

1 Flora Racely, Residuals Paralegal  
Writers Guild of America, West, Inc.  
2 7000 W. Third Street  
Los Angeles, California 90048  
3 Phone: (323) 782-4521  
Fax: (323) 782-4806

4 Representative for Complainant

5  
6  
7  
8 BEFORE THE WRITERS GUILD OF AMERICA, WEST, INC. - PRODUCERS  
9 ARBITRATION TRIBUNAL

10  
11 In the Matter of the Arbitration between

12 WRITERS GUILD OF AMERICA, WEST, INC.,

13 Complainant,

14 vs.

15 HARDSTONE ENTERTAINMENT INC; BRANWEN  
16 PRODUCTIONS, LTD.; CROWN MEDIA HOLDINGS, INC.  
17 D/B/A CROWN HOLDINGS; U.S. BANK NATIONAL  
ASSOCIATION; U.S. BANK NATIONAL ASSOCIATION,  
18 CANADA BRANCH; AND SA GROUP PRODUCTIONS, LLC;

19 Respondents.

20 Relating to unpaid residual compensation in connection with  
various basic cable television motion pictures.

NOTICE OF  
SECOND AMENDED  
CLAIM SUBMITTED  
TO ARBITRATION  
AND SECOND  
AMENDED CLAIM

CASE No. 10-CL-097

21 TO ALL PARTIES AND THEIR COUNSEL:

22 PLEASE TAKE NOTICE that the Writers Guild of America, West, Inc. ("WGAW" or  
23 "Guild") submits the above-captioned Notice of Second Amended Claim Submitted to  
24 Arbitration and Second Amended Claim ("Second Amended Claim") to arbitration pursuant to  
25 Articles 10, 11 and 12 of the Writers Guild of America 2004 - 2011 Theatrical and Television  
26 Basic Agreements (collectively "MBA"). Pursuant to MBA Article 11.B.3, submission of this  
27 Second Amended Claim to steps 1 and 2 of the grievance procedure is waived.  
28

1 **INFORMATION REQUEST**

2 Pursuant to Section 8 of the National Labor Relations Act, 29.U.S.C. § 158, the WGAW  
3 requests that on or before July 08, 2013, Respondents produce the following information and  
4 documents, which are relevant and necessary to the Guild's ability to enforce the MBA:

5 (a) Any and all licensing, distribution and/or assumption agreements and any and all  
6 documents that relate to or reflect the terms of such agreements including, but not limited to,  
7 the financial terms of such agreements, in connection with the various basic cable television  
8 motion pictures which are listed in the document attached hereto as "Schedule A" (collectively  
9 "Covered Pictures");

10 (b) Any and all documents, receipts and/or accountings received or sent by  
11 Respondents which relate to the licensing and/or distribution of the Covered Pictures to  
12 various markets including, but not limited, to basic cable, videodisc/videocassette, pay  
13 television, free television, foreign television, new media-EST, new media-consumer does not  
14 pay, and new media-limited period or fixed number of exhibitions; and

15 (c) Any and all documents related to the broadcast, exhibition and/or airing of the  
16 Covered Pictures.

17 **SECOND AMENDED CLAIM**

18 [Facts Pertaining to All Counts]

19 1. Complainant WGAW is a labor organization and a party to the MBA. The  
20 WGAW brings this claim on behalf of the credited writers of the Covered Pictures to recover  
21 unpaid residual compensation due to them and for other related damages.

22 2. Respondents Hardstone Entertainment, Inc.; Branwen Productions, Ltd.; Crown  
23 Media Holdings, Inc. d/b/a Crown Holdings; U.S. Bank National Association; U.S. Bank  
24 National Association, Canada Branch; and SA Group Productions, LLC (collectively  
25 "Respondents") were at all material times signatory to or otherwise bound by the MBA.

26 3. During the term of the MBA, Respondent Hardstone Entertainment, Inc. entered  
27 into employment agreements with writers for writing services in connection with the Covered  
28 Pictures.

1 4. During the term of the MBA, one or more of the Respondents produced, or  
2 caused to be produced, the Covered Pictures.

3 5. The WGAW is informed, believes and thereon alleges that the Respondents are  
4 jointly and severally liable for any and all MBA obligations in connection with their respective  
5 Covered Pictures including, but not limited to, the obligations outlined herein.

6 6. During the term of the MBA, writing credits for the Covered Pictures became  
7 final. The final writing credits are set forth in "Schedule A, which is attached hereto.

