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11 Attorneys for Plaintiffs,  
12 DEBORAH NOVAK, JOHN WITEK, and WITEK & NOVAK, INC.

13 UNITED STATES DISTRICT COURT  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 DEBORAH NOVAK, an individual, JOHN  
16 WITEK, an individual and WITEK &  
17 NOVAK, INC.,

18 Plaintiffs,

19 vs.

20 WARNER BROS. PICTURES, LLC, a  
21 Delaware Limited Liability Corporation,  
22 THUNDER ROAD FILM PRODUCTIONS,  
23 INC., a California Corporation,  
24 LEGENDARY PICTURES FILMS, LLC, a  
25 Delaware Limited Liability Corporation,  
26 WONDERLAND SOUND AND VISION,  
27 INC., a California Corporation, CORY  
28 HELMS, an individual, JAMIE LINDEN, an  
individual, MARY VIOLA, an individual,  
BASIL IWANYK, an individual, McG aka  
JOSEPH MCGINTY NICHOL, an  
individual, and DOES 1-10,

Defendants.

2007 JUN 20 PM 2:30  
FILED  
CV 07 4000 AHM  
(PLAx)

Docket No.:

COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. BREACH OF IMPLIED-IN-FACT CONTRACT
3. BREACH OF CONTRACT - WRITTEN
4. BREACH OF CONTRACT - ORAL
5. FRAUD
6. BUS. & PROF. CODE § 17200 (UNFAIR BUSINESS PRACTICES)

JURY TRIAL DEMANDED

Plaintiffs, Deborah Novak, an individual, John Witek, an individual, and  
Witek & Novak, Inc., a West Virginia Corporation, allege as follows:

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## The Parties

1  
2           1.     Plaintiffs Deborah Novak and John Witek (hereinafter “Plaintiffs”), are  
3 individuals, and adults who currently reside in the State of West Virginia.

4           2.     Plaintiff Witek & Novak, Inc. (hereinafter “Plaintiffs”), is a duly  
5 constituted West Virginia Corporation, qualified to do business in California, with its  
6 principal place of business in Huntington, West Virginia. Plaintiffs Deborah Novak  
7 and John Witek are the sole shareholders in Witek & Novak, Inc.

8           3.     Plaintiffs are informed and believe and based thereon allege that  
9 defendant Warner Bros. Pictures. (hereinafter “WARNER”), is and was a duly  
10 constituted Delaware limited liability corporation, qualified to do business in  
11 California, with its principal place of business in Burbank, California.

12           4.     Plaintiffs are informed and believe and based thereon allege that  
13 defendant Thunder Road Film Productions, Inc. (hereinafter “THUNDER ROAD”),  
14 is and was a duly constituted California corporation, qualified to do business in  
15 California, with its principal place of business in Encino, California.

16           5.     Plaintiffs are informed and believe and based thereon allege that  
17 defendant Legendary Pictures, LLC (hereinafter “LEGENDARY”), is and was a duly  
18 constituted Delaware limited liability corporation, qualified to do business in  
19 California, with its principal place of business in Burbank, California.

20           6.     Plaintiffs are informed and believe and based thereon allege that  
21 defendant Wonderland Sound and Vision, Inc. (hereinafter “WONDERLAND”), is  
22 and was a duly constituted California corporation, qualified to do business in  
23 California, with its principal place of business in Santa Monica, California.

24           7.     Plaintiffs are informed and believe and based thereon allege that  
25 defendant Cory Helms (hereinafter “HELMS”) is a screenwriter engaged in the  
26 entertainment business and is an individual who resides in Burbank, California.

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1           8.     Plaintiffs are informed and believe and based thereon allege that  
2 defendant Jaime Linden (hereinafter "LINDEN") is a screenwriter engaged in the  
3 entertainment business and is an individual who resides in Los Angeles, California.

4           9.     Plaintiffs are informed and believe and based thereon allege that  
5 defendant Mary Viola (hereinafter "VIOLA") is Vice-President of THUNDER  
6 ROAD, is a producer engaged in the entertainment business and is an individual who  
7 resides in Los Angeles, California.

8           10.    Plaintiffs are informed and believe and based thereon allege that  
9 defendant Basil Iwanyk (hereinafter "IWANYK") is a principal at THUNDER  
10 ROAD, is a producer engaged in the entertainment business and is an individual who  
11 resides in Los Angeles, California.

12           11.    Plaintiffs are informed and believe and based thereon allege that  
13 defendant McG aka Joseph McGinty Nichol (hereinafter "McG") is a director  
14 engaged in the entertainment business and is an individual who resides in California.

15           12.    Plaintiffs are unaware of the true names and capacity whether corporate,  
16 associate, individual or otherwise of defendants named as DOES 1-10, inclusive.  
17 Plaintiffs will seek leave of court to amend this complaint to state the fictitiously-  
18 named defendants' names and capacities when the same have been ascertained.  
19 Plaintiffs are informed and believe and based thereon allege that the fictitiously-  
20 named defendants are responsible for the injury and damages to Plaintiffs as  
21 hereinafter alleged.

22           13.    Defendants are engaged in the business of producing, financing,  
23 distributing, marketing and developing theatrical motion pictures, for national  
24 markets. Defendants transact significant business in the State of California, and  
25 market and distribute their movies in the State of California, nationally, and within  
26 the jurisdiction of this Court.

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1 players who had barely set foot on a football field, and a town who gave the “Young  
2 Thundering Herd” the strength to play football in the shadow of those who perished.

3 20. Plaintiff NOVAK was not only a resident of Huntington, West Virginia  
4 on the night of the tragic plane crash, but also was in the stands of Fairfield Stadium  
5 a year later on September 25, 1971 where she witnessed first-hand the memorable  
6 game against Xavier of Ohio, the same game she would later use as the climax of  
7 *Ashes to Glory*.

8 21. Inspired by these very personal experiences, Plaintiffs spent the next 25  
9 years developing *Ashes to Glory*. This involved countless hours sifting through  
10 volumes of first-hand sources, interviewing family members involved in the tragedy,  
11 as well as surviving football players, coaches, sports reporters, and relevant members  
12 of the community.

