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PETER BRENNAN AND
7 PETER BRENNAN PRODUCTIONS, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 PETER BRENNAN, an Individual, and
12 PETER BRENNAN PRODUCTIONS, INC., a
New York Corporation,

13 Plaintiffs,

14 vs.

15 BIG TICKET PICTURES, INC., a Delaware
corporation, VIACOM, INC., a Delaware
16 corporation, PARAMOUNT TELEVISION
GROUP, an entity of unknown form,
17 SPELLING ENTERTAINMENT GROUP,
INC., a New York corporation, and DOES 1-
18 50, inclusive,

19 Defendants.

CASE NO. BC 240430
(Hon. Alban I. Niles, Dept. 34)

FIRST AMENDED COMPLAINT FOR:

1. **BREACH OF CONTRACT**
2. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
3. **BREACH OF FIDUCIARY DUTY**
4. **INTENTIONAL INTERFERENCE WITH CONTRACT**
5. **DECLARATORY RELIEF**
6. **ACCOUNTING**
7. **FRAUD**

DEMAND FOR JURY TRIAL

20
21
22 Plaintiffs Peter Brennan and Peter Brennan Productions, Inc. allege as follows:

23
24 **NATURE OF THE CASE**

25
26 1. This is an action by Plaintiffs Peter Brennan ("Brennan") and his loan-out
27 corporation, Peter Brennan Productions, Inc. ("PBP"), to recover millions of dollars of profits
28 that Defendant Big Ticket Pictures, Inc. ("BTP") wrongfully failed to pay them pursuant to their

1 participation in the defined proceeds of "The Judge Judy Show" ("the Show"). PBP and
2 Brennan, a well-known and successful television producer of such shows as "A Current Affair,"
3 "Hard Copy" and "The Judge Joe Brown Show," entered into an agreement with BTP, a
4 corporation under the ownership and control of Defendants Viacom, Inc., Paramount Television
5 Group and Spelling Entertainment Group, Inc. Pursuant to the agreement, BTP agreed to pay to
6 Plaintiffs the following:

7
8 12 ½% of 100% of defined proceeds (BTP's standard definition to
9 be negotiated in good faith on a favored nations basis except with
10 respect to the merchandising provision of Judge Judith Sheindlin)
11 in perpetuity for all shows that [Brennan] renders services on.
12

13 2. Acting in a common conspiracy, some of the most respected entertainment
14 companies in the world schemed with each other to cheat Plaintiffs out of profits contractually
15 owed to them. Brennan's exceptional talent has generated millions of dollars for these
16 companies. They have rewarded Brennan's contribution to their success by refusing to disclose
17 information necessary to determine Plaintiffs' rightful compensation.
18

19 3. Plaintiffs have recently learned that Defendants intentionally withheld from them
20 the fact that the contractual definition of Judge Judith Sheindlin's ("Sheindlin") interest in
21 defined proceeds was modified and, since in or before April, 1999, has been more favorable than
22 the definition applied to Plaintiffs (the "Sheindlin Modification"). Accordingly, and pursuant to
23 the above-referenced "favored nations" provision, Plaintiffs are entitled to receive their 12 1/2%
24 interest in defined proceeds based on the most favorable definition applicable to Sheindlin (or
25 any other party with a better definition than Sheindlin's). Despite demand for an accounting and
26 payment of the amounts due, BTP has failed and refused to account to or pay Plaintiffs in
27 accordance with Sheindlin's definition.
28

1 corporation duly organized and existing under the laws of the State of Delaware. BTP is, and a
2 all times relevant hereto was, doing business within the County of Los Angeles, California.

