

**FILED**  
LOS ANGELES SUPERIOR COURT

JUL 24 2012

JOHN A. CLARKE, CLERK  
*Andre M. Williams*  
BY ANDRE WILLIAMS, DEPUTY

CASE MANAGEMENT CONFERENCE

NOV 13 2012

Date

1 MARTIN D. SINGER (BAR NO. 78166)  
2 MICHAEL D. HOLTZ (BAR NO. 149616)  
3 LAVELY & SINGER  
4 PROFESSIONAL CORPORATION  
5 2049 Century Park East, Suite 2400  
6 Los Angeles, California 90067-2906  
7 Telephone: (310) 556-3501  
8 Facsimile: (310) 556-3615  
9 Email: [mdsinger@lavelysinger.com](mailto:mdsinger@lavelysinger.com)  
10 [mholtz@lavelysinger.com](mailto:mholtz@lavelysinger.com)

11 Attorneys for Plaintiffs  
12 KEVIN COSTNER and TIG FILMS, INC.

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

15 KEVIN COSTNER, an individual; TIG )  
16 FILMS, INC., a California corporation, )

CASE NO. **SC117842**

17 Plaintiffs, )

COMPLAINT FOR:

18 v. )

1. BREACH OF CONTRACT

19 MORGAN CREEK PRODUCTIONS, )  
20 INC., a corporation of unknown origin; )  
21 PRINCE OF THIEVES PRODUCTIONS )  
22 LIMITED, a corporation of unknown )  
23 origin; and DOES 1 through 10, )  
24 inclusive, )

2. BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING

3. FRAUD

4. UNJUST ENRICHMENT

25 Defendants. )

JURY TRIAL DEMAND

26 Plaintiffs KEVIN COSTNER and TIG FILMS, INC. (collectively "Plaintiffs") allege as  
27 follows:

28 INTRODUCTION

1. Every actor hopes to star in a great movie that makes substantial profits. But if you're  
hoping to earn profits based on the success of your film and you want to be paid on a timely basis,  
then one company you certainly do not want to do business with is Defendant Morgan Creek

ORIGINAL

1 Productions, Inc. Plaintiff Kevin Costner is an academy-award winning actor who has achieved  
2 international stardom and critical acclaim for his leading roles in such films as *Dances With Wolves*,  
3 *JFK*, *Field of Dreams*, *Bull Durham*, *The Bodyguard*, *No Way Out*, *The Untouchables* and *Robin*  
4 *Hood: Prince of Thieves*. Costner's most well-known films have also enjoyed huge commercial  
5 success and have earned hundreds of millions of dollars for the studios that produce them. *Robin*  
6 *Hood: Prince of Thieves* (the "Picture") was no exception. After generating over \$25,000,000 in its  
7 opening weekend at the U.S. box office in May of 1991, it has gone on to earn over \$390,000,000  
8 in worldwide theatrical revenues, as well as tens of millions more from worldwide television, home  
9 video and other sources.

10 2. The main beneficiary of this success has been the production company that made the  
11 Picture, Morgan Creek. When Morgan Creek contracted with Mr. Costner to appear in the film, they  
12 promised that if the film was successful, they would share the profits with him. However, when it  
13 came time to report and account to Mr. Costner, Morgan Creek was less than forthcoming. After  
14 being consistently late in rendering statements, they simply stopped altogether. Worse still, on the  
15 statements they did render, they intentionally concealed information and employed inaccurate and  
16 improper accounting practices designed to deprive Mr. Costner of his backend participation. Mr.  
17 Costner did as he promised - he starred in and promoted the Picture, helping it to become a huge  
18 success that earned Morgan Creek substantial profits. But when it came time for Morgan Creek to  
19 do as they promised and share those profits, they delayed, obfuscated, concealed and reneged. As  
20 a result, Mr. Costner has been forced to bring this action to recover the share of the profits which he  
21 was promised and which he has rightfully earned.

### 22 THE PARTIES

23  
24 3. Plaintiff KEVIN COSTNER ("Costner") is, and at all times relevant hereto has been,  
25 an individual and an adult of legal age, residing and conducting business in the County of Los  
26 Angeles, State of California.

27 4. Plaintiff TIG FILMS, INC. ("Tig Films") is now, and at all times relevant hereto has  
28 been, a corporation organized and existing pursuant to the laws of the State of California, transacting

1 business in the County of Los Angeles, State of California. Tig Films is Costner's professional loan  
2 out corporation.

3 5. Plaintiffs are informed and believe and based thereon allege that Defendant  
4 MORGAN CREEK PRODUCTIONS, INC. ("Morgan Creek") is now, and at all times relevant  
5 hereto has been, a corporation organized and existing pursuant to the laws of the State of Delaware,  
6 transacting business in the County of Los Angeles, State of California as a motion picture production  
7 and distribution company.