13 22. After devoting 25 years to this undertaking, *Ashes to Glory* was  
14 completed and subsequently aired on West Virginia Public Television on November  
15 12, 2000. In December 2000, a two-hour version of *Ashes to Glory* was first made  
16 available for sale in VHS form. On November 14, 2003, the *Ashes to Glory* DVD  
17 was released and included four bonus features.

18 23. On June 23, 2001, *Ashes to Glory* won a Midwestern Regional Emmy  
19 Award.

20 24. On January 28, 2004, Plaintiffs registered a feature film treatment of  
21 *Ashes to Glory* with the Writers Guild of America, East, Registration Number  
22 I16751-00.

23  
24 **Defendants’ Promises to Plaintiffs Regarding Use of *Ashes to Glory***

25 25. On November 24, 2003, just ten days after the DVD release of *Ashes to*  
26 *Glory* and after learning of the DVD, Defendant VIOLA, with her assistant Kristy  
27 Felton and on behalf of Defendants, contacted Plaintiffs by email, requesting to  
28 option *Ashes to Glory* from Plaintiffs for use of *Ashes to Glory* in a feature film.

1           26. Both Felton and Defendant VIOLA expressly advised Plaintiffs that in  
2 contacting Plaintiffs, they were acting on behalf of Defendants WARNER and  
3 IWANYK, who was also a principal in THUNDER ROAD and who acted on behalf  
4 of WARNER and THUNDER ROAD.

5           27. Defendant VIOLA emphasized that she was particularly interested in  
6 Plaintiffs' work, because Plaintiffs had already done all of the necessary research in  
7 making *Ashes to Glory* and Defendants did not want to have to duplicate the work  
8 already done.

9           28. On December 12, 2003, Defendants through Defendant VIOLA sent an  
10 "option agreement" to Plaintiffs. This option agreement was a contract between  
11 Plaintiffs on the one hand and Defendants on the other whereby Plaintiffs would sell  
12 Defendants the rights to *Ashes to Glory*, for development into a feature film in  
13 exchange for enumerated benefits. These promised benefits included, but were not  
14 limited to, a lump sum for the sale of all rights in *Ashes to Glory*, producer credit on  
15 the feature film, producer compensation to Plaintiffs, a role as a consultant on the  
16 feature film, and consulting compensation to Plaintiffs, as well as a writing credit on  
17 the feature film and compensation for a writing credit to Plaintiffs. A true and  
18 accurate copy of this contract is attached as Exhibit "A" and by this reference is  
19 incorporated as if fully set forth herein.

20           29. On December 16, 2003, Plaintiffs participated in a conference call with  
21 Defendant VIOLA, her assistant Felton and Defendant IWANYK. Defendant  
22 IWANYK suggested that Plaintiffs be paired with an established writer to develop  
23 the feature film.

24           30. Defendant IWANYK informed Plaintiffs that he would produce the  
25 feature film based on *Ashes to Glory* as a package deal with THUNDER ROAD and  
26 Defendant WARNER, and that Plaintiffs would serve as producers.

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1           31. On January 16, 2004, Defendant VIOLA sent written correspondence to  
2 Plaintiffs informing Plaintiffs that Defendant IWANYK would have a negotiated  
3 deal with Plaintiffs by the next week.

4           32. On January 23, 2004, Defendant VIOLA sent written correspondence to  
5 Plaintiffs informing them that “most of the details” for the contract were in place.  
6 Defendant VIOLA further informed Plaintiffs that she would “have firm numbers  
7 and some extra good news regarding producer credits for” Plaintiffs.

8           33. On February 2, 2004, Defendant VIOLA sent Plaintiffs a “free option  
9 agreement”, which was a contract for the purchase of the rights to *Ashes to Glory*  
10 including its title, themes, contents, plot, plot structure, and characters for  
11 development into a feature film. The contract, prepared and drafted by Defendants,  
12 identifies *Ashes to Glory* as an “original” work, “created” and owned by Plaintiffs.  
13 The contract also stated that Plaintiffs “...shall receive producer credit pursuant to the  
14 applicable provisions of the PGA basic agreement...” for their role in the  
15 development of the motion film as well as the other benefits described above. A  
16 true and accurate copy of this contract is attached as Exhibit “B” and by this  
17 reference is incorporated as if fully set forth herein.

18           34. On February 2, 2004, Defendant VIOLA sent written correspondence to  
19 Plaintiffs advising Plaintiffs again that Defendants would produce a feature film with  
20 Defendants and that the purpose of the contract was to guarantee Defendants a “stake  
21 in the film” and to protect Plaintiffs by preventing Plaintiffs from developing their  
22 property into a feature film with anyone else.

23           35. On February 18, 2004, Defendant VIOLA informed Plaintiffs that  
24 Defendants were looking for the writer to help produce the feature film.

25           36. On February 25, 2004, Defendant VIOLA told Plaintiffs that they had  
26 hired a writer, most probably Defendant HELMS, for the feature film and that they  
27 wanted Plaintiffs to meet the writer.

28       ///

1           37. Defendant HELMS and his writing partner Defendant LINDEN had a  
2 pre-existing agreement with Defendants WARNER and THUNDER ROAD to  
3 develop their next screenplay.

4           38. On March 1, 2004, Defendant VIOLA, on behalf of Defendants,  
5 informed Plaintiffs that the contract was done, except for a fine tuning of a few  
6 details, but that all parties were “on the same page.”

7  
8                           **Defendants’ Infringement and Use of *Ashes to Glory***

9           39. In January of 2006, Defendants WARNER, THUNDER ROAD and  
10 WONDERLAND announced their plans to release *We Are Marshall* (hereinafter “the  
11 FILM”), a major motion picture about the events surrounding the 1970 plane crash  
12 that was also the subject of *Ashes to Glory*.

13           40. In writing the screenplay for the FILM, Defendants copied the total  
14 concept and feel, theme, characters, plot, sequence, pace and setting, as well as the  
15 basic ideas directly from *Ashes to Glory*.

16           41. On December 22, 2006, the FILM was released in movie theaters  
17 nationwide. Defendants IWANYK and McG are credited as producers on the FILM.  
18 Defendant McG is also credited as the director in the FILM. Defendants LINDEN  
19 and VIOLA are credited as co-producers. Defendants THUNDER ROAD,  
20 WARNER, WONDERLAND and LEGENDARY were credited as the responsible  
21 production companies and studio. Additionally, Defendant HELMS was given  
22 “story by” credit, and Defendant LINDEN was given both “story by” and  
23 “screenplay” credit on the FILM.