3
4 10. Plaintiffs are informed and believe, and based thereon allege, that:

5
6 (a) PTG, SEG and BTP are all owned and controlled, directly or
7 indirectly, by Viacom;

8
9 (b) Viacom acquired total exclusive control of SEG (and
10 thereby BTP), on or about June 23, 1999;

11
12 (c) Viacom holds PTG, SEG, BTP and all of the other
13 companies under its dominion and control, specifically as
14 part of Viacom's closely-knit "family;"

15
16 (d) Viacom, PTG, SEG and BTP share common buildings
17 and/or television production facilities and that Viacom,
18 PTG and SEG's management is actively involved in
19 advising BTP in the areas of television production and
20 programming as well as its business and financial affairs;

21
22 (e) BTP's letterhead includes, or has included SEG, Viacom
23 and PTG's ("Paramount") names and;

24
25 (f) PTG's corporate logo ("Paramount") is affixed to BTP's
26 stationary.

1 11. The true names and capacities, whether individual, corporate, associate or
2 otherwise of defendants DOES 1 through 50, inclusive, are unknown to Plaintiffs, who therefore
3 sue these defendants by their fictitious names. Plaintiffs are informed and believe and, based
4 thereon, allege that each of the defendants designated herein as a fictitiously-named defendant is
5 in some manner responsible for the events and happenings herein referred to, either contractually
6 or otherwise, and caused the damage to Plaintiffs as herein alleged. When Plaintiffs ascertain the
7 true names and capacities of DOES 1 through 50, inclusive, they will ask leave of this Court to
8 amend their Complaint by setting forth the same. (Viacom, PTG, SEG, BTP and DOES 1
9 through 50 are hereinafter collectively referred to as "Defendants.")
10

11 12. Plaintiffs are informed and believe and, based thereon, allege that at all times
12 herein mentioned, each of the defendants, including the DOE defendants, was the agent and
13 employee of each of the other defendants, and in performing the acts herein complained of acted
14 within the course and scope of the respective agency and employment or, in the alternative, acted
15 in a common conspiracy, each with the other, and in performing the acts herein complained of
16 acted in furtherance of said conspiracy or, in the alternative, aided and abetted the other
17 defendants, including the DOE defendants, in performing the acts herein complained of.
18

19 **PLAINTIFFS' AGREEMENT WITH BTP**
20

21 13. On or about October 11, 1995, Plaintiffs entered into a written contract with BTP
22 (modified on September 8, 1995, October 3, 1995 and October 6, 1995), pursuant to which PBP
23 agreed to furnish Brennan's services as executive producer of the Show's one-hour pilot episode
24 and granted BTP certain options for additional services (the "Agreement").
25

26 14. The Agreement provided that Plaintiffs would be entitled to be paid, among other
27 things, the following:
28

1 12½ % of 100% of defined proceeds (BTP's standard definition to
2 be negotiated in good faith on a favored nations basis except with
3 respect to the merchandising provision of Judge Judith Sheindlin)
4 in perpetuity for all shows that [Brennan] renders services on.
5

6 15. At no time prior to the execution of the Agreement did BTP either provide
7 Plaintiffs with a definition of defined proceeds, or say or do anything to express its
8 understanding that defined proceeds, as used in the Agreement, meant something other than as
9 is commonly understood to be a generic term for back end participation, profit participation
10 and/or contingent compensation ("contingent compensation"). Subsequently, after Plaintiffs
11 demanded that they be paid the defined proceeds due under the Agreement, BTP took the
12 position, again, not expressed to Plaintiffs prior to the execution of the Agreement, that it
13 understands defined proceeds to mean "net profits," as that term is commonly understood.
14

15 16. The reference in the Agreement to a "favored nations basis" is commonly
16 understood in the industry to mean that if another interest in defined proceeds is more favorable
17 the contracting party with the right to favored nations treatment is entitled to the benefit of the
18 more favorable interest. BTP from time to time notified Plaintiffs of certain improvements in
19 Sheindlin's defined proceeds, but concealed the Sheindlin Modification from Plaintiff.
20

21 17. From time to time, BTP has rendered participation statements to Plaintiffs, which
22 BTP claims are calculated in accordance with Plaintiffs' favored nations right to participate in
23 defined proceeds, but in truth have all been based upon a calculation of "net profits" as opposed
24 to being based on the Sheindlin Modification (or any other better defined proceeds definition).
25 To date, all such participation statements have reflected no "net profits" and, as a result, BTP
26 contends that no money is due or owing to Plaintiffs pursuant to their interest in the defined
27 proceeds of the Show, and no such monies have been paid.
28

