRSM lawyers, from GRSM management, and from Netflix itself.

30. Aware of the clear conflict, Defendants failed to take steps to safeguard Plaintiff's interests or effectuate a plan to ensure that he receive prompt, non-conflicted representation, which would have required Defendants to publicly disclose their legal and ethical breaches in a high-profile case that was already generating nationwide publicity on VARIETY and TMZ.

F. GRSM Remain In As Counsel for Plaintiff And Advise Plaintiff To Dismiss Netflix:

31. Within ninety (90) minutes of Defendant Sybert's email to attorney Burrow, Defendants Sybert and Mulrain called Plaintiff and told him that they had a conflict with Netflix and that, unless he withdrew his claims against Netflix, the firm would have to withdraw from the case.

32. Defendants did not advise Plaintiff to seek input from independent counsel. Instead, in order to convince Plaintiff to agree to dismiss Netflix, Defendants Sybert and Mulrain falsely told Plaintiff by phone and/or in writing that (i) injunctive relief would no longer be available because removal of the case by Tucker to federal court had made it too late to stop the release of the movie; and (ii) there was no downside to Plaintiff if he dismissed his claims against Netflix, because without injunctive relief, there were no other claims against Netflix.

33. First, contrary to the false representations of Defendants Sybert and Mulrain, a TRO and injunction could have been entered by a federal court to prevent CHRIS TUCKER LIVE from distribution, or failing that, to remove it from distribution once distribution had commenced. In fact, prior to being expressly informed of the conflict, Defendants had prepared TRO papers to be filed in the removed action. (See Defendants' draft Ex Parte Application attached hereto as exhibit "B.") Even if streaming of the movie over Netflix might have begun due to Defendants' delay in commencing suit, injunctive relief was still available to discontinue the movie's distribution.

34. Second, Defendants Sybert and Mulrain knowingly misrepresented to Plaintiff that there was no downside to dismissing Netflix. Not only did the injunction claims remain viable, but Defendants intentionally did not tell their client that if he dismissed Netflix, he would also be dismissing his claims for monetary damages against the company.

35. At 7:32 P.M. Pacific Time on July 8, 2015—less than 90 minutes after Defendant Sybert wrote to attorney Burrow and promised to continue to pursue Plaintiff's monetary damages claims against Netflix even if Netflix settled the TRO claims—Defendant Sybert wrote to Plaintiff and copied Mulrain (emphasis supplied):

Terry, as we just discussed on the phone, we hit some major speed bumps today.

* * *

[W]e discovered a conflict in that we represent Netflix in other cases. We cannot ethically proceed unless we dismiss them as a defendant. However, *since it is not possible now to stop the release Friday, they do not need to be a defendant.* Accordingly, we recommended . . . that we will prepare and file an Amended Complaint that removes Netflix and any requests for injunctive relief.

(A true and correct copy of a July 8, 2015 email to Plaintiff is attached hereto as Exhibit "C.")

36. Unaware that his legal counsel were being deceitful, Plaintiff reasonably believed he had no choice: his lawyers were telling him he either had to give up his claims and substantive rights against Netflix, or else he would lose his lawyers at just the moment that he had filed his suit and two (2) days before CHRIS TUCKER LIVE began to stream on Netflix.

37. Relying upon the advice of his trusted legal advisors that there was no downside to dismissing Netflix, Plaintiff acquiesced in Defendants' recommendation to dismiss all of his claims against Netflix.

38. Defendants immediately began working on the preparation of an Amended Complaint which simply omitted Netflix from the caption and omitted all claims against Netflix. In addition to failing to tell Plaintiff that he was giving up all of his still-existing substantive claims against Netflix, Defendants did not advise Plaintiff that they were also using his only amendment "as of right" under the federal rules. Instead, slightly more than twelve (12) hours after Defendants learned that they had sued a client and had an unwaived, active conflict, on July 9, 2015, Defendants filed the Amended Complaint, which omitted all claims against their other client, Netflix, which pleading was filed by Defendant Flaherty.

39. At 8:50 a.m. on July 9, 2015, Defendant Sybert emailed Netflix's attorneys to advise: **"We are filing an Amended Complaint that does not name Netflix as a defendant and does not seek injunctive relief nor address release of the film."** (emphasis added.) (A true and correct copy of the email is attached hereto as Exhibit "D.")

40. Then, presumably, Gordon & Rees prayed that Hodges never caught wise to what they had done.

G. Defendants Continue to Betray Plaintiff for their Self-Benefit:

41. Only days after Defendant Flaherty filed the Amended Complaint, Defendant Mansukhani ordered Defendant Flaherty to file a duplicative dismissal of Netflix as a defendant from the action that Defendants had brought on Plaintiff's behalf. Flaherty recorded this directive in emails, a true and correct copy of which is attached hereto as Exhibit "E." The dismissal of Netflix was done by Defendants despite their express recognition that they didn't "have the right to deal away [Plaintiff's] rights."

42. On August 1, 2015--less than a month after Defendants had deceived Plaintiff, Netflix hired Defendant GRSM for a new matter, specifically sending it to Defendant Mulrain. A true and correct copy of a GRSM conflict check document listing the representation is annexed hereto as Exhibit F.

43. Upon information and belief, Netflix submitted more work to Defendant GRSM, and specifically to Defendant Mulrain, in October 2015.

44. In the meantime, as the case against Chris Tucker continued, Defendants continued to allow their duties to Netflix to adversely interfere with their representation of Plaintiff. For example, when it was time to prepare a witness list for use in the litigation, the initial drafts contained the names of two necessary Netflix personnel:

- Ted Sarandos, Chief Content Officer and one of Time Magazine's 100 Most influential People of 2013; and
- Don Halcombe, Netflix PR man.

45. However, Defendant Sybert ordered Defendant Flaherty to remove the names of any Netflix personnel from the witness list ("If Paul Norling, Ted Sarbandos, and Don Halcombe are from Netflix, *take them off*") (emphasis included), which Defendant Flaherty did. In fact, in the haste to shield Netflix employees, Flaherty also removed Paul Norling, a non-Netflix witness who had highly probative information. True and correct copies of the email exchange on this point are annexed hereto as Exhibit G.

46. The omission of Netflix's CCO and PR employee prejudiced the representation of Plaintiff and prosecution of his case. However, Defendants Sybert and Flaherty opted to protect the interests of their client Netflix, to the prejudice of their other client, Plaintiff.

47. On or about August 18, 2015, Defendant GRSM billed Plaintiff for \$8,381 and gave him 30 days to pay.

48. However, seven (7) days later, Defendant Mulrain wrote to Defendant Sybert: "Let's get out ASAP," referring to the firm's representation of Plaintiff

49. On or about August 28, 2015, Defendant Flaherty wrote to Chris Tucker's lawyer regarding Defendant GRSM's intent to withdraw as Plaintiff's lawyers. A true and correct copy of this email is annexed hereto as Exhibit "H."

50. When Defendant Flaherty asked a fellow GRSM lawyer to review a draft email to Chris Tucker's attorneys on that point, her colleague responded, "[O]pposing counsel knows more about the withdrawal than your client does." (See Exhibit "H.")

51. On or about September 4, 2015, --just 16 days into the 30-day payment window--Defendant Mulrain wrote to Plaintiff that Defendant GRSM was dropping him as a client because "you don't have the financial wherewithal to finance the case." At that time, no legal bill was overdue and Plaintiff had never indicated to Defendants that he was unable to pay for Defendants' representation.