24           42. There are extensive similarities between *Ashes to Glory* and the FILM  
25 which include, but are not limited to, the following:

- 26           A. The FILM dramatizes the events depicted in *Ashes to Glory*, in the same  
27 chronological order, with the identical tone, sequencing, story emphasis,  
28 principal characters, theme, and archival clips.

- 1 B. After documenting the events immediately following the 1970 plane  
2 crash, *Ashes to Glory* shifts its focus to the team's and the university's  
3 efforts to rebuild. These efforts climax with the "Young Thundering  
4 Herd's" implausible victory over Xavier of Ohio. Before the first  
5 broadcast of *Ashes to Glory*, these specific events had never been linked  
6 together on film, in any significant manner. The FILM follows the  
7 events as they are depicted in *Ashes to Glory*, with little deviation.
- 8 C. The central theme of both the FILM and *Ashes to Glory* is that of  
9 Huntington, West Virginia and Marshall University joining together, in  
10 the face of enormous adversity.
- 11 D. Both the FILM and *Ashes to Glory* open with an aerial view of  
12 Huntington, West Virginia and the Marshall University campus. Both  
13 aerials are filmed in the fall with colorful fall leaves shown.
- 14 E. Both the FILM and *Ashes to Glory* begin with Marshall University's  
15 annual memorial service for those who perished in the tragic plane crash  
16 of 1970.
- 17 F. Both the FILM and *Ashes to Glory* describe events which occurred in  
18 the home of the Morehouse family at the time of the crash. Both the  
19 FILM and *Ashes to Glory* make mention of the fact that the news  
20 bulletin of the crash scrolled across the bottom of the scene during an  
21 episode of The Newlywed Game, which was being watched by the five  
22 Morehouse children, whose father perished in the crash. The same  
23 episode of the long running game show, featuring the same couple  
24 appearing on the game show were depicted in both the FILM and *Ashes  
25 to Glory*, even though this was not really the episode which ran at the  
26 time, but had just been chosen at random by Plaintiffs to depict the  
27 show generally.

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- 1 G. Both *Ashes to Glory* and the FILM place two football players and  
2 cheerleaders at the scene of the crash.
- 3 H. Both *Ashes to Glory* and the FILM reveal that varsity player Nate Ruffin  
4 was injured and wearing a cast, in order to explain why he was not on  
5 the plane when it went down.
- 6 I. Both *Ashes to Glory* and the FILM feature funeral montages.
- 7 J. Both *Ashes to Glory* and the FILM joke about the fact that coach Jack  
8 Lengyel was recruited to serve as replacement head coach at Marshall  
9 from the obscure College of Wooster in the same manner.
- 10 K. Both *Ashes to Glory* and the FILM climax in the emotional and dramatic  
11 football game Marshall played against Xavier of Ohio. Both *Ashes to*  
12 *Glory* and the FILM culminate with a football soaring through the air in  
13 slow motion, resulting in the final play of the game which brought  
14 Marshall its first win since the tragic crash. In both *Ashes to Glory* and  
15 the FILM, this poignant scene is intercut with flashbacks, employing  
16 identical film-making techniques.
- 17 L. Both *Ashes to Glory* and the FILM place dramatic emphasis on the fact  
18 that following Marshall's unlikely defeat of Xavier, the Marshall fans  
19 remain in the stadium with no desire to return to their homes.
- 20 M. Both *Ashes to Glory* and the FILM end with the chant "We Are  
21 Marshall." In the FILM, a featured character's voice is heard stating  
22 "*From the ashes we rose.*" *Ashes to Glory* ends with a banner hanging  
23 in the football stadium, reading "*From the Ashes We Rose.*" This quote,  
24 expressly depicted in *Ashes to Glory*, also served as the subtitle in  
25 posters advertising the FILM.
- 26 N. Both the FILM and *Ashes to Glory* feature a West Virginia State  
27 Trooper at the scene of the crash.

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- 1 O. Both the FILM and *Ashes to Glory* either depict or recount a key team  
2 member shouting “get it off” during the last play of the Xavier game. In  
3 the FILM the line is delivered by Red Dawson. In *Ashes to Glory* the  
4 exact same line was delivered by Reggie Oliver. Both are uttered  
5 during the most tension-filled scene of the climactic football game.
- 6 P. Both the FILM and *Ashes to Glory* end with an update of the Marshall  
7 University football program and the team’s impressive victories  
8 following the crash. Specifically, both the FILM and *Ashes to Glory* use  
9 the same footage of Coach Bobby Pruett holding a championship  
10 trophy. Both the FILM and *Ashes to Glory* display the same three clips  
11 of the 1984 East Tennessee State Game which occurred during  
12 Marshall’s first winning season since the crash.
- 13 Q. Both the FILM and *Ashes to Glory* feature the exact same hotel marquee  
14 which read “ The Lord Giveth...The Lord Taketh Away.”
- 15 R. Both the FILM and *Ashes to Glory* feature two identical pieces of  
16 footage of the 1971 Marshall game against Morehead State.
- 17 S. *Ashes to Glory* highlights a lesser-known Marshall player named Blake  
18 Smith. In an interview featured in *Ashes to Glory*, Mr. Smith describes  
19 an incident whereby Marshall Head Coach Jack Lengyel, told him that  
20 the team had just beaten Xavier, and that he, Smith would not be needed  
21 to kick the extra point. This fact is depicted in the screenplay for the  
22 FILM. Notably, this event had not been reported before *Ashes to Glory*.  
23 Mr. Smith’s story was not widely known or reported, with the exception  
24 of Plaintiffs’ *Ashes to Glory*.
- 25 T. Both the FILM and *Ashes to Glory* display the same clip of Marshall  
26 player Doug Chapman scoring a touchdown during the Motor City  
27 Bowl.