BTP'S RELATIONSHIP WITH VIACOM AND PTG

18. Plaintiffs are informed and believe, and based thereon allege, that on or about June 23, 1999, Viacom, then an 80% shareholder, purchased the remaining interest in SEG with the intent to control SEG and BTP. Plaintiffs are further informed and believe, and on that basis allege, Viacom's decision to own and exclusively control SEG, and thus BTP, was to maximize the profits that Viacom and PTG derived from SEG and BTP's television programming.

19. Plaintiffs are informed and believe, and based thereon allege, that Viacom, with the full knowledge and consent of PTG, integrated and merged SEG and BTP into PTG in a move that dramatically increased PTG's television programming library and significantly enhanced Viacom's first-run syndication business with the addition of the Show and two other television courtroom reality programs, "The Judge Mills Lane Show" and "The Judge Joe Brown Show." Brennan is also the executive producer of "The Judge Joe Brown Show."

20. Plaintiffs are informed and believe, and based thereon allege, that Viacom, PTG, and SEG exerted considerable dominion and control over BTP to maximize the profits on its courtroom reality shows, particularly, with respect to the top-rated and Emmy nominated Show.

21. Plaintiffs are informed and believe, and based thereon allege, that Viacom, PTG, and SEG exerted considerable influence and control over BTP to make the Show even more profitable for Viacom, PTG and SEG, with full knowledge and intent that their influence and control over BTP and their demand for greater profitability would be at the expense of BTP's profit participants and would, among other things, cause BTP to breach its Agreement with Plaintiffs.

1 **BTP'S BREACHES OF THE AGREEMENT WITH PLAINTIFFS**

2
3 22. Plaintiffs are informed and believe, and based thereon allege, that in or about
4 April, 1999, BTP and Sheindlin entered into the Sheindlin Modification, whereby Sheindlin was
5 to receive, and did in fact receive, a defined proceeds definition which entitled her to a portion of
6 the "adjusted gross profits" derived from the Show, which interest is more favorable than the
7 defined proceeds definition applied to Plaintiffs, and pursuant to which Sheindlin has received
8 substantial compensation from BTP.

9
10 23. Plaintiffs are informed and believe, and based thereon allege that at the time of the
11 Sheindlin Modification, Viacom, PTG, SEG were all aware of the terms of the Agreement
12 between BTP and Plaintiffs. Notwithstanding this knowledge, and under the direction and
13 control, and for the benefit of, Viacom, PTG and SEG, BTP knowingly and intentionally
14 concealed the existence of the Sheindlin Modification, failed to give Plaintiffs the favored
15 nations treatment to which they were entitled pursuant to the Agreement, and failed to account
16 or pay Plaintiffs their interest in defined proceeds on the terms established by the Sheindlin
17 Modification.

18
19 24. As a result, BTP has, with the consent and acquiescence of Viacom, PTG and
20 SEG, failed and refused and continues to fail and refuse to comply with the promises made to
21 Plaintiffs and with the express and implied terms of the Agreement between BTP and Plaintiffs.

22
23 **FIRST CAUSE OF ACTION**

24 **(Against Defendant BTP for Breach of Contract)**

25
26 25. Plaintiffs incorporate herein by reference each and every allegation of paragraphs
27 1 through 24, inclusive, as though fully set forth herein.

1 26. Plaintiffs have performed all conditions, covenants and promises required
2 pursuant to the terms of the Agreement, except those conditions, covenants, and promises which
3 have been prevented or otherwise excused by the conduct of BTP.

4
5 27. BTP breached the Agreement by, among other things, failing to negotiate in good
6 faith, and failing to account to and pay Plaintiffs the defined proceeds to which they are entitled.