52. Defendants did not timely move for permission to withdraw, but instead simply stopped attending to the case. For example, Defendants did not attend a conference on September 21, 2015, but rather called the Court during the conference and told the Court they planned to withdraw.

53. Subsequently, Plaintiff demanded that Defendant GRSM provide him with the legal file from their representation of him. Defendants GRSM has provided parts, but not all of the file, including communications with each other and Netflix concerning Plaintiff.

Count One for Legal Malpractice Against All Defendants

54. Plaintiff realleges and incorporates the allegations of all proceeding paragraphs as if realleged herein.

55. Plaintiff had an attorney-client relationship with Defendants.

56. At all times during their representation of Plaintiff, Defendants owed a duty to Plaintiff to use such skill, prudence and diligence as other members of the profession commonly possess and exercise.

57. Defendants, and each of them, breached this duty by negligently and carelessly handling said representation. The acts of negligence include, but are not necessarily limited to: (i) failing to conduct a conflicts check and/or notice that Netflix was an active client of Defendant GRSM and advise Plaintiff of same; (ii) accepting the representation and filing suit against an existing client of the firm; and (iii) advising Plaintiff to dismiss, and dismissing, Plaintiff's viable claims against Netflix.

58. As a direct and proximate result of Defendants' negligence, Plaintiff lost his rights in valid claims and has suffered special damages in an amount to be proven at time of trial.

59. Plaintiff should be awarded his expenses of litigation in this matter, including attorney's fees, pursuant to O.C.G.A. §13-6-11, because Defendants have acted in bad faith during the course of the transaction and/or have caused Plaintiff unnecessary trouble and expense.

Count Two for Breach of Fiduciary Duty Against All Defendants

60. Plaintiff realleges and incorporates the allegations of all proceeding paragraphs as if realleged herein.

61. A fiduciary relationship existed between Plaintiff and Defendants, and each of them.

62. Because of the fiduciary relationship, Defendants owed Plaintiff a duty to exercise the utmost good faith and loyalty to Plaintiff, and to act solely for his benefit.

63. Defendants acted in breach of the fiduciary relationship by committing the acts and omissions as set forth above, as well as by: (i) failing to adequately advise Plaintiff of the conflict upon discovery of same as required by Rule 1.7 of the Georgia Rules of Professional Conduct and/or Rule 3-310 of the California Rules of Professional Conduct; (ii) continuing to represent Plaintiff while they had an active, unwaived conflict of interest against an existing client, Netflix; (iii) actively conspiring to fool Plaintiff into giving up his rights against Defendants' other client, Netflix; (iv) taking secret actions to continue to protect and shelter Netflix while they represented Plaintiff, such as removing Netflix personnel from the witness list that they included with Plaintiff's Rule 16(b) statement; (v) failing to disclose the effect of their acts and omissions; (vi) putting their own financial interests in front of those of their client, Plaintiff; and (vii) knowingly making false statements of fact and law to Plaintiff and others.

64. Defendants actions also violated, *inter alia*, Georgia Rules of Professional Responsibility 1.1 (concerning competence); 1.3 (concerning diligence); 1.4 (concerning communication with the client); 1.7 (prohibiting conflicts of interest); 1.16 (requiring withdrawal where another rule is violated); and 8.4(a)(4) (dishonesty, fraud, deceit and misrepresentation).

65. As a direct and proximate result of Defendants' fiduciary breaches, Plaintiff lost his rights in valid claims and has suffered special damages in an amount to be proven at time of trial.

66. As a further direct and proximate result of Defendants' fiduciary breaches, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, and has been injured in mind and body, all to Plaintiff's general damage, in an amount to be proven at time of trial.

67. Plaintiff should be awarded his expenses of litigation in this matter, including attorney's fees, pursuant to O.C.G.A. §13-6-11, because Defendants have acted in

bad faith during the course of the transaction and/or have caused Plaintiff unnecessary trouble and expense.

68. Defendants' actions and omissions showed willful misconduct, malice, fraud, wantonness, oppression and a conscious indifference to the consequences of their conduct. Plaintiff therefore prays for exemplary and punitive damages in an amount to be determined by a jury to deter Defendants from such wrongful conduct in the future.

Count Three for Fraud Against Sybert, Mulrain and the GRSM

69. Plaintiff realleges and incorporates the allegations of all proceeding paragraphs as if realleged herein.

70. Defendants Sybert and Mulrain made the following representations, among others, to Plaintiff: (a) injunctive relief to prevent the airing of CHRIS TUCKER LIVE was unavailable; and (b) there was no reason to keep Netflix as a defendant since Defendant GRSM could no longer obtain injunctive relief to prevent the airing of CHRIS TUCKER LIVE.

71. Defendants Sybert and Mulrain failed to mention, among other things, to Plaintiff: (a) injunctive relief was available to enjoin the continued streaming of CHRIS TUCKER LIVE; (b) such an injunction would have put substantial pressure on Netflix and Chris Tucker and improved Plaintiff's chances of success and (c) it was imprudent to no longer seek damages from Netflix because Netflix had greater resources than Chris Tucker to satisfy a judgment.

72. Each of these representations and omissions were false and misleading.

73. As lawyers, Defendants Sybert and Mulrain knew that each of these representations and omissions were false.

74. Defendants Sybert and Mulrain knew that their client, Plaintiff, who was paying \$500 per hour to have them serve as his attorneys, would reasonably rely upon their counsel.

75. Each of these representations and omissions were material to Plaintiff's decision to give up his claims against Netflix.

76. By reason of the foregoing, Defendants Sybert, Mulrain and GRSM committed fraud.

77. As a direct and proximate result of Defendants' fraud, Plaintiff lost his rights in valid claims and has suffered special damages in an amount to be proven at time of trial.

78. As a further direct and proximate result of Defendants' fraud, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, and has been injured in mind and body, all to Plaintiff's general damage, in an amount to be proven at time of trial.

79. Plaintiff should be awarded his expenses of litigation in this matter, including attorney's fees, pursuant to O.C.G.A. §13-6-11, because Defendants have acted in bad faith during the course of the transaction and/or have caused Plaintiff unnecessary trouble and expense.

80. Defendants' actions and omissions showed willful misconduct, malice, fraud, wantonness, oppression and a conscious indifference to the consequences of their conduct. Plaintiff therefore prays for exemplary and punitive damages in an amount to be determined by a jury to deter Defendants from such wrongful conduct in the future.

Count Four for Civil Conspiracy Against All Defendants

81. Plaintiff realleges and incorporates the allegations of all preceding paragraphs as if realleged herein.

82. Each Defendant had an agreement to protect their own interests at the expense of Plaintiff, including but not limited to the commission of fraud and breach of fiduciary duty.

83. Each Defendant committed acts in aid of the conspiracy, including but not limited to giving Plaintiff falsely and misleading advice, inducing him not to pursue

injunctive relief, inducing him to drop his claims against Netflix and dismissing his claims against Netflix.

84. Each Defendant's respective conduct was committed with malice – namely, with a willful and conscious disregard for Plaintiff's rights.

85. By reason of the foregoing, each Defendant committed civil conspiracy.

86. Plaintiff was damaged by each Defendant's civil conspiracy in an amount to be proven at trial.

87. Plaintiff should be awarded his expenses of litigation in this matter, including attorney's fees, pursuant to O.C.G.A. §13-6-11, because Defendants have acted in bad faith during the course of the transaction and/or have caused Plaintiff unnecessary trouble and expense.