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- 1 U. Both the FILM and *Ashes to Glory* display the same clip of Marshall  
2 player Ted Shoebridge scoring a touchdown in a game against Miami of  
3 Ohio.
- 4 V. The exact same photographs from the climatic game against Xavier of  
5 Ohio appear in both the FILM and *Ashes to Glory*.
- 6 W. The exact same black and white footage of the plane crash are shown in  
7 both the FILM and *Ashes to Glory*.
- 8 X. Both the FILM and *Ashes to Glory* feature Blake Smith's successful  
9 field goal attempt during the Xavier game which gave Marshall the lead  
10 at halftime, and the hope that they may win the game.

11  
12 **Defendants' Access to Plaintiffs' *Ashes to Glory***

13 43. Defendants first obtained access to Plaintiffs intellectual property *Ashes*  
14 *to Glory*, when Defendant VIOLA, while searching for an idea for a feature film  
15 came across Plaintiffs' DVD version of their docudrama, prompting her to contact  
16 Plaintiffs to explore purchasing the rights to *Ashes to Glory*.

17 44. In exchange for the many promises made by Defendants, Plaintiffs  
18 disclosed additional thoughts and material relating to *Ashes to Glory* with  
19 Defendants throughout their discussions.

20 45. On April 8, 2004, Defendant HELMS, a writer retained by Defendants  
21 THUNDER ROAD and WARNER and all other Defendants to write a screenplay for  
22 a feature film based directly on *Ashes to Glory*, personally ordered a copy of the  
23 DVD version of *Ashes to Glory* from Plaintiffs.

24 46. In April of 2004, Plaintiffs personally sent Defendant HELMS a copy of  
25 the DVD directly, via return receipt requested. Defendant HELMS received the  
26 DVD of *Ashes to Glory* at his home in Burbank. Defendant HELMS watched the  
27 DVD before he began writing the first draft of the screenplay for WARNER's release  
28 of the FILM for which HELMS was given "story by" credit.



1 \$40,000,000.00.

2 53. Also as a direct and proximate result of the aforementioned  
3 infringement, Plaintiffs have been compelled to retain legal counsel to enforce their  
4 rights. As a result, Plaintiffs have and will continue to incur legal fees and costs  
5 which are recoverable pursuant to Section 505 of the Copyright Act of 1976, 17  
6 U.S.C. § 505.

7  
8 **SECOND CLAIM**

9 **Breach of Implied-in-Fact Contract**

10 (Against all Defendants)

11 54. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1  
12 through 47 as if set forth in full.

13 55. Plaintiffs researched, conceptualized, developed, wrote, directed and  
14 produced the award-winning docudrama entitled *Ashes to Glory*.

15 56. Plaintiffs submitted *Ashes to Glory* directly to Defendants or indirectly  
16 to Defendants through Plaintiffs' agents and/or Defendants' agents for the purpose of  
17 having *Ashes to Glory* evaluated and considered for production purposes.

18 57. Plaintiffs submitted *Ashes to Glory* to Defendants for sale, with the  
19 reasonable expectation of payment if Defendants used *Ashes to Glory* or any part of  
20 it. Plaintiffs disclosed *Ashes to Glory* under circumstances from which it could be  
21 concluded that Defendants voluntarily accepted the disclosure, knowing the  
22 conditions on which it was tendered. Because the ideas in *Ashes to Glory* were  
23 submitted by Plaintiffs to Defendants with the understanding and expectation, fully  
24 and clearly understood by Defendants that Plaintiffs would be reasonably  
25 compensated for its use by Defendants, an implied contract arose whereby  
26 Defendants promised to compensate Plaintiffs the reasonable value of Plaintiffs'  
27 submission if Defendants produced and distributed the FILM using the ideas  
28 embodied in *Ashes to Glory*.



1 attached as Exhibit "A" and by reference is incorporated as if fully set forth herein.

2 66. These promised benefits included, but were not limited to a lump sum  
3 for the sale of all rights in *Ashes to Glory*, producer credit on the feature film and  
4 producer compensation to each Plaintiff, a role as Consultant on the feature film, and  
5 compensation for consulting to each Plaintiff, as well as a writing credit on the  
6 feature film and compensation for a writing credit to each Plaintiff.

7 67. On February 2, 2004, Defendant VIOLA on behalf of all Defendants  
8 sent Plaintiffs a "free option agreement", which was a contract between Plaintiffs  
9 and Defendants IWANYK, THUNDER ROAD, VIOLA and all other Defendants.  
10 The contract was for the purchase of the rights to *Ashes to Glory* including its title,  
11 themes, contents, plot, plot structure, and characters for development into a feature  
12 film. The contract, prepared and drafted by Defendants, identifies *Ashes to Glory* as  
13 an "original" work, "created" and owned by Plaintiffs.

14 68. The contract also stated that Plaintiffs "...shall receive producer credit  
15 pursuant to the applicable provisions of the PGA basic agreement..." for their role in  
16 the development of the motion film as well as the other benefits described above. A  
17 true and accurate copy of this contract is attached as Exhibit "B" and by reference is  
18 incorporated as if fully set forth herein.

19 69. On December 22, 2006, the FILM was released in movie theaters  
20 nationwide. Defendants IWANYK and McG, as well as Defendant  
21 WONDERLAND were credited as producers on the FILM. Defendant McG is also  
22 credited as the director in the FILM. Defendants LINDEN and VIOLA were credited  
23 as co-producers. Defendants THUNDER ROAD, WARNER, WONDERLAND and  
24 LEGENDARY were credited as the responsible production companies and studio.  
25 Additionally, Defendant HELMS was given "story by" credit and Defendant  
26 LINDEN was given both "story by" and "screenplay" credit on the FILM.

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1 Additionally, Defendant HELMS was given “story by” credit and Defendant  
2 LINDEN was given both “story by” and “screenplay” credit on the FILM.

3 77. Defendants breached the terms of the oral contracts entered into with  
4 Plaintiffs. Defendants have produced and distributed the FILM and have not  
5 compensated Plaintiffs as promised under the terms of the oral agreements.

6 78. Plaintiffs have performed all conditions, covenants, and promises  
7 required on their part to be performed in accordance with the terms and conditions of  
8 the oral agreements.

9 79. Plaintiffs have demanded compensation and Defendants refuse and  
10 continue to refuse to compensated Plaintiffs.