7
8 28. As a direct and foreseeable result of BTP's breaches of contract, Plaintiffs have
9 suffered general, special, and incidental damages in an amount to be proven at trial, but which
10 Plaintiffs are informed and believe, and based thereon allege, are within the jurisdictional limits
11 of this Court, plus pre- and post-judgment interest at the legal rate.

12
13 **SECOND CAUSE OF ACTION**

14 **(Against Defendant BTP for Breach of the**
15 **Covenant of Good Faith and Fair Dealing)**

16
17 29. Plaintiffs incorporate herein by reference each and every allegation of paragraphs
18 1 through 24, inclusive, as though fully set forth herein.

19
20 30. There is implied in the Agreement a covenant that no party will do anything to
21 interfere with the other party's full enjoyment of its contractual rights and benefits under the
22 Agreement, and that each contracting party will do everything that the contract presupposes it
23 will do to accomplish the Agreement's purpose.

24
25 31. One purpose of the Agreement was to enable Plaintiffs to receive favored nations
26 treatment with respect to compensation. There was no express provision in the Agreement which
27 obligated BTP to disclose any changes in third parties' interests in defined proceeds. Such an
28 obligation is implied in the Agreement pursuant to the covenant of good faith and fair dealing

1 because the failure to make that disclosure interferes with Plaintiffs' full enjoyment of their
2 contractual rights, and specifically with their right to favored nations treatment.

3
4 32. The implied covenant of good faith and fair dealing also requires, among other
5 things, that if BTP elects to modify the defined proceeds interests of third parties, including
6 Sheindlin, it not do so in a way which is calculated or designed to prevent Plaintiffs from
7 realizing the benefit of that modification in accordance with their right to favored nations
8 treatment.

9
10 33. Plaintiffs are informed and believe, and based thereon allege, that BTP breached
11 the covenant of good faith and fair dealing implied in the Agreement by, among other things,
12 intentionally characterizing Sheindlin's improved right to defined proceeds as "adjusted gross"
13 rather than "defined proceeds," when in fact the Sheindlin Modification is virtually identical to
14 Sheindlin's prior "defined proceeds" definition; and by concealing the fact of the Sheindlin
15 Modification to prevent Plaintiffs from becoming aware of their right to an improved definition
16 of defined proceeds.

17
18 34. BTP's breaches of the covenant of good faith and fair dealing implied in the
19 Agreement, as alleged hereinabove, deprived Plaintiffs of their right to favored nations treatment,
20 lulled Plaintiffs into believing that they had no right to current payments on account of their
21 interest in defined proceeds, and induced Plaintiffs to delay exercising their audit rights under the
22 Agreement. In addition, if BTP is successful in contending (as it has) that its intentional
23 mislabeling of Sheindlin's interest under the Sheindlin Modification as something other than
24 defined proceeds means that BTP is not technically in breach of the express terms of the
25 Agreement (which Plaintiffs deny), then Plaintiffs will have no contractual remedy arising from
26 BTP's intentional interference with Plaintiffs' right to receive one of the principal benefits of the
27 Agreement, the right to favored nations treatment.

28

1 35. Plaintiffs are informed and believe, and based thereon allege, that as a direct and
2 foreseeable result of BTP's breaches of the implied covenant of good faith and fair dealing, as
3 alleged hereinabove, Plaintiffs have been damaged in an amount which is presently unknown,
4 but which Plaintiffs are informed and believe, and based thereon allege, is within the
5 jurisdictional limits of this Court, plus pre- and post-judgment interest at the legal rate.

6
7 **THIRD CAUSE OF ACTION**
8 **(Against BTP for Breach of Fiduciary Duty)**
9

10 36. Plaintiffs incorporate herein by reference each and every allegation of paragraphs
11 1 through 24, inclusive, as though fully set forth herein.