88. Defendants' actions and omissions showed willful misconduct, malice, fraud, wantonness, oppression and a conscious indifference to the consequences of their conduct. Plaintiff therefore prays for exemplary and punitive damages in an amount to be determined by a jury to deter Defendants from such wrongful conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- a) That the Court enter a judgment in favor of Plaintiff and against Defendants, and each of them;
- b) That Plaintiff recover special damages from Defendants, and each of them, in a sum to be proven at time of trial;
- c) That Plaintiff recover general damages from Defendants, and each of them, in a sum to be proven at time of trial;
- d) That Plaintiff recover punitive damages from Defendants, and each of them, in a sum to be proven at time of trial;
- e) That Plaintiff recover his expenses of litigation, including attorney's fees, from Defendants, and each of them;

- f) That all costs of this action be assessed against Defendants;
- g) That Plaintiff receive a trial by jury on all issues; and
- h) That this Court grant such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED, this 17th day of October, 2016.

Warren R. Hinds, P.C.
Attorney for Plaintiff

By: 

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GA Bar No. 355767

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Begin forwarded message:

From: Richard Sybert <RSybert@gordonrees.com>
Date: July 8, 2015 at 8:54:47 PM EDT
To: "burrow@caldwell-leslie.com" <burrow@caldwell-leslie.com>
Cc: Joni Flaherty <jflaherty@gordonrees.com>
Subject: Hodges v. Tucker and Netflix

Dear Ms. Burrow:

This will confirm our telephone discussion of today. As you know, our client Terry Hodges earlier this week filed a complaint against Chris Tucker and your client Netflix in Los Angeles Superior Court seeking injunctive relief and damages on account of the Chris Tucker concert movie that we are informed and believe is scheduled to be released by and on Netflix this Friday, July 10. The Complaint, a copy of which has been served on Netflix, alleges irreparable harm to Mr. Hodges including what we are informed and believe to be the failure to give him co-production credit in the movie credits. This goes to reputation and stature within the entertainment industry and is not fully compensable in money damages.

We gave both Netflix and counsel for Mr. Tucker proper notice of our intent to apply for a temporary restraining order (TRO) in Department 85 of Los Angeles Superior Court tomorrow morning, July 9, 2015 at 8:30 am to delay release of the subject movie unless and until Mr. Hodges is given proper co-production credit. Obviously this would come prior to the planned July 10 release.

We learned indirectly at approximately 4:30 pm this afternoon that you apparently filed documents purporting to remove this case to federal court. We received actual notice of such removal from counsel for Mr. Tucker at 5:35pm, after the courts had closed. This removal is illegitimate and without basis on its face because, *inter alia*, (1) the amount in controversy required for federal diversity jurisdiction, which is judged by the allegations of the Complaint, *see* 28 U.S.C. Sec. 1446(c)(2), is not met; (2) removal is improper where any defendant is a citizen of the state in which the state court is located, as Netflix is here; *see, e.g., Lincoln Property Co. v. Roche*, 546 U.S. 81, 126 S.Ct. 606, 613, 163 L.Ed.2d 415 (2005); *see also, Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302 (11th Cir. 2001); (3) Mr. Tucker and presumably his lawyers are well aware that Mr. Hodges lives in and is a resident of Georgia, not Nevada.

Such attempted removal is transparently a bad faith tactic and improper "sharp practices" obviously intended to delay and frustrate the ability of any court to hear our client's application for emergency relief prior to release of the subject movie. In addition to violating Federal Rule of Civil Procedure 11 which is made expressly applicable to removal by 28 U.S.C. Sec. 1446(a), we believe it constitutes contempt of court.

As we discussed on the phone, we request that Netflix delay the release of the subject movie until Mr.

EXHIBIT A

Hodges' application for emergency relief and a temporary restraining order is heard in either state or federal court. We represent that we will endeavor to do this on the earliest possible date. Should Netflix decline this request, Netflix will have effectively made itself party to this illegitimate, unauthorized, bad faith delaying tactic on the part of Mr. Tucker and his counsel plainly intended to prevent any court from hearing the matter until after the movie has been released.

On a related note, as I stated in my voicemail left you around noon today, returning your call, if Netflix will give Mr. Hodges co-production credit on the movie credits, we will not proceed with the TRO and will not object to release of the subject movie as planned this Friday. We will of course proceed with the remaining portions of the claims and causes of action in the Complaint.

Finally, the voicemail you left me this morning stated that you had relevant information to impart. When we spoke with you this afternoon, you stated that you could not remember what that information was.

Yours truly,
Richard P. Sybert

RICHARD P. SYBERT | Partner

GORDON & REES LLP

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6 Attorneys for Plaintiff
TERRY HODGES

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION - LOS ANGELES

11 TERRY HODGES, an Individual,
12 Plaintiff,

13 vs.

14 CHRISTOPHER TUCKER, an
Individual; NETFLIX, INC., a
15 Delaware corporation; DOES 1-25
16 inclusive,
17 Defendants.

CASE NO. 2:15-CV-05158-JAK-JEM
Judge: The Honorable
John A. Kronstadt

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER OR, IN THE
ALTERNATIVE, SUA SPONTE
REMAND TO STATE COURT**

Complaint Filed: July 2, 2015
Removal Filed: July 8, 2015

20 **To the Honorable John A. Kronstadt:**

21 Plaintiff Terry Hodges ("Plaintiff") respectfully submits this *ex parte* request
22 for a Temporary Restraining Order against Defendants Netflix, Inc. ("Netflix") and
23 Christopher "Chris" Tucker ("Tucker") (together "Defendants").¹

24 This lawsuit was originally filed in Los Angeles Superior Court on July 2,
25 2015. Plaintiff seeks relief from Defendants for breach of contract-related claims,
26 stemming from Defendants' failure to pay Plaintiff for work performed on

27
28 ¹ In submitting for this emergency relief, Plaintiff does not expressly or impliedly waive any
objections he may have to this Court's jurisdiction.

EXHIBIT

B

1 Tucker's comedy special, *Chris Tucker Live* (the "Film"). Plaintiff, also a
2 comedian, providing work in the form of acting, editing, voice-over announcing,
3 and writing on the Film, and was promised in return payment and co-producer
4 credit. Netflix entered into an agreement with Tucker to release *Chris Tucker Live*
5 via its subscription-based media streaming service. The date of release is
6 scheduled for this Friday, July 10, 2015.

7 On Wednesday, July 8, 2015 (today's date), Plaintiff filed an *Ex Parte*
8 Application for Temporary Restraining Order and to Show Cause Why a
9 Preliminary Injunction Should Not Issue, to be heard on Thursday, July 9, 2015 in
10 Department 85 of the Los Angeles Superior Court. As fully briefed in the papers
11 filed in State Court and incorporated here in the pages that follow this request, the
12 temporary restraining order is requested on this ex parte basis because Plaintiff will
13 suffer irreparable harm if he is not heard before the July 10, 2015 release date of
14 *Chris Tucker Live*. Plaintiff was promised – through a valid and enforceable oral
15 contract – credit as co-producer of the film, however Defendant Tucker breached
16 his agreement with Plaintiff and Plaintiff will not appear in the credits as a co-
17 producer. As a result, and if this TRO is not issued prior to the release of *Chris*
18 *Tucker Live*, Plaintiff will suffer irreparable injury to his reputation, goodwill, and
19 publicity. This harm cannot be repaired through legal damages requested through
20 Plaintiff's contract-based claims.