8 7. The writing credits for the Covered Pictures were determined pursuant to the  
9 applicable television schedule of the MBA. The writers receiving credit on the Covered  
10 Pictures shall be collectively referred to herein as "Credited Writers".

11 8. Paragraph 2.b.(1) of Appendix C of the MBA provides in pertinent part:

12 Except as otherwise provided herein, all terms and conditions of  
13 the 1988 – 2011 MBA Writers Guild of America Theatrical and  
14 Television Basic Agreement and all amendments and modifications  
15 thereto that are applicable to a dramatic program produced for first  
16 run syndicated free television and other programs to which  
Company has elected to apply this subparagraph 2.b. shall apply to  
such employment or acquisition.

17 9. Respondents thereafter released or caused to be released the Covered Pictures  
18 to various markets including, but not limited to, basic cable, videodisc/videocassette, pay  
19 television, free television, foreign television, new media-EST, new media-consumer does not  
20 pay, and new media-limited period or fixed number of exhibitions.

### 21 COUNT I

#### 22 [Failure to Pay Residual Compensation]

23 10. Pursuant to Paragraph 2.b.(1) of Appendix C and Article 15.B.1. of the MBA,  
24 Respondents are required to pay Credited Writers residual compensation under the "Sanchez  
25 Formula" not later than four months after telecast of each respective rerun on basic cable.

26 11. Pursuant to Article 15.B.1. of the MBA, Respondents are required to pay to  
27 Credited Writers residual compensation not later than four months after telecast of each  
28 respective re-run on free television and in syndication.

1 12. Pursuant to Article 51.C.1. of the MBA, Respondents are required to pay each  
2 participating writer (as defined in Article 51.C.5. of the MBA) residual compensation in an  
3 amount equivalent to one and two-tenths percent (1.2%) of Respondents' accountable  
4 receipts derived from the licensing and/or distribution of the Covered Pictures to pay-type  
5 CATV or pay television.

6 13. Pursuant to Article 51.C.1. of the MBA, Respondents are required to pay each  
7 participating writer (as defined in Article 51.C.5. of the MBA) residual compensation for the  
8 licensing and/or distribution of the Covered Pictures to videodisc/videocassette in an amount  
9 equivalent to one and one-half percent (1.5%) of the first One Million Dollars (\$1,000,000.00)  
10 of Producer's gross and at one and eight-tenths percent (1.8%) of Producer's gross in excess  
11 of One Million Dollars (\$1,000,000.00).

12 14. Pursuant to Article 15.B.2 of the MBA, Respondents are required to pay  
13 Credited Writers residual compensation of fifteen percent (15%) of the applicable minimum  
14 not later than thirty days after the Company obtains knowledge of, and no later than six (6)  
15 months after, the first foreign telecast of the Covered Pictures on foreign television.  
16 Additionally, Respondents are required to pay Credited Writers residual compensation of ten  
17 percent (10%) of the applicable minimum when the applicable foreign gross receipts are  
18 exceeded.

19 15. Pursuant to Paragraph 1.b. of the Sideletter on Exhibition of Motion Pictures  
20 Transmitted Via New Media ("Sideletter") of the 2008 MBA, for exhibition of television motion  
21 pictures on new media via electronic sell through, Respondents are required to pay Credited  
22 Writers residual compensation in the amount of 1.8% of 20% of the Company's accountable  
23 receipts for the first 100,000 units and 3.5% thereafter.

24 16. Pursuant to Paragraph 1.a. of the Sideletter, for exhibition of television motion  
25 pictures on new media for a limited period or fixed number of exhibitions, Respondents are  
26 required to pay Credited Writers residual compensation in the amount of 1.2% of the  
27 Company's accountable receipts.

28 17. Pursuant to Paragraph 2.b. of the Sideletter, during the first year of exhibition of

1 the Covered Pictures on new media via ad-supporting streaming, Respondents are required to  
2 pay Credited Writers residual compensation at the applicable percentage rate of the  
3 applicable minimum compensation upon expiration of the initial streaming window.  
4 Thereafter, Respondents are required to pay Credited Writers residual compensation in the  
5 amount of 2% of distributor's gross receipts for this usage.

6 18. In breach of the foregoing MBA provisions, Respondents have failed and  
7 refused and continue to fail and refuse to pay the required residual compensation, which  
8 compensation is currently due, owing and unpaid.