8 6. Plaintiffs are informed and believe and based thereon allege that Defendant PRINCE  
9 OF THIEVES PRODUCTIONS LIMITED was, at all times relevant hereto, a corporation of  
10 unknown origin, organized by Morgan Creek as a special purpose entity for the purpose of producing  
11 the motion picture *Robin Hood: Prince of Thieves* (the "Picture"). Morgan Creek and Prince of  
12 Thieves Productions Limited are collectively referred to hereinafter as the "Defendants."

13 7. Plaintiffs are informed and believe and based thereon allege that pursuant to  
14 California Code of Civil Procedure § 474, the fictitiously named defendants sued herein as Does 1  
15 through 10, inclusive, and each of them, were in some manner responsible or legally liable for the  
16 actions, events, transactions and occurrences alleged herein. The true names and capacities of such  
17 fictitiously named defendants whether individual, corporate, associate or otherwise, are presently  
18 unknown to Plaintiffs, and Plaintiffs will seek leave of Court to amend the Complaint to assert the  
19 true names and capacities of such fictitiously named defendants when the same have been  
20 ascertained. For convenience, each reference to a named defendant herein shall also refer to the Doe  
21 Defendants, and each of them.

22 8. Plaintiffs are informed and believe and based thereon allege that named Defendant  
23 Morgan Creek, and those Defendants sued herein as Does, were acting in concert or participation  
24 with one another, or were joint participants and collaborators in the acts complained of, and were  
25 the officers, directors, agents or employees of named Defendant Morgan Creek in doing the acts  
26 complained of herein, each and all of them acting within the course and scope of said agency and/or  
27 employment, each and all of them acting in concert with the other and all together. Plaintiffs are  
28 informed and believe and based thereon allege that at all times herein mentioned each of the Doe

1 Defendants was and is the agent, servant, alter ego, officer, director, and/or employee of named  
2 Defendant Morgan Creek, and all of the things alleged to have been done by said Defendants were  
3 done in a capacity of an agent, servant, alter ego, officer, director, and/or employee of and for named  
4 Defendant Morgan Creek.

#### 5 6 THE ACTING AGREEMENTS

7 9. Costner and his loan out corporation Tig Films, on the one hand, and Morgan Creek  
8 and its affiliate Prince of Thieves Productions Limited, on the other hand, are parties to a series of  
9 agreements dated as of July 23, 1990 pursuant to which Costner was employed by Defendants to  
10 render services in connection with the Picture. Of principal relevance to this dispute are two of the  
11 agreements, namely the Acting Agreement dated as of July 23, 1990 between Prince of Thieves  
12 Productions Limited and Costner, and the Release Agreement dated as of July 23, 1990 between  
13 Morgan Creek, Tig Films and Costner (collectively the "Acting Agreements").

14 10. The Acting Agreements provide, in relevant part, that in addition to his base  
15 compensation, Costner would be paid contingent compensation referred to as "Acting Participation"  
16 or "Participation" in the following amounts: Twelve-and-a-Half percent (12.5%) of the Adjusted  
17 Gross Receipts ("AGR") of the Picture in excess of Sixty Million Dollars (\$60,000,000), increased  
18 to Fifteen percent (15%) of the AGR of the Picture in excess of One Hundred Million Dollars  
19 (\$100,000,000).

20 11. The AGR was to be defined and computed in accordance with an Exhibit that was  
21 attached and incorporated into the Acting Agreements (hereinafter the "AGR Exhibit"). The  
22 following material provisions are included in the AGR Exhibit:

23 i. With respect to distribution of the Picture on home video, Plaintiffs are  
24 entitled to the greater of (A) the amounts received by Morgan Creek less a 25% distribution fee or  
25 (B) 10% of the wholesale price of home video gross receipts from sell through distribution.

26 ii. Morgan Creek does not have the right to make any outright sale of all of its  
27 rights in and to the Picture without obtaining the purchaser's written assumption for the benefit of  
28 Plaintiffs of all of Morgan Creek's obligations under the Acting Agreements. The Agreements

1 further provide that if any successor-in-interest to Morgan Creek does not assume all of Morgan  
2 Creek's obligations under the Acting Agreements, then Morgan Creek shall remain liable and  
3 responsible for all of its obligations thereunder. This concept is reinforced by the Terms and  
4 Conditions contained in the Acting Agreements, which give Costner assignment approval rights and  
5 state that if any assignee does not satisfy Morgan Creek's obligations to Costner then Morgan Creek  
6 shall remain liable and responsible for all of its obligations thereunder.