21 In an effort to initiate these proceedings transparently, and despite no legal
22 obligation to do so pursuant to California Code of Civil Procedure section 527(c),
23 counsel for Plaintiff notified Defendants of the underlying Application. Counsel
24 for Plaintiff notified Susan Adamson and Martin Singer, attorneys for Defendant
25 Tucker, by teleconference on July 7, 2015 and through follow-up email on the
26 morning of July 8. Counsel for Plaintiff notified David Hyman, General Counsel
27 for Defendant Netflix, by email on the morning of July 8, 2015. Attorney Susan
28

1 Burrow, outside counsel for Netflix, contacted counsel for Plaintiff shortly after
2 notice was provided to Netflix.

3 Counsel for Plaintiff learned at approximately 4:30 pm this afternoon –
4 Thursday, July 8, 2015 – that counsel for Tucker have filed documents purporting
5 to remove the state court lawsuit assigned to Department 61 to this Federal Court.
6 Counsel for Plaintiff received actual notice of the removal from counsel for Tucker
7 in an email sent at 5:35 pm, after the courts had closed. Defendant Tucker’s
8 attempt to remove this case is illegitimate and without basis on its face because,
9 *inter alia*, (1) the amount in controversy required for federal diversity jurisdiction,
10 which is judged by the allegations of the Complaint, is not met²; (2) removal is
11 improper where any defendant is a citizen of the state in which the state court is
12 located, as Netflix’s principal place of business and headquarters are in California³;
13 and (3) Mr. Hodges lives in and is a resident of Georgia, not Nevada, and therefore
14 complete diversity has not been met.⁴

15 In the interest of hearing this TRO in *any* court with jurisdiction – federal or
16 state – before the July 10, 2015 release date of the Film, Plaintiff submits this
17 request and incorporates in its entirety the Application submitted in Los Angeles
18 Superior Court, prior to the improper removal. The pages that follow is a direct,
19 unedited copy of the state court filing, and Plaintiff asks the Court to consider and
20 incorporate the arguments initially presented in these papers as if re-drafted herein.

21 In the alternative, Plaintiff respectfully requests that the Court, pursuant to
22 its *sua sponte* authority, remands this lawsuit back to state court, in time for

23 _____
24 ² See 28 U.S.C. § 1446.

25 ³ See 28 U.S.C. § 1441(b); *Lincoln Property Co. v. Roche*, 536 U.S. 81 (2005).

26 ⁴ See 28 U.S.C. § 1332. Plaintiff argues that the attempted removal is transparently a bad-faith
27 tactic intended to delay and frustrate the ability of *any* court to hear his application for
28 emergency relief prior to release of the subject movie. See, e.g., Fed. R. Civ. P. 11; 28 U.S.C.
Sec. 1447. However, at this time, Plaintiff is acutely and earnestly invested solely in asking for
either the state *or* federal court to hear the TRO prior to the Friday, July 10, 2015 release date.

1 Plaintiff to be heard on his TRO application no later than July 10, 2015 at 8:30
2 am.⁵ See 28 U.S.C. § 1447(c).

3
4
5 Respectfully submitted,

6 Dated: May 9, 2016

GORDON & REES LLP

7 By:

8 Richard P. Sybert
9 Joni B. Flaherty
10 Attorneys for Plaintiff
11 TERRY HODGES

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Gordon & Rees LLP
101 W. Broadway Suite 2000
San Diego, CA 92101

⁵ Pursuant to Local Rules and Standing Orders of the Los Angeles Superior Court, such ex parte relief may be heard at 8:30 am on any day the court is open.

From: Richard Sybert <RSybert@gordonrees.com>
Date: July 8, 2015 at 10:32:47 PM EDT
To: "thodgescomedy@gmail.com" <thodgescomedy@gmail.com>
Cc: "C. Anthony Mulrain" <amulrain@gordonrees.com>
Subject: Hodges v Tucker

Terry, as we just discussed on the phone, we hit some major speed bumps today.

First, the lawyers for Chris Tucker removed (transferred) the case from state court to federal court in Los Angeles, as they have a right to do, on the ground that they say you are a resident of Nevada and not Georgia, and therefore the suit is between citizens of different states which entitles them to federal jurisdiction. We believe they are wrong, but they have a procedural right to transfer the case, and the burden is then on us to file a motion to remand (return) the case to state court, which we can do. But the practical effect, and the obvious intent, is that it is now simply impossible to have our request for a temporary restraining order heard before the movie is released Friday.

Second, we discovered a conflict in that we represent Netflix in other cases. We cannot ethically proceed unless we dismiss them as a defendant. However, since it is not possible now to stop the release Friday, they do not need to be a defendant.

Accordingly, we recommended, and you agreed and approved, that we will prepare and file an Amended Complaint that removes Netflix and any requests for injunctive relief. This Amended Complaint will be a straight request for money damages against Chris Tucker for his failure to pay you and give you appropriate production credit on the movie. We will try to file this tonight, and then subsequently prepare and file a motion to return the case to state court.

Best regards,
Rich Sybert

RICHARD P. SYBERT | Partner
GORDON & REES LLP
D: 619-230-7768 | F: 619-595-5768 (San Diego)

EXHIBIT C

D: 206-695-6652 | F: 206-689-2822 (Seattle)

rsybert@gordonrees.com

[vCard](#) | [Bio](#)

Arizona • California • Colorado • Connecticut • Florida • Georgia • Illinois • Maryland
Missouri • Nevada • New Jersey • New York • North Carolina • Oregon • Pennsylvania
South Dakota • Texas • Virginia • Washington • Washington, D.C.

Alabama • Arizona • California • Colorado • Connecticut • Florida • Georgia • Illinois • Massachusetts • Missouri • Nevada • New Jersey • New York •
North Carolina • Oregon • Pennsylvania • Texas • Washington • Washington, DC

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GORDON & REES LLP
<http://www.gordonrees.com>

From: Richard Sybert
Sent: Thursday, July 09, 2015 9:35 AM
To: Roger Mansukhani
Subject: Fwd: Hodges v. Tucker, et al.

Begin forwarded message:

From: "Linda M. Burrow" <burrow@caldwell-leslie.com>
Date: July 9, 2015 at 9:29:19 AM PDT
To: Richard Sybert <RSybert@gordonrees.com>
Subject: RE: Hodges v. Tucker, et al.

Thank you for letting me know.

Best,

Linda

Linda M. Burrow

Caldwell Leslie
Caldwell Leslie & Proctor, PC
725 South Figueroa Street, 31st Floor
Los Angeles, CA 90017-5524
Tel 213.629.9040 Fax 213.629.9022
burrow@caldwell-leslie.com

www.caldwell-leslie.com

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From: Richard Sybert [<mailto:RSybert@gordonrees.com>]
Sent: Thursday, July 09, 2015 8:50 AM
To: Linda M. Burrow
Subject: RE: Hodges v. Tucker, et al.

Dear Ms. Burrow:

We are filing an Amended Complaint that does not name Netflix as a defendant and does not seek injunctive relief nor address release of the film.

Yours truly,
Richard Sybert

EXHIBIT 2

Hodges.Gordon Email 001155

From: Joni Flaherty
Sent: Thursday, July 16, 2015 11:11 AM
To: Maria Cerezo
Subject: RE: Hodges

Thanks, Maria. I'm waiting for final OK to file the dismissal from Roger, and will give you the go-ahead as soon as I get his approval.

From: Maria Cerezo
Sent: Thursday, July 16, 2015 8:17 AM
To: Joni Flaherty
Subject: RE: Hodges

Dismissal is without prejudice unless stated otherwise per the FRCP rule

Maria G. Cerezo
GORDON & REES LLP

From: Richard Sybert
Sent: Wednesday, July 15, 2015 5:14 PM
To: Maria Cerezo
Cc: Joni Flaherty
Subject: Re: Hodges

It seems fine. Joni just make sure it's without prejudice. We don't have the right to deal away his rights.