9 19. Pursuant to Articles 15.A.3.f., 51.C.6, 51, and 15.B.4 of the MBA, Respondents  
10 are required to pay interest on the unpaid residual compensation at the rate of one and one-  
11 half percent (1.5%) per month, commencing to accrue from the date of such delinquency and  
12 continuing to accrue until paid in full.

13 **COUNT II**

14 [Failure to Report]

15 20. Pursuant to Article 15.B.5. of MBA, Respondents are required to give the  
16 WGAW prompt written notice of the date(s) on which the Covered Pictures are telecast in any  
17 city in the United States and Canada for the second run and subsequent runs thereafter.

18 21. Pursuant to Article 51.C.6. of MBA, Respondents are required to furnish or  
19 cause to be furnished to the WGAW on a quarterly basis, no later than sixty (60) days  
20 following the end of a calendar quarter, written reports showing the Producer's gross receipts  
21 for the preceding quarter from the distribution of the applicable Covered Pictures to  
22 videodisc/videocassette and pay television.

23 22. Pursuant to Article 53 of MBA, Respondents are required to make available to  
24 the Guild all the financial terms of all contracts relevant to the determination of the accuracy of  
25 any payment due to a writer, and the records showing the receipts and deductions for which to  
26 be accounted.

27 23. Pursuant to Article 15.B.6. of MBA, Respondents are required to furnish reports  
28 to the Guild showing the distributor's foreign gross derived from the foreign distribution of the

1 Covered Pictures until all of the Credited Writers of the Covered Pictures have received the  
2 full additional payments for such foreign telecasting to which they are entitled.

3 24. Pursuant to Paragraph 3.c. of the Sideletter and Article 51 of the MBA,  
4 Respondents are required to furnish or cause to be furnished to the WGAW on a quarterly  
5 basis, and no later than sixty (60) days following the end of a calendar quarter, a written report  
6 showing the Producer's gross receipts from the licensing and/or distribution of the Covered  
7 Pictures to new media. Such reports shall specify the medium and source of the accountable  
8 receipts and shall be separated from revenues derived from the exploitation of Covered  
9 Pictures in traditional media.

10 25. In breach of the foregoing MBA provisions, Respondents have failed and  
11 refused and continue to fail and refuse to provide to the WGAW the requisite written reports  
12 as described above in a timely manner, and have failed and continue to fail and  
13 refuse to make accessible to the Guild all relevant financial documents as described above.

14 26. As a direct and proximate result of this breach, Credited Writers have suffered  
15 and unless Respondents are required to and do give the WGAW such written notices, reports,  
16 and access to relevant documents, shall continue to suffer damage by the loss of benefits  
17 conferred on them under the MBA in connection with such reporting requirements. The  
18 WGAW will present proof of damage at the hearing.

19 27. As a further direct and proximate result of this breach, the WGAW has suffered  
20 and, unless Respondents are required to and do give the WGAW such written notices,  
21 reports, and access to relevant documents, shall continue to suffer damage to its prestige, to  
22 the integrity of the MBA and to its ability to enforce the residual compensation provisions of  
23 the MBA. The WGAW will present proof of damage at the hearing.

24 **COUNT III**

25 [Failure to Pay Pension Plan and Health Fund Contributions]

26 28. Pursuant to Article 17 of the MBA, Respondents are required to make Pension  
27 Plan and Health Fund contributions on behalf of Credited Writers at the applicable percentage  
28 rate of the total gross residual compensation.

1 29. In breach of the foregoing MBA provisions, Respondents have failed and  
2 refused and continue to fail and refuse, to make the required Pension Plan and Health Fund  
3 contributions, which compensation is currently due, owing, and unpaid.

4 30. Pursuant to Article 17 of the MBA and the trust agreements, Respondents are  
5 required to pay interest on the unpaid Pension Plan and Health Fund contributions at a rate of  
6 eighty-three hundredths percent (.83%) per month commencing from the date the  
7 contributions were due and continuing to accrue until paid in full.

8 **COUNT IV**

9 **[Failure to Deliver Assumption Agreement]**

10 31. Pursuant to Articles 51.C.8. and 51.C.9 of the MBA, signatory companies are  
11 required to obtain and deliver to the WGAW a written assumption agreement from any buyer,  
12 transferee or assignee in order to bind such buyer, transferee or assignee to all MBA  
13 obligations including, but not limited to, the MBA obligations referenced in this Claim, for the  
14 benefit of Credited Writers and the WGAW.