11 80. As a result of the aforementioned breach of the agreement by  
12 Defendants, Plaintiffs have suffered and will continue to suffer damages in a  
13 currently unascertained amount, which Plaintiffs believe to be in excess of  
14 \$40,000,000.00.

15  
16 **FIFTH CLAIM**

17 **FRAUD**

18 (Against Defendants WARNER, THUNDER ROAD,  
19 VIOLA, IWANYK and DOES 1-10)

20 81. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1  
21 through 47 as if set forth in full.

22 82. Defendants falsely and fraudulently represented to Plaintiffs from  
23 November 2003 through March 2004, that Defendants intended to buy the rights to  
24 *Ashes to Glory* from Plaintiffs for use in the FILM. Those false representations  
25 included:

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- A. On November 24, 2003, Defendant VIOLA, on behalf of Defendants, contacted Plaintiffs by email, falsely representing that Defendants wanted and would pay to option *Ashes to Glory* from Plaintiffs for use of *Ashes to Glory* in a feature film.
- B. On December 12, 2003, Defendant VIOLA, on behalf of Defendants, sent an “option agreement” to Plaintiffs. This option agreement was a false representation that Defendants would purchase the rights to *Ashes to Glory*, for development into a feature film. Defendants also falsely promised Plaintiffs benefits which Defendants falsely represented would include, but not be limited to, a lump sum for the sale of all rights in *Ashes to Glory*, producer credit on the feature film, producer compensation to Plaintiffs, a role as a consultant on the feature film, and consulting compensation to Plaintiffs, as well as a writing credit on the feature film and compensation for a writing credit to Plaintiffs.
- C. On December 16, 2003, Defendant IWANYK, on behalf of Defendants, repeated, aided and/or affirmed the false representations earlier made by Defendant VIOLA.
- D. On December 16, 2003, Defendant IWANYK, on behalf of Defendants, falsely informed Plaintiffs that he would produce the feature film based on *Ashes to Glory* and that Plaintiffs would serve as producers.
- E. On January 16, 2004, Defendant VIOLA, on behalf of Defendants, falsely represented in written correspondence to Plaintiffs that Defendant IWANYK would have a negotiated deal with Plaintiffs by the next week.

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- 1 F. On January 23, 2004, Defendant VIOLA, on behalf of Defendants,  
2 falsely represented in written correspondence to Plaintiffs that “most of  
3 the details” for the contract were in place. Defendant VIOLA further  
4 and falsely informed Plaintiffs that she would “have firm numbers and  
5 some extra good news regarding producer credits for” Plaintiffs.
- 6 G. On February 2, 2004, Defendant VIOLA, on behalf of Defendants,  
7 falsely represented that Defendants offered Plaintiffs a “free option  
8 agreement” for the purchase of the rights to *Ashes to Glory* and falsely  
9 stated therein that Plaintiffs “...shall receive producer credit pursuant to  
10 the applicable provisions of the PGA basic agreement...” for their role in  
11 the development of the motion film as well as the other benefits.
- 12 H. On February 2, 2004, Defendant VIOLA, on behalf of Defendants,  
13 falsely represented in written correspondence to Plaintiffs that  
14 Defendants would produce a feature film using *Ashes to Glory* and that  
15 the purpose of the contract was to guarantee Defendants a “stake in the  
16 film” and to protect Plaintiffs by preventing Plaintiffs from developing  
17 their property into a feature film with anyone else.
- 18 I. On March 1, 2004, Defendant VIOLA, on behalf of Defendants, falsely  
19 informed Plaintiffs that the contract was done, except for a fine tuning  
20 of a few details, but that all parties were “on the same page.”

21 83. Defendants’ representations were false when made and Defendants  
22 knew they were false.

23 84. Defendants made the misrepresentations for the purpose of inducing  
24 Plaintiffs to rely on the misrepresentations by not producing *Ashes to Glory* as a  
25 feature film with any of Defendants’ competitors.

26 85. At the time of the foregoing misrepresentations and omissions of fact,  
27 Plaintiffs were ignorant of the falsity of Defendants’ representations, believed said  
28 representations to be true, and acted reasonably in reliance on Defendants’

1 representations by not producing *Ashes to Glory* as a feature film with any of  
2 Defendants' competitors. Plaintiffs did not discover the facts constituting  
3 Defendants' fraud and/or of Plaintiffs' injury until the FILM was released in  
4 December of 2006.

5 86. Plaintiffs suffered damages as a result of their reasonable reliance  
6 because Plaintiffs are now precluded from successfully producing *Ashes to Glory* as  
7 a feature film and Plaintiffs were not compensated by Defendants' release of the  
8 FILM.

9 87. The aforementioned acts of Defendants were willful and malicious and  
10 done intentionally so as to deprive Plaintiffs of property, of legal rights or otherwise  
11 cause injuries to Plaintiffs, and was despicable conduct that subjected Plaintiffs to  
12 cruel and unjust hardship in conscious disregard for Plaintiffs' rights, so as to justify  
13 an award of exemplary and punitive damages.

14  
15 **SIXTH CLAIM**

16 **Unfair Competition under Cal. Bus. & Prof. Code section 17200**

17 (Against Defendants WARNER, THUNDER ROAD,

18 VIOLA, IWANYK and DOES 1-10)

19 88. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1  
20 through 47 and paragraphs 54 through 87 as if set forth in full.

21 89. As stated and incorporated herein, Defendants made false and fraudulent  
22 misrepresentations to Plaintiffs, breached their implied-in-fact and express contracts  
23 with Plaintiffs, and interfered with Plaintiffs' opportunity to seek economic  
24 advantage from the use of *Ashes to Glory* in a major motion picture by fraudulent  
25 and deceptive practices.

26 90. Defendants' conduct constitutes unlawful, deceptive, fraudulent, and/or  
27 unfair conduct by Defendants, and each of them, in violation of California's Unfair  
28 Competition Act, Business and Professions Code section 17200 *et seq.*





**ALL CLAIMS FOR RELIEF**

1. For interest according to proof;
2. For cost of suit herein; and
3. For such further relief as the Court deems proper and just.

Dated: June 20, 2007

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

By: 

John A. Marder, Esq.

Michele L. Levinson, Esq.

Attorneys for Plaintiffs, DEBORAH NOVAK,  
JOHN WITEK, and WITEK & NOVAK, INC.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial.