12
13 37. BTP is Plaintiffs' fiduciary by virtue of at least the following:

- 14
15 (a) By accepting the obligation to negotiate Plaintiffs' right to defined
16 proceeds "in good faith on a favored nations basis," BTP specifically
17 agreed to act with the utmost good faith for the benefit of Plaintiffs;
18
19 (b) The information necessary to determine the extent of Plaintiffs' interest in
20 defined proceeds is exclusively within the control of BTP. As a result,
21 Plaintiffs are at the mercy of BTP and have no choice but to repose their
22 trust and confidence in BTP that BTP will at all times act with integrity
23 and fidelity in disclosing information material to Plaintiffs' right to
24 defined proceeds, including information relating to changes in the rights or
25 definitions of third parties; and (ii) accounting fully, fairly and accurately
26 to Plaintiffs for their interest in defined proceeds;
27
28 (c) The information necessary to a full and fair accounting of the Show's

1 profits (e.g., BTP's books and records) is exclusively within the control
2 BTP. As a result, Plaintiffs are at the mercy of BTP and have no choice
3 but to repose their trust and confidence in BTP that BTP will at all times
4 act with integrity and fidelity and the utmost good faith in accounting to
5 Plaintiffs for their 12½% interest in defined proceeds; and

- 6
7 (d) As the party obligated under the Agreement to render accountings to
8 Plaintiffs with respect to Plaintiffs' 12½% interest in defined proceeds,
9 determined on a favored nations basis, BTP owes to Plaintiffs a fiduciary
10 duty with to account fully, fairly and accurately to Plaintiffs for the
11 defined proceeds to which Plaintiffs are entitled under the Agreement.

12
13 38. Plaintiffs are informed and believe, and based thereon allege, that BTP has
14 breached its fiduciary duty to Plaintiffs, advancing its or other Defendants' best interests at the
15 expense of Plaintiffs' interests, by, among other things, the following:

- 16
17 (a) Secretly and surreptitiously agreeing to adjust Sheindlin's defined
18 proceeds definition and concealing the Sheindlin Modification from
19 Plaintiffs, thereby enabling BTP to avoid similarly adjusting Plaintiffs'
20 defined proceeds definition pursuant to the favored nations provision in
21 the Agreement;
- 22
23 (b) Failing to account to Plaintiffs fully, fairly and accurately for all defined
24 proceeds to which they are entitled, on a favored nations basis; and
- 25
26 (c) Failing to pay to Plaintiffs their share of defined proceeds derived from the
27 distribution and exploitation of the Show, as determined by a full, fair and
28 accurate accounting.

1 39. As a direct and proximate result of BTP's breaches of fiduciary duty, as alleged
2 hereinabove, Plaintiffs have been damaged in an amount which is presently unknown, but which
3 Plaintiffs are informed and believe, and based thereon allege, is within the jurisdictional limits of
4 this Court, plus pre- and post-judgment interest at the legal rate.

5
6 40. Plaintiffs are informed and believe, and based thereon allege, that BTP has been
7 guilty of oppression, fraud, or malice, such that Plaintiffs, in addition to their actual damages,
8 may recover damages for the sake of example and by way of punishing BTP, in a sum to be
9 determined at trial.

10
11 41. Plaintiffs are entitled to the imposition of a constructive trust for the benefit of
12 Plaintiffs upon all funds, assets, revenues and profits BTP receives from the distribution and
13 exploitation of the Show, in an amount sufficient to enable Plaintiffs to receive all monies to
14 which they are entitled therefrom.

15
16 **FOURTH CAUSE OF ACTION**

17 **(Intentional Interference with Contract and Conspiracy**

18 **Against Defendants Viacom, PTG, SEG and DOES 1 through 25)**

19
20 42. Plaintiffs incorporate herein by reference each and every allegation of paragraphs
21 1 through 24, inclusive, as though fully set forth herein.

22
23 43. The Agreement was and is a valid existing contract between Plaintiffs and BTP.

24
25 44. Plaintiffs are informed and believe, and based thereon allege, as follows: Viacom,
26 PTG and some or all of Does 1 through 25 knew of the existence of the Agreement, and its
27 terms, by not later than when Viacom acquired control over BTP in or about 1999. SEG also
28 became aware of the existence of the Agreement, and its terms, at the time it was executed, or

1 shortly thereafter.