15 32. In breach of the foregoing provisions of the MBA, Respondents have failed and  
16 refused and continue to fail and refuse to deliver to the WGAW written assumption  
17 agreements in connection with the Covered Pictures.

18 33. As a direct and proximate result of Respondents' breach of the MBA, Credited  
19 Writers have suffered, and unless the Respondents are required to and do obtain and deliver  
20 to the WGAW valid assumption agreements, shall continue to suffer damage by the loss of  
21 benefits conferred on them under the MBA in connection with such delivery requirements.  
22 The WGAW will present proof of damage at the hearing.

23 34. As a further direct and proximate result of this breach of the MBA, the WGAW  
24 has suffered and, unless Respondents are required to and do obtain and deliver to the  
25 WGAW valid assumption agreements, shall continue to suffer damage to its prestige, to the  
26 integrity of the MBA and to its ability to monitor and enforce the residual compensation  
27 provisions of the MBA. The WGAW will present proof of damage at the hearing.

28 //

1 COUNT V

2 [Posting of Bond or Security—MBA Art. 42]

3 35. Article 42 of the MBA provides in pertinent part as follows:  
4 Posting of Bonds -The Guild reserves the right, in the event it  
5 determines that a particular Company is not reliable or financially  
6 responsible, to require posting in advance of an adequate bond,  
7 cash or other security.

8 The Company acknowledges the Guild's right to instruct its  
9 members to withhold services from any Company that has failed to  
10 post a bond when required to do so in accordance with the  
11 foregoing paragraph.

12 36. During the term of the present and predecessor MBAs, Respondents have  
13 engaged in a pattern and practice of contract breaches including, but not limited to, the  
14 systematic failure to make timely payment of residual compensation for multiple motion  
15 pictures. The present claim is only the latest example of this pattern and practice of contract  
16 breaches. As a result of these breaches, the Guild has been required to bear the  
17 administrative burden and economic costs of monitoring Respondents' noncompliance and  
18 initiating legal action to compel compliance with MBA obligations.

19 37. The Guild is informed and believes Respondents' failure to meet their  
20 contractual obligations is a result, in whole or in part, of their financial condition, certain details  
21 of which have recently come to light publicly. Based on this evidence, and on Respondents'  
22 ongoing pattern and practice of noncompliance with their MBA obligations, the Guild has  
23 determined that Respondents are not reliable or financially responsible.

24 38. In accordance with Article 42 of the MBA, the WGAW is entitled to an order  
25 requiring Respondents to post an adequate bond, cash or other security, in an amount and  
26 upon such conditions as are subject to proof at the time of the hearing, in order to assure  
27 compliance with Respondents' present and future MBA obligations.

28 COUNT VI

[Breach of Covenant of Good Faith and Fair Dealing--Punitive Damages]

39. In every collective bargaining agreement, including the MBA, there is implied a



1 covenant of good faith and fair dealing.

2 40. By engaging in a pattern and practice of noncompliance with their contractual  
3 obligations, as alleged more fully above, Respondents have violated the covenant of good  
4 faith and fair dealing in the MBA. The WGAW is informed and believes and thereon alleges  
5 that Respondents made promises contained in the MBA without the intention of performing  
6 them. Respondents made such promises with the intent of inducing reliance by the WGAW  
7 and Credited Writers. The WGAW and Credited Writers relied on such promises.

8 41. Respondents' ongoing pattern and practice of contract breaches is fraudulent  
9 and willful, and reflects conscious disregard for the rights of the WGAW and the writers it  
10 represents. Compensatory damages are insufficient to deter such willful misconduct. The  
11 Guild therefore seeks an award of punitive or exemplary damages.

#### 12 PRAYER FOR RELIEF

13 WGAW seeks the following relief:

- 14 a. An order requiring Respondents, and each of them, to pay to the Credited  
15 Writers residual compensation for the release of the Covered Pictures to the basic cable, pay  
16 television, videodisc/videocassette, free television, foreign television, new media-EST, new  
17 media-consumer do not pay and new media-limited period or fixed number of exhibitions  
18 markets, plus interest thereon;
- 19 b. An order requiring Respondents to furnish to the WGAW the requisite  
20 documents or records reasonably necessary to confirm compliance with the MBA;
- 21 c. An order requiring Respondents to make Pension Plan and Health Fund  
22 contributions on behalf of the Credited Writers, plus interest thereon;
- 23 d. An order whereby the WGAW is assigned the right to receive all monies owed to  
24 Respondents by any third party including, but not limited to, any licensee, transferee or  
25 successor in interest, subject to any prior perfected security agreement in favor of a third  
26 party, until all residual compensation and all interest accrued thereon, and all Pension Plan  
27  
28