7           iii. Morgan Creek is permitted to deduct certain checking and collection costs  
8 actually incurred by Morgan Creek or actually deducted by the Distributor [Warner Bros.], but  
9 checking and collection costs may not exceed one percent (1%) of the Gross Receipts and Morgan  
10 Creek may not deduct a greater amount than the amount Distributor [Warner Bros.] charges Morgan  
11 Creek.

12           iv. Morgan Creek is required to furnish the Plaintiffs with participation  
13 statements on a quarterly basis for the first three years after the Picture's general release, then semi-  
14 annually for the next two years, then annually thereafter. The statements are to be furnished to  
15 Plaintiffs within 90 days after the end of the respective accounting period.

### **FIRST CAUSE OF ACTION**

(For Breach of Contract Against All Defendants)

19           12. Plaintiffs repeat, reallege, adopt and incorporate by reference each and every  
20 allegation contained in paragraphs 1 through 11, inclusive, of this Complaint, as though fully set  
21 forth herein.

22           13. Defendants have breached the Acting Agreements in each of the following non-  
23 exclusive ways:

24           (a) Defendants drastically under-reported home video gross receipts from home  
25 video exploitation by reporting 10% of the gross receipts of its home video distributor, Warner Bros.,  
26 rather than reporting the home video gross receipts received by Morgan Creek less a 25%  
27 distribution fee.

28

1 (b) In 2006, Defendants assigned the foreign distribution rights to 41 motion  
2 picture titles (including the Picture) for \$21,000,000 to Morgan Creek International Limited (later  
3 known as "Inverness"), a company wholly owned by the CEO of Morgan Creek, James Robinson,  
4 without Plaintiffs' knowledge or consent. Under the assignment, Inverness purportedly assumed all  
5 of the executory obligations and liabilities of Morgan Creek. Despite that Plaintiffs neither approved  
6 the sale nor released Morgan Creek of its obligations and liabilities to Plaintiffs with respect to profit  
7 participations on the Picture, neither Morgan Creek nor Inverness have reported a single dollar to  
8 Plaintiffs in connection with the sale.

9 (c) Defendants violated the provisions of paragraph 4 of the AGR Exhibit by  
10 deducting from Gross Receipts checking and collection costs in excess of \$2,000,000 allegedly  
11 incurred by Morgan Creek despite that Defendants provided no evidence that the costs were actually  
12 incurred, and despite that this amount was in excess of two times the amount that the Distributor  
13 [Warner Bros.] charged Morgan Creek.

14 (d) Defendants failed to report all revenues received on television sales of the  
15 Picture;

16 (e) Defendants failed to timely provide participation statements to Plaintiffs and  
17 frequently provided them years after they were required to be provided;

18 (f) Defendants failed to provide Plaintiffs with participation statements for the  
19 years 2010 and 2011.

20 14. Plaintiffs have at all times performed all duties and obligations required of them  
21 under the Acting Agreements, except to the extent that Plaintiffs were excused or prevented from  
22 doing so by the acts and omissions of Defendants.

23 15. As a direct and proximate result of the aforesaid material breaches of the Acting  
24 Agreements by Defendants, Plaintiffs have suffered damages in an amount in excess of the minimum  
25 jurisdictional limits of this Court, the exact amount subject to proof at the time of trial.

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1 SECOND CAUSE OF ACTION

2 (For Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants)

3 16. Plaintiffs repeat, reallege, adopt and incorporate by reference each and every  
4 allegation contained in paragraphs 1 through 11, inclusive, of this Complaint, as though fully set  
5 forth herein.

6 17. Implied in every contract is a covenant that the parties will act in good faith and that  
7 no party will engage in conduct that is either intended or that would have the natural tendency to  
8 deprive the other parties of the benefits to which they are entitled under the contract. Said covenant  
9 is implied in the Acting Agreements.

10 18. Defendants breached the implied covenant of good faith and fair dealing by packaging  
11 the Picture in the international territories for free, basic and pay television distribution and taking  
12 the package fees and allocating them evenly across all pictures in the package, rather than allocating  
13 the package fees according to the performances and true values of the pictures in the package.

14 19. Plaintiffs have at all times performed all duties and obligations required of them  
15 under the Agreement, except to the extent that Plaintiffs were excused or prevented from doing so  
16 by the acts and omissions of Defendants.

17 20. As a direct and proximate result of Defendants' breach of the implied covenant of  
18 good faith and fair dealing, Plaintiffs have suffered damages in an amount in excess of the minimum  
19 jurisdictional limits of this Court, the exact amount subject to proof at the time of trial.

20  
21 THIRD CAUSE OF ACTION

22 (For Fraud Against All Defendants)

23 21. Plaintiffs repeat, reallege, adopt and incorporate by reference each and every  
24 allegation contained in paragraphs 1 through 11, inclusive, of this Complaint, as though fully set  
25 forth herein.