On Jul 15, 2015, at 5:03 PM, Maria Cerezo <mcerezo@gordonrees.com> wrote:

How about now?

Maria G. Cerezo
GORDON & REES LLP

From: Richard Sybert
Sent: Wednesday, July 15, 2015 5:01 PM
To: Maria Cerezo
Cc: Joni Flaherty
Subject: Re: Hodges

It's not filled out.

On Jul 15, 2015, at 4:59 PM, Maria Cerezo <mcerezo@gordonrees.com> wrote:

Here is copy of doc

EXHIBIT 

From: Joni Flaherty
Sent: Monday, July 20, 2015 11:44 AM
To: Maria Cerezo
Subject: Hodges - Dismissal of Netflix (EOB Tues)

Go ahead and file dismissal of Netflix today or tomorrow. No need to separately serve Netflix; just file through ECF.
Thanks!

JONI B. FLAHERTY | Associate Attorney
GORDON & REES LLP

101 W. Broadway, Suite 2000
San Diego, CA 92101
D: 619-230-7789
jflaherty@gordonrees.com

[vCard](#) | [Bio](#) | [LinkedIn](#)

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Missouri • Nevada • New Jersey • New York • North Carolina • Oregon • Pennsylvania
South Carolina • South Dakota • Texas • Virginia • Washington • Washington, D.C.

CONFLICT OF INTEREST REPORT

Search Number: 81846

Conflict Check For: Smith, Deborah	Date: 9/15/2015	Office: OAKLAND
Search Submitted By: Ranick, Rachel	Email: riskmanagement@gordontreec.com	Report Expires: 12/14/2015
Risk Management Coordinator's Comments: Netflix, Inc		

To the Attorney:

Identifying and resolving conflicts is the obligation of the billing or supervising attorney. Questions pertaining to identifying and resolving conflicts should be directed to the Risk Management Committee. Upon completion of your review, forward this report with any comments to a member of the Risk Management Department.

How To Read This Report

The report groups the results into sections by their position in the matter. Some reports will not contain all of these categories, based on the search criteria and whether there is this type of information on the parties searched.

- ▲ Adverse
- ▲ Clients
- ▲ Matters *(This section displays hits on the Matter name only)*
- ▲ Other
- ▲ Pending Search *(This section displays possible conflict hits against recent searches run for other attorneys or intakes. You should review this section to determine if any other new business is being considered that may represent a conflict of interest.)*

			SUMMARY OF RESULTS		
Names Searched:	Position (Client, Adverse, Other)	Relationship In New Matter (Plaintiff, Tenant, etc.)	Total Number of Hits	Type of Hit/Number of Hits	Search Detail on Page#
Netflix, Inc	CLIENT		9	-Clients - 8 -Pending - 1	2 4

EXHIBIT F

CONFLICT OF INTEREST REPORT

Search Number: 81846

Conflict Of Interest Report - Prior Involvement Detail

CLIENT/CLIENT AFFILIATE

Name Searched Netflix, Inc
Relationship
Client No. MNTR **Client Name** Monitor Liability Managers
Matter No. 1063354 **Matter Name** Coston v. Netflix
Practice Group Employment Law Group
Area Law Litigation-Discrim/Harassment
Billing Atty Lucey, Michael
Open Date 5/24/2010 **Closed Date** 4/10/2015
Last Wip 8/25/2010

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Defendant	

Name Searched Netflix, Inc
Relationship
Client No. MNTR **Client Name** Monitor Liability Managers
Matter No. 1074672 **Matter Name** Hissner v. Netflix
Practice Group Employment Law Group
Area Law Litigation-Discrim/Harassment
Billing Atty Lucey, Michael
Open Date 12/21/2011 **Closed Date** 4/10/2015
Last Wip 5/24/2012

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Respondent	

Name Searched Netflix, Inc
Relationship
Client No. MNTR **Client Name** Monitor Liability Managers
Matter No. 1080672 **Matter Name** Green v. Netflix
Practice Group Employment Law Group
Area Law Non-Litigation
Billing Atty Lucey, Michael
Open Date 6/5/2012 **Closed Date** 4/10/2015
Last Wip 6/6/2012

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Employer	

Name Searched Netflix, Inc
Relationship
Client No. MNTR **Client Name** Monitor Liability Managers
Matter No. 1081065 **Matter Name** Le Roux v. Netflix
Practice Group Employment Law Group
Area Law EEOC
Billing Atty Lucey, Michael
Open Date 6/20/2012 **Closed Date**
Last Wip 12/31/2013

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Employer	

CONFLICT OF INTEREST REPORT

Search Number: 81846

Conflict Of Interest Report - Prior Involvement Detail

CLIENT/CLIENT AFFILIATE

Name Searched Netflix, Inc
Relationship
Client No. MNTR
Matter No. 1090211
Practice Group Employment Law Group
Area Law Litigation-Discrim/Harassment
Billing Atty Mansukhani, Roger
Open Date 7/1/2013
Last Wip 12/18/2014

Client Name Monitor Liability Managers
Matter Name Garda, Joseph v. Netflix, Inc.

Closed Date

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Defendant	

Name Searched Netflix, Inc
Relationship
Client No. MNTR
Matter No. 1105540
Practice Group Employment Law Group
Area Law EEOC
Billing Atty Mansukhani, Roger
Open Date 4/1/2015
Last Wip 7/17/2015

Client Name Monitor Liability Managers
Matter Name Estrella, Mario v. Netflix, Inc.

Closed Date

Name	Position	Relationship	Alias
Netflix, Inc.	CLIENT	Respondent	

Name Searched Netflix, Inc
Relationship
Client No. NTFLEX
Matter No. 1109446
Practice Group Business Transactional
Area Law
Billing Atty Mulrain, C. Anthony
Open Date 8/1/2015
Last Wip 8/26/2015

Client Name Netflix, LLC
Matter Name Tax

Closed Date

Name	Position	Relationship	Alias
Netflix, LLC	CLIENT	Client	

Name Searched Netflix, Inc
Relationship
Client No. NTFLEX
Billing Atty Mulrain, C. Anthony
Open Date 10/10/2005

Client Name Netflix, LLC

Closed Date

Name	Position	Relationship	Alias
Netflix, LLC	CLIENT	Client	

From: Joni Flaherty
Sent: Monday, September 14, 2015 1:07 AM
To: Maria Cerezo
Subject: Fwd: RULE 16(b) JOINT REPORT.docx
Attachments: RULE 16(b) JOINT REPORT.docx; ATT00001.htm

Please take these names off before filing. Thanks!

Sent via mobile. Please excuse the brevity of this message.