Dated: June 20, 2007

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

By: 

John A. Marder, Esq.

Michele L. Levinson, Esq.

Attorneys for Plaintiffs, DEBORAH NOVAK,  
JOHN WITEK, and WITEK & NOVAK, INC.

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## Documentary Rights Option and Exclusive Consulting Agreement

This Documentary Rights Option and Exclusive Consulting Agreement (this "Agreement") is made effective as of December 12, 2003 by and between Mary Viola and Kristi Felton (the "Purchasers") and XXX and XXX ("you"), in connection with Purchaser's acquisition of the exclusive right to portray the events of the story (the "Documentary"), as hereinafter set forth.

1. Option. You hereby grant to Purchasers the exclusive and irrevocable option (the "Option") to purchase all Rights (as defined and set forth in paragraph 3), upon and subject to the following terms and conditions.

a. Option Period.

- i. The initial option period shall commence as of the date above, and shall continue until December 12, 2004 (the "Initial Option Period"). In the event that Purchasers has made reasonable progress toward the production and/or development of the Documentary into a "Work" (as defined below), the initial option period may be extended by Purchasers for additional periods to be negotiated in good faith ("Extension Period") by the payment to Purchasers of the sum provided in subparagraph (b)(ii) below at any time prior to expiration of the Initial Option Period. (The Initial Option Period and Extension Period are hereafter referred to collectively as the "Option Period"). Notwithstanding the foregoing, in the event that the Initial Option Period or the Extension Period, as the case may be, is set to terminate on a date by which Purchasers has commenced negotiations with a third party in connection with an agreement regarding the Documentary or a Work (as defined below), then the applicable option period shall be extended for such period of time in which to complete such negotiations.
- ii. Notwithstanding the foregoing, the Option Period shall be extended in perpetuity so long as any "Additional Element" shall remain attached to a Work (as defined below). For purposes herein, the term, "Additional Element" shall include, without limitation, any producer, director, writer, lead cast, or above the line crew that has been attached to a Work, directly or indirectly, by Purchasers.

b. Option Payment. Purchasers shall pay to you the following sums in consideration of the option herein granted:

- (i) For the Initial Period, payment of One Hundred Dollars(\$100.00), the receipt of which is hereby acknowledged by you;
- (ii) For the Extension Period, if applicable, One Hundred Dollars (\$100.00).

c. Automatic Extensions. The Option Term shall be automatically extended by

you waive all claims arising therefrom (except in the event of intentional defamation of you);

d. Proprietary Rights. Purchasers shall have no obligation to actually exploit the Documentary and/or any of the Works. The rights granted by you to Purchasers hereunder are in addition to, and this Agreement shall in no way limit, the rights with respect to the subject matter of this Agreement that Purchasers may now or hereafter enjoy as a member to the general public. You acknowledge and agree that Purchasers and or its successors, assigns and designees shall own all right, title and interest, including the entire copyright, in and to any and all of the Works. (The rights contained in this Paragraph 3 (a), (b), (c), and (d) are collectively referred to as the "Rights").

4. Consultation Services; Material Covenants; Representations and Warranties.

As further consideration hereunder, you agree to the following:

a. Consultation Obligations. You shall, at reasonable times, cooperate and consult with, and provide information and relevant materials to, Purchasers and other persons working with or for Purchasers in connection with the development of the Works. As requested by Purchasers, you further agree to use your reasonable best efforts to help Purchasers obtain interviews with and releases from members of your family, your professional associates and other third parties relevant to the Works. Purchasers will pay any costs and expenses required in connection with obtaining such interviews and releases, but only to the extent the costs and expenses were approved in advance in writing by Purchasers.

b. Representations and Warranties.

i. You represent and warrant to Purchasers that you have not granted to any other person or entity any of the rights granted by you to Purchasers hereunder.

ii. You represent and warrant that you will not do any act or thing inconsistent with the grant of exclusive Rights by you to Purchasers hereunder or which might interfere with Purchaser's full enjoyment thereof, including by way of illustration granting any other person or entity any right or privilege which is equivalent or similar to any of the Rights granted to Purchasers by you hereunder, or lending your name or endorsement to any other production based on your Documentary.

iii. You represent and warrant that you will not furnish to any person, corporation or entity other than Purchasers or its successors, licensees, assigns and designees, for use in any manner inconsistent with the exclusivity of the rights granted to Purchasers hereunder, any information, material or services of any kind pertaining to your

Documentary.

6. Additional Provisions.

- a. Purchasers Remedies. The parties hereto agree and acknowledge that the Rights granted to Purchasers under this Agreement are of a special, unique, unusual, extraordinary and intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in any action at law. A breach hereof by you shall cause Purchasers irreparable injury and Purchasers shall entitle Purchasers to injunctive and other equitable relief to secure enforcement of this Agreement, in addition to any other legal remedies available to Purchasers hereunder.
- b. Additional Documents. At Purchaser's request, you will execute or cause the execution of any and all additional documents and instruments, including without limitation, a short form release, which may now or hereafter be reasonably necessary or desirable to effectuate the purpose of this Agreement.
- c. Damages. All Rights granted and agreed to be granted by you to Purchasers under this Agreement shall be irrevocably vested in Purchasers and shall not be subject to rescission by you or any other party for any cause. You acknowledge that in the event of a breach of any of Purchaser's obligations under this Agreement, the damage (if any) caused by you thereby is not irreparable or otherwise sufficient to give rise to a right of injunctive or other equitable relief. Your sole and exclusive remedy hereunder shall be an action at law for damages and you irrevocably waive any right to seek and/or obtain equitable or injunctive relief.
- d. Assignment. You may not assign this Agreement or any rights or obligations hereunder. Purchasers shall have the right to assign or license any or all of its Rights under this Agreement to any person or entity; provided however, that unless the assignee is a so-called major motion picture or television company or other financially capable party that assumes all of Purchaser's executory obligations hereunder in writing, or unless you consent to such assignment in writing, Purchasers shall remain secondarily liable for any and all payments of compensation to be made to you hereunder.
- e. Notices: All written notices which either party hereto is required or may desire to give to the other shall be given by-delivering or mailing the same to the other at the addresses below, or at such other address provided in writing. Notices to Purchasers shall be addressed to the specific attention of Mary Viola, c/o Darin Frank Esq., Eisner & Associates, 9777 Wilshire Blvd, Suite 718, Beverly Hills, CA 90212, Facsimile (310) 205-6081. Notices shall be sufficiently given when hand-delivered or when the same shall be deposited so addressed, postage prepaid, in the United States mail and/or when the same shall have been transmitted by facsimile or similar means with confirmation thereof, and the date of said delivery, mailing or transmission shall be the date

the length of an industry-wide strike or any other event which interferes with Purchaser's regular motion picture development or production activities. In the event that the Option Period would otherwise expire on a Saturday, Sunday or national holiday, said period shall be automatically extended until the close of business on the next following business day.