2
3 45. Plaintiffs are informed and believe, and based thereon allege, that Viacom, PTG,
4 SEG and each of Does 1 through 25, inclusive, wrongfully, intentionally and without
5 justification attempted to and did cause BTP to breach the Agreement.

6
7 46. Plaintiffs are informed and believe, and based thereon allege, that as a result of
8 intentional acts of Viacom, PTG, SEG and Does 1 through 25, inclusive, the business
9 relationship between Plaintiffs and BTP was disrupted in that BTP breached the Agreement by
10 among other things:

- 11
12 (a) Secretly and surreptitiously agreeing to adjust Sheindlin's defined
13 proceeds definition and concealing the Sheindlin Modification from
14 Plaintiffs, thereby enabling BTP to avoid similarly adjusting Plaintiffs'
15 defined proceeds definition pursuant to the favored nations provision in
16 the Agreement;
17
18 (b) Failing to account to Plaintiffs fully, fairly and accurately for all defined
19 proceeds to which they are entitled, on a favored nations basis; and
20
21 (c) Failing to pay to Plaintiffs their share of defined proceeds derived from the
22 distribution and exploitation of the Show, as determined by a full, fair and
23 accurate accounting.
24

25 47. As a direct and proximate result of Viacom, PTG, SEG and DOES 1 through 25
26 intentional interference with the Agreement, Plaintiffs have been damaged in an amount which
27 presently unknown, but which Plaintiffs are informed and believe, and based thereon allege, is
28 within the jurisdictional limits of this Court, plus pre- and post-judgment interest at the legal rate.

48. Plaintiffs are informed and believe, and based thereon allege, that some or all of said defendants have been guilty of oppression, fraud, or malice, such that Plaintiffs, in addition to their actual damages, may recover damages for the sake of example and by way of punishing said defendants, in a sum to be determined at trial.

FIFTH CAUSE OF ACTION

(Declaratory Relief Against Defendants BTP and DOES 26 through 50)

49. Plaintiffs incorporate herein by reference each and every allegation of paragraphs 1 through 24, inclusive, as though fully set forth herein.

50. An actual controversy has arisen, and now exists, between Plaintiffs and defendant BTP and DOES 26-50, inclusive, concerning their respective rights and duties under the Agreement as more fully described hereinabove.

51. Plaintiffs are informed and belief, and on that basis allege, that Defendants dispute each of Plaintiffs' contentions hereinabove alleged and contend that they have not breached the Agreement as alleged herein.

52. Plaintiffs desire a judicial determination of its rights and obligations under the Agreement including that Plaintiffs are entitled to receive a percentage of the defined proceeds based on the definition received by Sheindlin pursuant to the Sheindlin Modification, and to favored nations treatment with respect to any other more favorable definition, however denominated. Such a declaration is necessary in order that Plaintiffs may ascertain their rights and obligations thereunder, to ensure that future accountings are full, complete and accurate, to prevent further breaches of the Agreement and in order that Plaintiffs receive all of the benefits to which they are entitled under the Agreement.

1 **SIXTH CAUSE OF ACTION**

2 **(Against Defendants BTP and DOES 26 through 50 for an Accounting)**

3
4 53. Plaintiffs incorporate herein by reference each and every allegation of paragraph
5 1 through 24, 26, 27, 30 through 34, 37 and 38, inclusive, as though fully set forth herein.

6
7 54. Plaintiffs request that the Court order BTP and Does 26 through 50 to render a
8 full, complete and accurate accounting to ascertain the defined proceeds in which Plaintiffs are
9 entitled to participate, based upon the best definition of defined proceeds, including without
10 limitation any definition set forth in the Sheindlin Modification, however denominated.

11
12 **SEVENTH CAUSE OF ACTION**

13 **(Against Defendants BTP and DOES 1 through 50 for Fraud)**

14
15 55. Plaintiffs incorporate herein by reference each and every allegation of paragraphs
16 1 through 24, inclusive, as though fully set forth herein.