Begin forwarded message:

From: Richard Sybert <RSybert@gordonrees.com>
Date: September 14, 2015 at 2:39:22 AM GMT+1
To: Lauren Bellamy <lbellamy@gordonrees.com>
Cc: Joni Flaherty <jflaherty@gordonrees.com>
Subject: RULE 16(b) JOINT REPORT.docx

If Paul Norling, Ted Sardandos, and Don Halcombe are from Netflix, *take them off*

EXHIBIT **G**

1 MARTIN D. SINGER (BAR NO. 78166)
2 ALLISON S. HART (BAR NO. 190409)
3 LAVELY & SINGER
4 PROFESSIONAL CORPORATION
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8 Facsimile: (310) 556-3615
9 Email: mdsinger@lavelysinger.com
10 Email: ahart@lavelysinger.com

11 Attorneys for Defendant CHRISTOPHER TUCKER

12 RICHARD P. SYBERT (BAR NO. 080731)
13 JONI B. FLAHERTY (BAR NO. 272690)
14 GORDON & REES LLP
15 101 W. Broadway, Suite 2000
16 San Diego, California 92101
17 Telephone: (619) 696-6700
18 Email: rsybert@gordonrees.com
19 Email: jflaherty@gordonrees.com

20 Attorneys for Plaintiff TERRY HODGES

21 UNITED STATES DISTRICT COURT

22 CENTRAL DISTRICT OF CALIFORNIA

23 TERRY HODGES, an individual
24 Plaintiff,

25 v.

26 CHRISTOPHER TUCKER,
27 an individual,
28 Defendant.

CASE NO. CV 2:15-05158-JAK
(JEMx)

[Assigned to the Hon. John. A.
Kronstadt, Ctrm. 750]

JOINT RULE 16(b)/26(f) REPORT

Scheduling Conference
Date: September 21, 2015
Time: 1:30 p.m.
Ctrm.: 750

Complaint Filed: July 2, 2015
Trial Date: None Set

CHRISTOPHER TUCKER, an
individual;
Counterclaimant

v.

TERRY HODGES, an individual,
Counterdefendant.

3274-RRULE 26(f) JOINT REPORT

RULE 16(b)/26(f) JOINT REPORT

1 Plaintiff and Counterdefendant Terry Hodges ("Plaintiff") and Defendant and
2 Counterclaimant Christopher Tucker ("Defendant") hereby jointly submit this Report
3 pursuant to Federal Rules of Civil Procedure 16(b) and 26(f), Local Rule 26-1, and
4 the Court's Order Setting Rule 16(b) Scheduling Conference.
5

6
7 **A. STATEMENT OF THE CASE**

8 **1. Plaintiff:**

9 On or about 2008, Defendant engaged Plaintiff to work on a feature-length,
10 stand-up comedy special titled "Chris Tucker Live" (the "Film"). Plaintiff worked
11 on the Film at Defendant's request in a number of key capacities, including writing,
12 editing, co-producing, acting, and voice-over announcing. Initially, Defendant paid
13 Plaintiff for Plaintiff's early work on the Film, but has failed to make consistent
14 payments for the work performed by Plaintiff since 2011. Plaintiff continued to work
15 on the Film through 2014. On multiple occasions, Defendant engaged Plaintiff to
16 work on the Film from various locations, often requiring travel. During this
17 engagement, Plaintiff was prevented from accepting other work, resulting in lost
18 compensation and damages in thousands of dollars.

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21
22
23 Defendant made numerous countless assurances that he would pay Plaintiff for
24 his work. Plaintiff relied on such assurances, and continued to perform work for
25 Defendant on the Film without payment. Furthermore, based on Defendant's
26 assurances of payment for services rendered, Plaintiff turned declined other
27 employment and consultant opportunities.
28

1 In 2014, Defendant had not rendered any additional payment to Plaintiff for
2 Plaintiff's work on the film. In or around September 2014, Plaintiff entered into an
3 additional oral agreement with Defendant, whereby, in addition to the amount owed
4 to Plaintiff through September 2014, Plaintiff would be credited as a co-producer of
5 the Film and earn a percentage share of the profits. Defendant made representations
6 to Plaintiff that Defendant was entering into this additional agreement because
7 Defendant had failed to pay Plaintiff for his services.

10 To date, Plaintiff has not been paid for his work and services rendered in
11 connection with Defendant's Film under the original agreement. Similarly, Plaintiff
12 has not received a co-producer credit for the Film under the additional agreement.

14 In or about May 9, 2015, at a show in St. Louis, Missouri, Defendant presented
15 Plaintiff with an unsigned "Consultant Agreement" (hereinafter "Sham Agreement"),
16 backdated to August 2012, in an effort to alter and renege on his prior contractual
17 agreements with and promises to Plaintiff. Plaintiff refused to sign the Sham
18 Agreement, and still has not been compensated for his work on the Film pursuant to
19 the parties' agreed-upon terms. Defendant's brother Norris Tucker, acting as
20 Defendant's agent, attempted to induce Plaintiff into signing the Sham Agreement by
21 threatening to withhold other, unrelated payments owed to Plaintiff unless he signed.
22 Still, Plaintiff refused to sign the backdated Sham Agreement. Plaintiff never agreed
23 that the Sham Agreement would govern the parties' agreement or supersede prior
24 negotiated terms, and any agreement purportedly signed by Plaintiff contains a
25
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1 forgery of Plaintiff's signature. Plaintiff has never agreed that payments owed to him
2 by Defendant for other functions, such as the parties' separate engagement related to
3 Defendant's comedy show tour, satisfied compensation for Plaintiff's work on the
4 Film.

5
6 Finally, there is absolutely no factual or legal basis for the counter-claims
7 asserted by Defendant against Plaintiff in this action. Contrary to what is alleged in
8 said Defendant's counterclaims, Plaintiff has never received any monies loaned by
9 Defendant and Plaintiff does not owe any amount of money to Defendant.

10
11 Moreover, Plaintiff never threatened, extorted, or attempted to extort Defendant in
12 any manner, and Plaintiff never threatened to disclose private and confidential
13 information concerning Defendant's personal and business affairs unless Defendant
14 paid sums of money to Plaintiff.

15
16
17 **2. Defendant:**

18 There is absolutely no factual or legal basis for the claims asserted by Plaintiff
19 against Defendant in this action. Contrary to what is alleged in Plaintiff's Amended
20 Complaint, Plaintiff never rendered any services as a writer, editor, producer, co-
21 producer or actor for the *Chris Tucker Live* concert film (hereinafter the "Picture").
22 Moreover, on March 8, 2013, Plaintiff signed a fully integrated written agreement
23 dated as of August 1, 2012 (the "Consultant Agreement"), pursuant to which he was
24 engaged to consult with Defendant upon request and as reasonably required, and to
25 warm up the audience and introduce Defendant before certain of Defendant's
26
27
28

1 performances during his concert tour for the Picture. In exchange, Defendant agreed
2 to pay Plaintiff the sum of \$1,500 per each concert tour engagement at which
3 Plaintiff rendered services. In addition, Defendant paid for all of Plaintiff's hotel and
4 travel expenses during the concert tour. Therefore, Plaintiff is not owed any money
5 whatsoever for services rendered in connection with the Picture. Furthermore,
6 pursuant to the Consultant Agreement, Plaintiff has no right to receive a Co-Producer
7 credit – or any credit at all on the Picture. Therefore, Plaintiff has no legitimate
8 claims against Defendant.
9

10
11 Defendant has asserted Counterclaims against Plaintiff for breach of a written
12 Confidentiality Agreement and civil extortion, arising from threats communicated by
13 Plaintiff to Defendant, including threatening to disclose private and confidential
14 information concerning Defendant's personal and business affairs in breach of the
15 Confidentiality Agreement and to falsely attribute outrageous, fabricated and
16 defamatory statements about third parties to Defendant in a calculated to attempt to
17 publicly embarrass and humiliate him, unless Defendant accedes to Plaintiff's
18 extortionate financial demands.
19
20

21
22 In addition, Defendant has asserted Counterclaims against Plaintiff for monies
23 owed under an open book account, account stated and monies had and received,
24 arising from a series of personal loans made by Defendant to Plaintiff which Plaintiff
25 has failed and refused to repay.
26