- d. Non-Circumvention. As a material inducement to entering into this Agreement, Purchasers and you agree and acknowledge, that in the event that the Option granted hereunder expires, you may not, without the express written consent of Purchasers, enter into any agreement with respect to the Documentary with any third party directly or indirectly introduced to the Documentary by Purchasers (each a "Purchasers Contact") for a period of two (2) years after the expiration of this Agreement or the Option hereunder, unless or until such third party has entered into an agreement, satisfactory to Purchasers, in Purchaser's sole discretion, for Purchasers to provide producer services in connection with the applicable Work.

2. Purchase Price. Purchasers may exercise the Option to purchase the Rights by notice and payment, due no later than the commencement of principal photography of the first feature-length motion picture based on the Rights (the "Picture"). The purchase price shall be no less than Thirty Five Thousand Dollars (\$35,000) (collectively the "Purchase Price"); provided however, that in the event that the Purchasers assigns the Rights hereunder to a major or mini-major motion picture studio, Purchasers shall use commercially reasonable good faith efforts to increase the Purchase Price.

### 3. Rights.

- a. Exploitation. If the Option is exercised, Purchasers shall own, and subject only to such exercise, Owner assigns and sells to Purchasers, exclusively, in perpetuity and throughout the universe, the Documentary, including all right, title, and interest thereto, including without limitation the right to write, produce, distribute, exhibit, license and otherwise exploit the Documentary (collectively "Exploitation").
- b. Media. Such Exploitation rights may be used in connection with the Picture and/or any and all media formats now known or hereafter devised, including but not limited to motion pictures, television productions, and other audiovisual works of all kinds, now known or hereafter devised (collectively, the "Works", and individually, a "Work"), including without limitation sequels and remakes, based on or portraying the Documentary or depicting you, as well as exclusive ancillary rights in the Works (including without limitation publishing, merchandising, music, and soundtrack album) relating to you and the Documentary, as well as the right to use your name, likeness and other identifying characteristics in connection with the Works.
- c. Edit. You agree that in the Exploitation of the Works, Purchasers shall have the right to add to, delete from, modify and fictionalize your Documentary and

of the giving of such notice.

- f. Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of California applicable to contracts entered into and fully performed therein. The parties hereto submit to the sole and exclusive jurisdiction and venue of the state and federal courts in the county of Los Angeles, state of California.
  
- g. Relationship of the Parties: This Agreement is not a partnership between or joint venture of the parties hereto and neither party is the agent of the other. This Agreement is not for the benefit of any third party, whether or not referred to herein. Captions and organization are for convenience only and shall not be used to construe meaning. A waiver of any breach shall not waive a prior or subsequent breach. Except as otherwise provided herein, all remedies shall be cumulative and pursuit of any one shall not waive any other. This Agreement may be signed in counterpart and by facsimile, each of which shall be deemed an original, but all of which together shall constitute the Agreement.

\_\_\_\_\_  
By: Mary Viola

\_\_\_\_\_  
By: Kristi Felton

ACCEPTED AND AGREED TO:

\_\_\_\_\_  
By: XXX

\_\_\_\_\_  
By: XXX

. 2 .



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OPTION AGREEMENT - SHORT FORM

Witek & Novak, Inc.  
Deborah Novak and John Witek  
241 Whitaker Blvd.  
Huntington, WV 25701-4706

Re: ASHES TO GLORY (Documentary)

Dear Deborah and John,

This letter shall confirm the terms and conditions of the agreement between Basil Iwanyk and Mary Viola ("producers"), and Deborah Novak and John Witek of Witek & Novak, Inc. ("owners") with respect to the original documentary created by owners and currently entitled ASHES TO GLORY (which together with the title, themes, contests, plot, plot structure, characters, and other versions and derivations thereof, is herein called the "Property".) When property is set up through a third party ("Studio"), an addendum will be added to the existing agreement regarding additional Producer fees and participation.

1. Free Option

Owners hereby grant the producers the exclusive and irrevocable Free Option (the "Option") of named property. Producers have the right to distribute property to third parties, including but not limited to potential Writers, Agents, and Studios. The Option allows producers to purchase all rights, title, interest in and to, and ownership of the property, including without limitation to motion picture, television and customary allied and ancillary rights throughout the world in the property and in the copyright thereof and all renewals and extensions of copyright, which rights are more particularly described in paragraph four (4) below.

The period during which the option may be exercised (the "Option Period") shall commence on February 1, 2004 and shall expire twelve (12) months thereafter on midnight of January 31, 2004.

The Option shall be exercised, if at all, by written notice from producers to owners at any time on or before the expiration of the Option period, as it may be extended and negotiated in good faith between producers to owners.

2. Purchase Price

The purchase price for all motion picture, television, allied and ancillary rights in and to the property shall be negotiated in good faith when property is set up through a third party ("Studio") in conjunction with said producers. The purchase price will be no less than fifteen thousand dollars (\$15,000).

3. Credit

Owners shall receive producer credit pursuant to the applicable provisions of the PGA basic agreement in effect at the time the picture is completed and distributed. Credit will be awarded provided owners comply with producers' requests to share all additional footage obtained while

creating property, sharing any additional research pertaining to property, assisting producers in obtaining the necessary life rights associated with the property, and by assisting screenplay writer(s) with any story information as deemed necessary by producers.

#### 4. Rights

On payment of the purchase price, producers shall be the sole and exclusive owners of the property, the copyrights, music and all other elements including the sequel, remake, television series and all other subsidiary and allied rights, without exception, and shall have the exclusive right, in perpetuity, to distribute and otherwise deal with the picture, including marketing rights, worldwide in all media.