17
18 56. In connection with the negotiation and execution of the Agreement, and at various
19 times thereafter, including when Brennan entered into an amendment to the Agreement in or
20 about May 1999, Defendants, specifically thru Larry Lyttle, Neal Shenker, Robert Kirman and
21 Linda Stricklin, or each of them: (1) represented to Plaintiffs or their representatives, specifically
22 Brennan and Barry Weiner, that Plaintiffs would have and were receiving the benefit of favored
23 nations treatment with respect to defined proceeds, and specifically represented that Plaintiffs'
24 participation statements were being calculated according to the most favorable definition of
25 Sheindlin, and (2) concealed material facts relating thereto by concealing the following from
26 Plaintiffs:

27
28 (a) That Defendants believed or would contend that an interest in defined

1 proceeds is really just an interest in "net profits," when the term defined
2 proceeds is customarily used to refer to any form of contingent
3 compensation, including interests in, among others, "net profits" and
4 "adjusted gross receipts;"

5
6 (b) That Defendants did not intend to give Plaintiffs favored nations treatment
7 with respect to defined proceeds if the defined proceeds were denominated
8 as something else, such as "adjusted gross receipts;"

9
10 (c) That Defendants could and would prevent Plaintiffs from receiving any
11 benefit from their right to favored nations treatment by the artifice of
12 labeling changes in defined proceeds definitions as something other than
13 defined proceeds;

14
15 (d) That Defendants would not act in good faith with respect to Plaintiffs'
16 right to favored nations treatment, but would instead ignore Plaintiffs'
17 right to favored nations treatment with respect to changes in defined
18 proceeds definitions; and

19
20 (e) That Defendants never intended to pay Plaintiffs on any interest in defined
21 proceeds that was not what is commonly referred to as "net profits."

22
23 57. Plaintiffs are informed and belief, and on that basis allege, that commencing not
24 later than April, 1999, and continuing thereafter until at least the fall of 2000, Defendants
25 concealed from Plaintiffs the actual existence and the specific terms of the Sheindlin
26 Modification, and specifically concealed the fact that Sheindlin was receiving a more favorable
27 defined proceeds definition that Defendants called an interest in "adjusted gross receipts," and
28 that, according to Defendants, Plaintiffs were not entitled to receive favored nations treatment

1 with respect thereto.

2
3 58. Plaintiffs are informed and belief, and on that basis allege that at all relevant
4 times, Defendants knew that Plaintiffs and their representatives were not aware of Defendants'
5 beliefs or intentions or the true facts as alleged hereinabove. Specifically, Defendants knew that
6 the term defined proceeds was used to refer generically to any form of contingent compensation
7 and not merely to a "net participation," and that Plaintiffs were not aware of the meaning that
8 Defendants attributed to that term. Defendants allowed and encouraged Plaintiffs to believe that
9 Defendants' understanding was the same as Plaintiffs' understanding, and that Defendants were
10 preparing Plaintiffs' participation statements according to Sheindlin's most favorable defined
11 proceeds definition.

12
13 59. Plaintiffs are informed and belief, and on that basis allege, that at the time
14 Defendants made the foregoing representations and concealed the foregoing facts, Defendants
15 knew that said representations and concealments were material and were false, in that
16 Defendants did not intend to give Plaintiffs favored nations treatment except with respect to
17 modifications to third parties' contingent compensation which would not result in additional
18 monetary obligations to Plaintiffs, and specifically that Defendants did not intend to permit
19 Plaintiffs to participate in "adjusted gross receipts" notwithstanding the Sheindlin Modification
20 or in any other more favorable defined proceeds definition.

