

1 Gary Jay Kaufman, Esq. State Bar No. 92759
2 Dana Milmeister, Esq. State Bar No. 167307
3 Colin Hardacre, Esq. State Bar No. 250915
4 THE KAUFMAN LAW GROUP
5 1925 Century Park East, Suite 2350
6 Los Angeles, California 90067
7 Telephone: (310) 286-2202
8 Facsimile: (310) 712-0023

6 Allen Lichtenstein, Esq. State Bar No. 153687
7 3315 Russell Road, #222
8 Las Vegas, Nevada 89120
9 Telephone: (702) 433-2666
10 Facsimile: (702) 433-9591

11 Attorneys for Plaintiff,
12 Arrow Productions, Ltd.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 ARROW PRODUCTIONS, LTD., a Nevada)
16 corporation,)
17 Plaintiff,)
18 vs.)
19 VIVID ENTERTAINMENT LLC, a California)
20 limited liability company; and DOES 1 to 20,)
21 inclusive,)
22 Defendants.)
23)
24)
25)

Case No. BC408496
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:
(1) BREACH OF CONTRACT;
(2) SPECIFIC PERFORMANCE;
(3) UNFAIR BUSINESS PRACTICES

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 26 2009

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

1 **INTRODUCTION**

2 1. Defendant Vivid Entertainment LLC (“Vivid”) entered into a lucrative and
3 mutually beneficial written contract with Plaintiff Arrow Productions, Ltd. (“Arrow”) for the
4 opportunity to exploit Arrow’s valuable intellectual property rights. Arrow has kept its end of the
5 bargain; Vivid has not. Vivid now seeks to profit from its unlawful acts at Arrow’s expense.
6 Therefore, Plaintiff Arrow complains of Defendants as follows:

7 **PARTIES AND JURISDICTION**

8 2. Plaintiff Arrow is, and at all times herein mentioned was, a Nevada corporation
9 with its principal place of business in Las Vegas, Nevada.

10 3. Defendant Vivid is, and at all times herein mentioned was, a California limited
11 liability company, with its principal place of business in Los Angeles, California.

12 4. Defendants DOES 1 through 20 are sued herein by their fictitious names for the
13 reason that their true names are unknown. Arrow will seek leave to amend this complaint to allege
14 such true names when the same are ascertained. Arrow is informed and believes, and based
15 thereon alleges, that these fictitiously named defendants are responsible as agents, principals, alter
16 egos, co-conspirators or otherwise for the acts alleged herein.

17 5. Jurisdiction and venue are proper in this judicial district in that the Defendant
18 resides in this judicial district.

19 **GENERAL ALLEGATIONS**

20 6. Arrow owns the rights to the highest-grossing adult film of all time, “Deep Throat.”
21 Arrows rights include federally registered trademarks in the terms “Deep Throat” and “Linda
22 Lovelace.”

23 7. Vivid is the world’s leading adult film producer.

24 8. On or about January 1, 2008, Arrow entered into a written License Agreement (the
25 “Agreement”) with Vivid regarding creation of both a Deep Throat remake (the “Vivid Deep
26 Throat Remake” or the “Remake”), and a reality television series chronicling Vivid’s and Arrow’s
27 efforts in creating the Remake (the “Show”). A copy of the Agreement is attached hereto as
28 Exhibit A and incorporated by reference.

1 9. While interested in participating in the project, Arrow had significant concerns
2 about maintaining the value of its Deep Throat brand. Therefore, it was essential to Arrow's
3 consent that it maintain absolute control over its intellectual property by way of an exclusive right
4 of first refusal in the Remake once completed.

5 10. Paragraph 4 of The Agreement states as follows:

6 As a *material inducement* for Arrow to enter into this License Agreement and
7 grant Vivid the licenses of rights set forth herein, Vivid expressly agrees to all of
8 the following as a *material term* of this Agreement:

9 ¶ 4.1 Vivid shall submit to Arrow, on an *exclusive "first-look"* basis, the Vivid
10 Deep Throat Remake for Arrow's consideration for potential acquisition by Arrow
11 of the "Deep Throat Remake Rights" (as defined below). The submission of the
12 Vivid Deep Throat Remake to Arrow shall be made by Vivid in accordance with
13 the requirements and procedures set forth below.

14 (Emphasis added).

15 11. The procedures that Vivid must follow in submitting the film for Arrow's first look
16 are specifically spelled out in Paragraph 5.1 of the Agreement:

17 ¶ 5.1 As soon as it has been determined by Vivid that the Vivid Deep Throat
18 Remake is complete, Vivid *shall submit* a DVD copy of the Vivid Deep Throat
19 Remake to Arrow, along with a *written notice* ("Vivid Deep Throat Remake
20 Submission Notice") from Vivid to Arrow stating Vivid's final budget for the
21 production of the final product version of the Vivid Deep Throat Remake (the
22 "Budget") and informing Arrow that the DVD and notice constitute a submission
23 hereunder.

24 (Emphasis added).

25 12. Arrow then has ten (10) days following receipt of the Vivid Deep Throat Remake
26 Submission Notice to provide Vivid with written notice whether it elects to acquire the Vivid
27 Deep Throat Remake Rights. (Ex. A, p. 10, ¶ 5.2).