27 **B. SUBJECT MATTER JURISDICTION**
28

1 Jurisdiction lies within this Court pursuant to 28 U.S.C. sections 1332(a) and
2 1441(b), in that it is a civil action, represented by Defendant to be between citizens or
3 subjects of a state, and citizens or subjects of a foreign state and, assuming without
4 admitting the truth of of the allegations in Plaintiff's Amended Complaint for
5 Damages, the amount in controversy exceeds the sum of \$75,000, exclusive of
6 interest and costs. The Court has jurisdiction over Defendant's pendant state claims
7 pursuant to 28 U.S.C. section 1367(a).
8

9
10 **C. LEGAL ISSUES**

11 Defendant is informed that Plaintiff contends that his claims against Defendant
12 are not barred because the written Consultant Agreement is not a binding and
13 enforceable agreement. Plaintiff claims that he did not sign the Consultant
14 Agreement, and that the signature on the Consultant Agreement is not Plaintiff's
15 signature. Defendant contends that the written Consultant Agreement is a binding and
16 enforceable agreement and, consequently, all of Plaintiff's claims against Defendant
17 are barred.
18
19
20

21 **D. PARTIES AND NON-PARTY WITNESSES**

- 22 1. Terry Hodges
23 2. Christopher Tucker
24 3. Phil Joanou
25 4. Tammye Stocks
26 5. Norris Tucker
27
28

1 6. Susan Adamson, Esq.

2 ~~7. Paul Norling~~

3 ~~8. Ted Sardandos~~

4 ~~9. Don Halcombe~~

5
6 Discovery is continuing and Defendant ~~the parties~~ reserves the right to amend
7 and/or supplement the foregoing list of witnesses should further investigation and
8 discovery reveal the identity of additional witnesses currently unknown to
9 Defendant ~~either party~~.

10
11 **E. DAMAGES**

12
13 Plaintiff contends that Defendant has not incurred any damages as a result of
14 any conduct by Plaintiff. Plaintiff is seeking the following damages, to be
15 determined by a trier of fact: actual damages; consequential and special damages;
16 disgorgement of profits; reasonable attorney fees in an amount according to proof at
17 time of trial; interest as provided by law and contract; costs of suit incurred herein; a
18 Declaratory Judgment that Plaintiff is named as co-producer of the Film, and such
19 other relief that may be necessary to effectuate that judgment; punitive damages
20 against Defendant in an amount to be proven at trial; and such other and further relief
21 as the Court deems proper.

22
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24
25 Defendant contends that Plaintiff has not incurred any damages as a result of
26 any conduct by Defendant. Defendant is seeking damages in excess of \$250,000 in
27 connection with his Counterclaims for breach of the written Confidentiality
28

1 Agreement and civil extortion, and Defendant is seeking damages of \$37,562.30,
2 plus interest at the maximum legal rate and reasonable attorney's fees in connection
3 with the Counterclaims for monies owed under open book account, account stated
4 and monies had and received.

6 **F. INSURANCE**

7 ~~At this time, Plaintiff is unaware of any insurance coverage applicable to~~
8 ~~Defendant's counterclaims.~~

10 Defendant tendered Plaintiff's claims to Defendant's insurance carrier, Hiscox
11 Insurance. However, on August 27, 2015, Hiscox Insurance informed Defendant that
12 it was denying coverage on the basis that Plaintiff's claims are contractual and
13 excluded from coverage under Defendant's policy.

15 **G. MOTIONS**

16 ~~At this time, Defendant neither party does not anticipates bringing any motions~~
17 ~~to add parties or claims, file amended pleadings or transfer venue.~~

19 **H. MANUAL FOR COMPLEX LITIGATION**

20 ~~Defendant. The parties~~ believes that this case should not be designated as
21 complex, and there is no need for the Manual for Complex Litigation to be utilized in
22 this case.
23

25 **I. STATUS OF DISCOVERY**

26 To date, no discovery has been exchanged between the parties.

27 **J. DISCOVERY PLAN**
28

1 Plaintiff's counsel has informed Defendant's counsel that they intend to
2 withdraw from representing Plaintiff in this matter. Therefore, Plaintiff's current
3 ~~counsel has refused~~ declined a meet and confer regarding a discovery plan pursuant
4 to Rule 26(f) until Plaintiff obtains new counsel. Defendant proposes that the Initial
5 Disclosures be exchanged by the parties within fourteen (14) days of the Scheduling
6 Conference.
7

8
9 Defendant ~~Both parties~~ intends to conduct written discovery regarding
10 Plaintiff's ~~the other party's~~ alleged claims and Defendant's allegations and defenses
11 ~~in response to those claims, and regarding Defendant's Counterclaims against~~
12 ~~Plaintiff and any allegations or defenses Plaintiff may assert in response to the~~
13 ~~Counterclaims. Defendant~~ Each party anticipates taking Plaintiff's ~~the other party's~~
14 deposition, and reserves the right to take additional third party depositions, including
15 without limitation the depositions of any witnesses who may be identified by Plaintiff
16 ~~the other party~~ in his Initial Disclosures or whose identity Defendant is discovered
17 ~~may hereafter discover~~.
18
19
20

21 At this time, Defendant ~~neither party does not~~ anticipates any issues regarding
22 disclosure or discovery of electronically stored information. Defendant ~~Both parties~~
23 anticipates that certain private and confidential information may be the subject of
24 discovery, and therefore, Defendant ~~either party~~ may bring a motion for the issuance
25 of a protective order in the event the parties do not stipulate to the entry of a
26 protective order.
27
28

1 ~~Defendant. Neither party does not propose~~ any changes to the limitations on
2 discovery imposed by the Federal Rules of Civil Procedure or the Court's Local
3 Rules.

4
5 **K. DISCOVERY CUTOFF**

6 ~~Defendant. The parties~~ proposes that the deadline for the parties to complete
7 non-expert discovery, including resolution of discovery motions be May 16, 2016.

8
9 **L. EXPERT DISCOVERY**

10 ~~Defendant. The parties~~ proposes that the deadline for the parties to exchange
11 initial expert witness disclosures be March 21, 2016, and that any rebuttal experts be
12 disclosed by April 4, 2016. ~~Defendant. The parties~~ proposes that the expert discovery
13 cutoff, including the resolution of any motions involving expert discovery be April
14 18, 2016

15
16
17 **M. DISPOSITIVE MOTIONS**

18 Plaintiff intends to bring a motion for summary judgment or motion for
19 summary adjudication of each of Defendant's counter-claims.

20
21 Defendant intends to bring a motion for summary judgment or motion for
22 summary adjudication of each of Plaintiff's claims.

23
24 **N. SETTLEMENT**

25 Pursuant to L.R. 26-1(c) and L.R. 16-15.4(2), ~~Defendant. the parties are~~ is
26 amenable to appear before a neutral selected from the Court's Mediation Panel in
27 early 2016.
28

1 O. TRIAL ESTIMATE

2 Plaintiff estimates a jury trial of five (5) days. Defendant anticipates calling
3 five (5) to eight (8) witnesses at trial.

4
5 Defendant estimates a jury trial of four (4) days. Defendant anticipates calling
6 five (5) to six (6) witnesses at trial.

7 P. TRIAL COUNSEL

8
9 Martin D. Singer, Esq. and Allison S. Hart, Esq., will try the case on behalf of
10 Defendant, and Mr. Singer will be lead trial counsel for Defendant.