26 22. Defendants had exclusive knowledge of and access to the information regarding  
27 revenues generated from their exploitation of the Picture, including the amount of home video  
28 revenues, and Defendants knew that such information was not known to Plaintiffs and that Plaintiffs

1 would rely on the statements furnished by Defendants for such information. Plaintiffs had a  
2 reasonable expectation that the information on the statements provided by Defendants would be  
3 complete and accurate.

4 23. In furnishing the statements to Plaintiffs, Defendants assumed an obligation to make  
5 a complete and fair disclosure of material information regarding revenues generated from  
6 exploitation of the Picture, and to refrain from providing partial, incomplete or misleading  
7 information or from withholding other information which materially qualified or undermined the  
8 other information given.

9 24. Plaintiffs are informed and believe and based thereon allege that in providing  
10 participation statements to Plaintiffs, Defendants suppressed certain information which materially  
11 qualified and undermined the other information provided about home video gross receipts generated  
12 by Defendants' exploitation of the Picture. Specifically, Defendants suppressed and failed to  
13 disclose the amount of home video gross receipts received by Morgan Creek, and instead simply  
14 reported 10% of Warner Bros.' gross on the statements furnished to Plaintiffs. In so doing,  
15 Defendants suppressed from and failed to disclose to Plaintiffs that the amount of home video gross  
16 receipts received by Morgan Creek less a 25% distribution fee was substantially greater than 10%  
17 of the wholesale price. Under the Acting Agreements, Defendants should have been reporting to  
18 Plaintiffs the greater amount, and Plaintiffs had a reasonable belief and expectation that Defendants  
19 were doing so. By providing partial information and excluding other material information from the  
20 statements regarding the home video revenues, Defendants engaged in fraudulent conduct which  
21 prevented Plaintiffs from discovering the true amount of home video participations that Plaintiffs  
22 should have been receiving. Compounding the deception was the fact that Defendants were  
23 consistently late in furnishing participation statements to Plaintiffs for the years 2004 through 2009  
24 (and then stopped issuing statements altogether).

25 25. Plaintiffs are informed and believe and based thereon allege that Defendants failed  
26 to include all of the home video revenue on the statements to Plaintiffs intentionally, because  
27 Defendants did not want Plaintiffs to know that the methodology employed by Defendants in  
28 reporting the home video gross receipts was improper and was causing substantial harm to Plaintiffs.





1 WHEREFORE, Plaintiffs prays for judgment against Defendants, and each of them, as  
2 follows:

3 **AS TO THE FIRST CAUSE OF ACTION:**

4 1. General damages in an amount subject to proof at the time of trial;

5 **AS TO THE SECOND CAUSE OF ACTION:**

6 2. General damages in an amount subject to proof at the time of trial;

7 **AS TO THE THIRD CAUSE OF ACTION:**

8 3. General damages in an amount subject to proof at the time of trial;

9 4. Punitive damages in a sum appropriate to punish Defendants, and each of them, and  
10 to deter Defendants from engaging in future similar misconduct, the exact sum subject to proof at  
11 the time of trial;

12 **AS TO THE FOURTH CAUSE OF ACTION:**

13 5. Damages in the amount that Defendants have been unjustly enriched, the exact  
14 amount subject to proof at the time of trial;

15 **AS TO ALL CAUSES OF ACTION:**

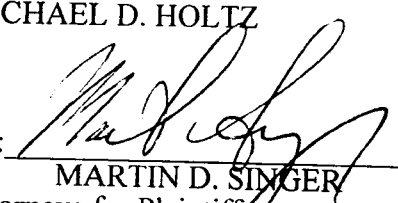
16 6. For costs of suit incurred herein;

17 7. For interest at the maximum legal rate; and

18 8. For such other and further relief as the Court may deem to be just and appropriate.

19  
20 DATE: July 17, 2012

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
MICHAEL D. HOLTZ

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24 By:   
MARTIN D. SINGER  
25 Attorneys for Plaintiffs  
26 KEVIN COSTNER and TIG FILMS, INC.  
27  
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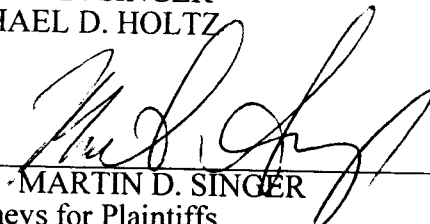
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JURY DEMAND

Plaintiffs Kevin Costner and Tig Films, Inc. hereby demand trial by jury.

DATE: July 17, 2012

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
MICHAEL D. HOLTZ

By:   
MARTIN D. SINGER  
Attorneys for Plaintiffs  
KEVIN COSTNER and TIG FILMS, INC.

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