28 ///

1 January 9, 2009, Vivid also breached the Agreement by publicly exhibiting the Remake without
2 Arrow's prior approval.

3 23. As a result of Vivid's breach, Arrow has suffered actual damages in an amount to
4 be proven at trial.

5 24. Paragraph 17(g) of the Agreement provides that the prevailing party in any action
6 to enforce the Agreement's terms shall be entitled to recover all attorneys' fees, costs and other
7 expenses incurred in the action or proceeding. (Ex. A, p. 26).

8 25. Arrow has no adequate legal remedy in that damages, if awarded, cannot be
9 properly ascertained since there is no fixed market value for Arrow's intellectual property rights
10 and damages will be inadequate to compensate plaintiff for the detriment suffered by it.

11 Accordingly, Arrow seeks injunctive relief as prayed for below.

12 **SECOND CAUSE OF ACTION**

13 (Specific Performance)

14 (Against Defendant Vivid Entertainment LLC)

15 26. Arrow incorporates herein by reference paragraphs 1 through 19 of this complaint.

16 27. The consideration set forth in the Agreement was the limited use of Arrow's
17 intellectual property for the purpose of creating the Remake and the Show, and the contract is just
18 and reasonable to Vivid.

19 28. Arrow has performed all conditions, covenants, and promises required on its part to
20 be performed in accordance with the terms and conditions of the Agreement.

21 29. Vivid has failed and refused, and continues to fail and refuse, to submit the Remake
22 and the Vivid Deep Throat Remake Submission Notice as required by the Agreement.

23 30. Arrow has no adequate legal remedy in that damages, if awarded, cannot be
24 properly ascertained since there is no fixed market value for Arrow's intellectual property rights
25 and damages will be inadequate to compensate Arrow for the detriment it has and will suffer if
26 Vivid is not restrained and enjoined as prayed for below. Accordingly, Arrow seeks injunctive
27 relief as prayed for below.

28 ///

1 **THIRD CAUSE OF ACTION**

2 (Unfair Business Practices)

3 (Against all Defendants)

4 31. Arrow incorporates herein by reference paragraphs 1 through 30 of this complaint.

5 32. The acts alleged above, and each of them, constitute unfair, unlawful and/or
6 fraudulent business practices in violation of Section 17200 of the California Business and
7 Professions Code.

8 33. Arrow seeks disgorgement of profits earned by Defendants as a result of their
9 unfair, unlawful and/or fraudulent business practices towards Arrow.

10 34. Arrow additionally seeks temporary, preliminary and permanent injunctive relief as
11 prayed for below. If Defendants are not restrained as requested herein, Arrow will suffer
12 irreparable harm, which will continue unless Defendants are restrained from their wrongful
13 conduct.

14 35. Arrow has no adequate remedy at law and injunctive relief is therefore necessary to
15 redress the wrongs alleged herein.

16
17 WHEREFORE, Plaintiff Arrow prays judgment against Defendants and each of them, as follows:

18 **On The First Cause of Action for Breach of Contract:**

- 19 1. For compensatory damages in an amount to be proven at trial;
20 2. For interest thereon at the applicable contract or legal rate;
21 3. For Arrow's attorneys' fees; and

22 **On The Second Cause of Action for Specific Performance:**

23 4. An order that Vivid and all those acting in concert with Vivid be ordered to submit
24 to Arrow a DVD copy of a complete version (final product version) of the Vivid Deep Throat
25 Remake, along with a written notice from Vivid to Arrow stating Vivid's final budget for the
26 production of the final product version of the Vivid Deep Throat Remake and informing Arrow
27 that the DVD and notice constitute a submission under the Agreement; and

28 ///

1 5. For a further order that if Arrow decides to buy the Vivid Deep Throat Remake,
2 that Vivid be ordered to provide Arrow with all original footage from the final product version of
3 the Remake and all collateral material, including but not limited to all outtakes; all unused footage;
4 and all promotional photos, including but not limited to chromes.

5 **On The Third Cause of Action for Unfair Business Practices:**

6 6. For disgorgement of profits and other restitution in amounts to be proven at trial;
7 and

8 **On All Causes Of Action:**

9 7. For a temporary restraining order, a preliminary injunction, and a permanent
10 injunction, all restraining and enjoining Defendants and all persons acting in concert with them
11 from reproducing, distributing, publishing, adapting, displaying, exhibiting, advertising,
12 promoting, disseminating, offering for sale or transfer and/or selling or transferring any production
13 of the Vivid Deep Throat Remake, or portion thereof, or any work substantially similar to same,
14 until further order of the Court;.

15 8. For costs of suit incurred herein; and

16 9. For such further relief as the Court deems just and proper.

17
18 Dated: February 25, 2009

THE KAUFMAN LAW GROUP

19
20 By: _____

GARY JAY KAUFMAN

Attorneys for Plaintiff, Arrow Productions, Ltd.