1 and Health Fund contributions and interest accrued thereon, have been paid in full;

2 e. An order requiring Respondents to pay damages to the WGAW and to Credited  
3 Writers for their failure to comply with the financial reporting and disclosure requirements;

4 f. An order requiring Respondents to pay damages to the WGAW and to Credited  
5 Writers for their failure to provide assumption agreements as required by the MBA;

6 g. An order requiring Respondents to post an adequate bond, cash, or other  
7 security to guarantee residual payments in an amount and on such conditions as are subject  
8 to proof at the time of the hearing in this matter;

9 h. An order requiring Respondents to pay punitive or exemplary damages; and

10 i. Such other and further relief as the Arbitrator may deem just and proper.

11  
12 WRITERS GUILD OF AMERICA, WEST, INC.

13  
14  
15 DATE:

*June 10, 2013*

BY:

  
Flora Racely  
Representative for Complainant

**SCHEDULE A**

<b>Title</b>	<b>Residual File #</b>	<b>Credits</b>
A Kiss At Midnight	12-CL-110	Written by: Anna Sandor
After the Fall	12-CL-206	Written by: Wayne Lemon
Always and Forever	10-CL-097	Written by: Riley Weston
Chasing a Dream aka Miles From Nowhere	12-CL-050	Written by: Bryce Zabel & Jackie Zabel
Chasing Leprechauns	12-CL-213	Written by: Rod Spence
Class, The	12-CL-050	Written by: Pamela Wallace
Cupid Inc. aka Cupid	12-CL-166	Written by: Judd Parkin
Farewell Mr. Kringle	11-CL-112	Written by: Robert Tate Miller
Fixing Pete	12-CL-031	Written by: Larry Kase & Joel Ronkin
Flower Girl, The	12-CL-117	Teleplay by: Marjorie Sweeney Story by: Mark Lloyd Rappaport & Richard Schenkman
Healing Hands aka Working Miracles	12-CL-129	Written by: Steven H. Berman
Honeymoon for One	12-CL-064	Written by: Rick Suvalle
I Married Who? aka Always a Bride	13-CL-092	Written by: Nina Weinman
Ice Dreams	12-CL-048	Written by: James Bruner & Elizabeth Stevens
Ladies of the House	12-CL-060	Written by: Karen Legasse Struck
Love Begins	12-CL-107	Written by: Michael Moran
Love's Everlasting Courage aka Love's Resounding Courage	12-CL-052	Written by: Kevin Bocarde
Meet My Mom aka Soldier Story	12-CL-046	Written by: Pamela Wallace
Mending Fences aka A view From Here	12-CL-115	Written by: Donald Martin & Mitchell Gabourie
Mystery Girl aka A Crush on You	11-CL-270	Written by: Keith Merryman & David A. Newman
Nanny Express	12-CL-061	Written by: Judith Heiman Kriegsman & Stephen Langford and Riley Weston
Oliver's Ghost	12-CL-081	Written by: David Golden

**SCHEDULE A**

Title	Residual File #	Credits
Operation Cupcake	12-CL-262	Written by: Neal Dobrofsky & Tippi Dobrofsky
Our First Christmas	12-CL-049	Written by: Edythe Swensen
Puppy Love	13-CL-035	Written by: Cynthia Riddle & Peter Hunziker
Relative Stranger	12-CL-051	Written by: Eric Haywood
Seven Year Hitch aka Common Law	13-CL-094	Written by: Brian Sawyer & Gregg Rossen
Storm, The aka Megatorm	12-CL-086	Teleplay by: David Abramowitz and Dennis A. Pratt
Strawberry Summer	13-CL-019	Teleplay by: Gary Goldstein and Jim Head Story by: Jim Head
The Cabin	11-CL-240	Teleplay by: Gary Goldstein Story by: Dennis Pratt
Three Gifts aka Christmas Gift	12-CL-039	Written by: Donald Martin & Mitchell Gabourie
Undercover Bridesmaid aka Bulletproof Bride	11-CL-226	Written by: Gregg Rossen & Brian Sawyer
Wish List	11-CL-039	Teleplay by: Gary Goldstein Story by: Gary Goldstein & Dan L. Clark
Wishing Well, The	12-CL-116	Written by: Steven H. Berman