11 As of this date, Richard P. Sybert and Joni B. Flaherty are counsel of record
12 for Plaintiff. However, Mr. Sybert and Ms. Flaherty have obtained Plaintiff's
13 consent to withdraw and have filed a Motion to Withdraw plan to withdraw as
14 counsel in the near future.

15
16
17 Q. INDEPENDENT EXPERT OR MASTER

18 The parties do Defendant does not believe that this is a case in which the Court
19 should appoint a Master pursuant to Rule 53 or an independent expert.
20

21 R. TIMETABLE

22 Please refer to the proposed Schedule of Pretrial and Trial Dates attached
23 hereto as Exhibit "A."
24

25 S. OTHER ISSUES

26 At this time, the parties are Defendant is unaware of any other issues that
27 might affect the status or management of this case.
28

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1 T. PATENT CASES

2 This is not a patent case.

3 U. MAGISTRATE JUDGE

4
5 Defendant does not wish to have a Magistrate Judge preside over this entire
6 action. Plaintiff is willing to do so.

7
8 DATE: September , 2015

RICHARD P. SYBERT
JONI B. FLAHERTY
GORDON & REES LLP

9
10
11 By:
12 RICHARD P. SYBERT
13 Attorneys for Plaintiff and
14 Counterdefendant TERRY HODGES

15
16
17 DATE: September __, 2015

MARTIN D. SINGER
ALLISON S. HART
LAVELY & SINGER
PROFESSIONAL CORPORATION

18
19
20
21
22 By:
23 ALLISON S. HART
24 Attorneys for Defendant and
25 Counterclaimant CHRISTOPHER
26 TUCKER
27
28

From: Sean Flaherty
Sent: Monday, August 31, 2015 1:53 PM
To: Joni Flaherty
Subject: RE: Tucker/Hodges Response

Maybe even after "your courtesy is expected" add "Accordingly, I have attached a joint motion (or stip, whatever the local rules are) for extension of time. Please confirm whether I have your authority to affix your digital signature and file."

-----Original Message-----

From: Sean Flaherty
Sent: Monday, August 31, 2015 1:51 PM
To: Joni Flaherty
Subject: RE: Tucker/Hodges Response

The only thing about this I don't like is that opposing counsel knows more about the withdrawal than your client does. They should be granting the extension as a matter of courtesy regardless of the reason. But I guess that cat is already out of the bag.

--

Allison,

Thanks for the note. Your two conditions are inherently conflicting. I can't withdraw then assure a responsive pleading by the end of the week.

To be clear, the extension is requested so that I may coordinate withdrawal with my client and thereafter permit Mr. Hodges sufficient time to find new counsel, should he choose.

My request is renewed for a two week extension of the following dates (INSERT NEW DEADLINES AND CALCULATION WHERE SHE'S WRONG):

If the extension request is not granted, then we will proceed according to the current schedule and thereafter resolve the withdrawal issue with Mr. Hodges.

As this is a non-substantive issue, your professional courtesy is expected. I look forward to your immediate response.

-----Original Message-----

From: Joni Flaherty
Sent: Monday, August 31, 2015 1:41 PM
To: Sean Flaherty
Subject: Tucker/Hodges Response

-----Original Message-----

From: Allison Hart [mailto:ahart@lavelysinger.com]
Sent: Monday, August 31, 2015 1:32 PM
To: Joni Flaherty; Richard Sybert
Cc: Martin Singer

EXHIBIT H

Subject: RE: Chris Tucker / Terry Hodges

Joni,

If a motion to withdraw or a substitution of attorney is filed this week, we would be amenable to a brief extension of the Scheduling Conference and associated deadlines.

As for the response to the Counterclaims, according to my calendar the response was due on August 24, 2015. We will agree not to seek a default if a response is filed by this Friday, September 4, 2015.

Allison

-----Original Message-----

From: Joni Flaherty [mailto:jflaherty@gordonrees.com]
Sent: Monday, August 31, 2015 1:03 PM
To: Allison Hart; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Hi Alison,

Our intention is to withdraw, however we are working out the logistics. Could you please let me know if we have your agreement to extend these dates as we do so?

Thank you,
Joni

-----Original Message-----

From: Allison Hart [mailto:ahart@lavelysinger.com]
Sent: Monday, August 31, 2015 12:55 PM
To: Joni Flaherty; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

What is the status of your firm representing Terry Hodges? Are you withdrawing or has he engaged new counsel?

Allison

-----Original Message-----

From: Joni Flaherty [mailto:jflaherty@gordonrees.com]
Sent: Monday, August 31, 2015 12:54 PM
To: Allison Hart; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Hi Alison,

I am following-up from our email on Friday. Do you agree to the two-week extension I proposed?

Thank you,
Joni

-----Original Message-----

From: Joni Flaherty
Sent: Friday, August 28, 2015 2:26 PM
To: Allison Hart; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Hi Alison,

Yes, I believe that is our intention. Would you like to set up a call on Monday morning to discuss further? I should have more information at that time.

Thanks,
Joni

From: Allison Hart [ahart@lavelysinger.com]
Sent: Friday, August 28, 2015 1:48 PM
To: Joni Flaherty; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Is your firm withdrawing as Terry Hodges' attorneys?

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-----Original Message-----

From: Joni Flaherty [mailto:jflaherty@gordonrees.com]
Sent: Friday, August 28, 2015 1:46 PM

To: Allison Hart; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Hi Allison,

Please excuse my delay in responding; I have had a difficult time this week reaching everyone regarding our next steps. Would you agree to a two-week extension of our upcoming Rule 16/26 dates, along with a similar extension for our answer to your cross-complaint? If that is reasonable to you, I will draft up a stipulation for your review and filing on Monday.

Thank you again for your patience and flexibility.

Best regards,
Joni

From: Joni Flaherty
Sent: Wednesday, August 26, 2015 5:14 PM
To: Allison Hart; Richard Sybert
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Hi Allison,

Thank you for your flexibility and agreement to continue these dates if needed. I am waiting to hear back from my client, and will get back to you tomorrow regarding a proposal for next steps.

Thanks again,
Joni

From: Allison Hart [mailto:ahart@lavelysinger.com]
Sent: Wednesday, August 26, 2015 1:17 PM
To: Richard Sybert; Joni Flaherty
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

Richard,

If you are unable to engage in the Rule 26(f) conference by the deadline set by the Court in the Court's Order Setting Rule 16(b) Scheduling Conference due to your uncertainty as to whether you will be continuing in the case, you should file a motion requesting a continuance of the Rule 16(b) Scheduling Conference and associated deadlines so that we do not run afoul of any court-ordered deadlines or otherwise violate the Court's Order. Under the circumstances we would be willing to stipulate to a continuance.

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From: Richard Sybert [<mailto:RSybert@gordonrees.com>]
Sent: Tuesday, August 25, 2015 6:20 PM
To: Allison Hart; Joni Flaherty
Cc: Martin Singer
Subject: RE: Chris Tucker / Terry Hodges

This will have to be deferred as we are uncertain we will be continuing on the case.

From: Allison Hart [<mailto:ahart@lavelysinger.com>]
Sent: Tuesday, August 25, 2015 6:01 PM
To: Richard Sybert; Joni Flaherty
Cc: Martin Singer
Subject: Chris Tucker / Terry Hodges

Dear Richard and Joni:

I have on my calendar that Monday August 31, 2015 is the deadline for the parties to conduct the Rule 26(f) conference in this matter. Please inform me what your availability is between now and August 31, 2015 so we may schedule a mutually convenient time to conduct the Rule 26(f) conference.

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