LICENSE AGREEMENT

This License Agreement ("Agreement") is made as of January 1, 2008 (the "Effective Date") by and between ARROW PRODUCTIONS, LTD., a Nevada corporation, with an office at 631 Las Vegas Boulevard South, Las Vegas, Nevada 89101 ("Arrow"), WORLD OF WONDER PRODUCTIONS, INC., a California corporation, with an office at 6650 Hollywood Boulevard, Hollywood, CA 90028 ("World of Wonder") and VIVID ENTERTAINMENT, LLC, a California limited liability company, having a business address at 3599 Cahuenga Blvd., West, 4th Floor, Los Angeles, CA 90068 ("Vivid"). The term "Parties" shall refer collectively to Arrow, Vivid and World of Wonder and the term "Party" shall refer to Arrow, Vivid and World of Wonder individually.

OVERVIEW

The following Overview shall comprise an operative part of this Agreement and all obligations and understandings set forth below are expressly deemed by the Parties to be material provisions of this Agreement describing the operative facts that have substantially induced the Parties to enter into this Agreement.

The Parties have negotiated this Agreement to effectuate their mutual participation in an ambitious and unique "reality series", the basic premise of which is that Vivid will approach Arrow to obtain permission to produce a new version of Arrow's the famous 1972 motion picture entitled "Deep Throat" with the current working title of "The New Deep Throat" ("Vivid Deep Throat Remake"). In response, Arrow grants Vivid's request, then appears to decide to also produce a new version of "Deep Throat". Subject to the terms and conditions set forth in this Agreement, Vivid and Arrow will each be responsible for writing their own script, finding the new principal character, "Linda Lovelace™", and shooting and editing their respective versions of "The New Deep Throat" (each referred to generically as a "Deep Throat Remake"). It is understood that Arrow may decide not to produce a Deep Throat Remake and such decision shall not affect the Parties' rights or obligations under this Agreement.

World of Wonder has agreed to produce a television series documenting the Deep Throat Remake(s). The aforesaid series shall comprise a "reality show" style depiction of the creation of the Deep Throat Remake(s) with associated "behind the scenes footage" ("Reality Show"). The Reality Show, tentatively entitled "Deeper Throat", will be filmed and owned exclusively by World of Wonder. World of Wonder agrees that it will use reasonable efforts to cause the Reality Show to be licensed or sold to Viacom International, Inc. or another broadcast network entity provided that World of Wonder's failure to license or sell the Reality Show, or to otherwise exploit the Reality Show, shall not be deemed a breach of this Agreement.

Arrow and Vivid have agreed to give World of Wonder access at times specified by Arrow or Vivid, as the case may be, to all locations that Arrow and Vivid shall prior designate and inform World of Wonder to be locations at which the shooting of the Deep Throat Remake(s) and/or any "behind the scenes" footage associated therewith will take

place, at no cost to World of Wonder, provided that all such locations comprise areas that are under the exclusive control of either Arrow or Vivid and the providing of such access to World of Wonder does not result in any additional expense to either Arrow or Vivid for which World of Wonder has not expressly agreed in writing to be reimbursed to Arrow and/or Vivid.

Arrow and Vivid have agreed to reasonably assist World of Wonder in obtaining releases in connection with World of Wonder's exploitation of behind-the-scenes footage from persons appearing in, and rendering services in connection with, Arrow's and Vivid's versions of the Deep Throat Remakes, it being understood that Arrow and Vivid shall be responsible for obtaining releases from all such persons for their respective versions of the Deep Throat Remakes and World of Wonder's exploitation of excerpts therefrom as provided herein. World of Wonder acknowledges that it may be required to enter into separate agreements with certain Vivid employees or independent contractors, such as Vivid Girls. Vivid will assist World of Wonder in negotiating such agreements with such employees and independent contractors.

This Agreement shall provide to Vivid a limited license of specific copyright, trademark, publicity, character and other rights that are exclusively owned by Arrow for the sole and exclusive purposes of authorizing Vivid's production of the Vivid Deep Throat Remake. This Agreement shall also provide to World of Wonder a limited license of specific copyright, trademark, publicity, character and other rights that are exclusively owned by Arrow for the sole and exclusive purposes of authorizing World of Wonder to produce, own, and exploit the Reality Show subject to the terms of this Agreement.

The Parties acknowledge that Mr. Robert O'Hara ("O'Hara") has been instrumental in assisting the Parties in the negotiations that have resulted in this Agreement. As such, and because of his anticipated future participation in the further development, creation and promotion of the Reality Show as an executive producer thereof, O'Hara shall receive such compensation from Arrow as has been agreed to by Arrow and O'Hara.

NOW THEREFORE, in consideration of the mutual representations, warranties, and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. ARROW'S LICENSE OF RIGHTS TO VIVID.

1.1 Subject to, and contingent upon, the terms and conditions set forth in this Agreement, Arrow hereby grants to Vivid the following royalty-free license of rights:

(a) The non-exclusive right to use the DEEP THROAT® and LINDA LOVELACE™ marks and the name and likeness of Linda Lovelace ("Arrow Marks") and the fictional characters ("Characters") depicted in the original motion picture "Deep Throat" in Vivid's creation of the Vivid Deep Throat Remake;