Additional payments for theatrical remakes and sequels, television movies-of-the-week, mini-series, or series (as these terms are commonly understood in the motion picture industry) will be negotiated in good faith.

#### 5. Warranties

Owners represent, warrant, and agree as follows:

- (i) Owners have the full right, power and authority to enter into this agreement and fully and freely grant each and all of the rights herein granted;
- (ii) The property and owner's contribution to the documentary are and shall be original with owner in all respects and no incident therein or part thereof has been or shall be taken from or based upon any other literary, dramatic or musical work, motion picture or television program;
- (iii) The full use and exploitation of property and documentary will not in any way infringe upon or violate any right of any nature whatsoever of any third party including, without limitation, copyrights, the right of privacy, the right of publicity and the right to be free from defamation;
- (iv) No motion picture, television movie, radio dramatic or other version of the property has heretofore been made, produced or performed;
- (v) The property is not in the public domain in any country in the world which provides for copyright or similar protection;
- (vi) There is no claim, litigation or other proceeding threatened pending or outstanding which might in any way prejudice any of the rights granted or to be granted hereunder; and
- (vii) Owners have not assigned, licensed, hypothecated or encumbered in any manner any of the rights granted or to be granted hereunder and shall not do so during option period or, if the option is exercised thereafter.

Owner shall defend, indemnify and hold producers and producer's successor's, licensees and assigns harmless from any loss, cost, damage, liability or expense (including attorney's fees) arising out of or in connection with any third party claim inconsistent with owner's representations and warranties herein or any breach by owners of its respective representations, warranties and agreements herein.

Producers shall defend, indemnify and hold owner harmless from any loss, cost, damage, liability or expense (including reasonable attorney's fees) arising out of or in connection with any material added to the property by producers at producers' direction.

#### 7. Reversion

If the option is not exercised by the end of the option period, as it may be extended, all rights in and to the property revert to owners.

8. Assignment

Upon consent of owners, producers may freely assign and transfer this agreement or all or any part of its parts hereunder to any person, firm or corporation, without limitation. This agreement shall be binding upon and insure to the benefit of the parties hereto and their successors, representatives and assigns forever

10. Relief

Owners agree that in the event of a breach of this agreement by producers, the damage, if any, caused owners thereby are not irreparable or sufficient to entitle owners to injunctive or any other equitable relief, and owners agree that owner's rights and remedies shall be limited to an action at law.

11. General

The balance of terms, if any, shall be producers' terms and conditions, subject to mutually agreed changes based upon good faith negotiation between producers and owners.

This agreement is the entire and complete agreement between the parties hereto, and there are no other agreements or promises between the parties. All agreements between the parties are set forth herein. This agreement may be modified but only in writing, signed by both parties hereto. This agreement shall be governed by and subject to the laws of the state of California.

Please indicate your understanding and acceptance of the fore-going terms and conditions by your signature below.

AGREED AND ACCEPTED BY:

\_\_\_\_\_  
Deborah Novak

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Witek

\_\_\_\_\_  
Date

1 **PROOF OF SERVICE**  
2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 *Deborah Novak, et al. v. Warner Bros. Picture, LLC, et al.*  
4 **United States District Court**

5 I am employed in the County of Los Angeles, State of California. I am over  
6 the age of 18 and not a party to the within action; my business address is 801 South  
7 Figueroa Street, 15th Floor, Los Angeles, California 90017.

8 On June 20, 2007, I served the document described as "**COMPLAINT FOR:**  
9 **1. COPYRIGHT INFRINGEMENT**  
10 **2. BREACH OF IMPLIED-IN-FACT CONTRACT**  
11 **3. BREACH OF CONTRACT - WRITTEN**  
12 **4. BREACH OF CONTRACT - ORAL**  
13 **5. FRAUD**  
14 **6. BUS. & PROF. CODE § 17200 (UNFAIR BUSINESS PRACTICES)**  
15 **JURY TRIAL DEMANDED**" on the interested parties in this action by placing true  
16 copies thereof enclosed in sealed envelopes addressed as follows:

17 **SEE ATTACHED**

18  **(BY MAIL)** I caused such envelope to be deposited in the mail at Los  
19 Angeles, California. The envelope was mailed with postage thereon fully  
20 prepaid.

21 I placed such envelope with postage thereon prepaid in the United States  
22 mail at Los Angeles, California.

23 I am "readily familiar" with the firm's practice of collection and  
24 processing correspondence for mailing. Under that practice it would be  
25 deposited with the U.S. postal service on that same day with postage thereon  
26 fully prepaid at Los Angeles, California in the ordinary course of business. I  
27 am aware that on motion of the party served, service is presumed invalid if  
28 postal cancellation date or postage meter date is more than one day after date  
of deposit for mailing in affidavit.

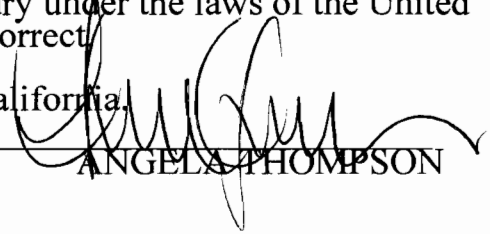
**(BY OVERNIGHT COURIER):** I placed the above-referenced document(s)  
in an envelope for collection and delivery on this date in accordance with  
standard \_\_\_\_\_ overnight delivery procedures.

**(BY FACSIMILE)** I telecopied such document to the offices of the addressee  
at the following fax number: .

**(BY PERSONAL SERVICE)** I delivered such envelope by hand to the  
offices of the addressee.

**(FEDERAL)** I declare under penalty of perjury under the laws of the United  
States of America, that the above is true and correct.

Executed on June 20, 2007 at Los Angeles, California.

  
ANGELA THOMPSON

1870-23914

**PROOF OF SERVICE LIST**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

***Deborah Novak, et al. v. Warner Bros. Picture, LLC, et al.***  
**United States District Court**

Zazi Pope, Esq.  
Warner Bros. Pictures  
General Counsel  
4000 Warner Boulevard  
Burbank, California 91522  
Tel: (818) 954-3671  
Fax: (818) 954-4910

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