21
22 60. Plaintiffs are informed and belief, and on that basis allege, that Defendants were
23 aware that Defendants had superior knowledge compared to Plaintiffs, and that Defendants knew
24 and intended that Plaintiffs would rely on Defendants' misrepresentations and omissions in
25 connection with the Agreement. As Defendants expected and intended, Plaintiffs relied on
26 Defendants' misrepresentations and omissions by, among other things: (1) agreeing to enter into
27 the Agreement in the belief that Defendants would fully perform thereunder, and would give
28 Plaintiffs the favored nations treatment to which they were entitled; and (2) by not clarifying the

1 meaning and breadth of defined proceeds in connection with various amendments to the
2 Agreement.

3
4 61. Until or about the fall of 2000, and because of Defendants' concealment of the
5 true facts and of their true intentions, Plaintiffs understood and believed that under the
6 Agreement Defendants would pay Plaintiffs - Plaintiffs were entitled to, would receive, and were
7 receiving favored nations treatment with respect to - defined proceeds, however denominated.

8
9 62. Plaintiffs' reliance on Defendants' misrepresentations and omissions was
10 reasonable under the circumstances, in that Plaintiffs had no knowledge of the terms of
11 Sheindlin's agreement with BTP or of the terms of the Sheindlin Modification or any more
12 favorable definition, and had no reason to disbelieve Defendants.

13
14 63. As a direct and proximate result of Defendants' fraud, as alleged hereinabove,
15 Plaintiffs have been damaged in an amount which is presently unknown, but which Plaintiffs are
16 informed and believe, and based thereon allege, is within the jurisdictional limits of this Court,
17 plus pre- and post-judgment interest at the legal rate.

18
19 64. Plaintiffs are informed and believe, and based thereon allege, that some or all of
20 Defendants have been guilty of oppression, fraud, or malice, such that Plaintiffs, in addition to
21 their actual damages, may recover damages for the sake of example and by way of punishing said
22 Defendants, in a sum to be determined at trial.

23
24 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, as
25 follows:

26
27 **AS TO THE FIRST CAUSE OF ACTION:**

1 1. For general, special and incidental damages against BTP, in an amount to be
2 proven at trial;

3
4 **AS TO THE SECOND CAUSE OF ACTION:**
5

6 2. For general, special and incidental damages against BTP, in an amount to be
7 proven at trial;

8
9 **AS TO THE THIRD CAUSE OF ACTION:**
10

11 3. For general, special and incidental damages against BTP, in an amount to be
12 proven at trial;

13
14 4. For the imposition of a constructive trust for the benefit of Plaintiffs upon all
15 funds, assets, revenues, and profits BTP receives from the Distribution, and exploitation of the
16 Show;

17 5. For damages for the sake of example and by way of punishing BTP, in an amount
18 to be proven at trial;

19
20 **AS TO THE FOURTH CAUSE OF ACTION:**
21

22 6. For general, special and incidental damages against each of Defendants Viacom,
23 PTG, SEG and DOES 1 through 25, in an amount to be proven at trial;

24
25 7. For damages for the sake of example and by way of punishing said Defendants,
26 an amount to be proven at trial;

27
28 **AS TO THE FIFTH CAUSE OF ACTION:**

1 8. For a judicial determination that Plaintiffs' contentions, as set forth above, are
2 correct, and that Plaintiffs are entitled to receive a percentage of the defined proceeds based on
3 the most favorable definition which is currently believed to be the definition of Sheindlin labeled
4 as "adjusted gross receipts;"

5
6 **AS TO THE SIXTH CAUSE OF ACTION:**

7
8 9. For an accounting from each of BTP and Does 26 through 50 of Plaintiffs'
9 interest in a percentage of the defined proceeds based on the most favorable definition which is
10 currently believed to be the definition of Sheindlin labeled as "adjusted gross receipts;"

11
12 **AS TO THE SEVENTH CAUSE OF ACTION:**

13
14 10. For general, special and incidental damages against each of Defendants BTP and
15 DOES 1 through 50, in an amount to be proven at trial;

16
17 11. For damages for the sake of example and by way of punishing said Defendants, in
18 an amount to be proven at trial;

19
20 **ON ALL CAUSES OF ACTION:**

21
22 12. For the costs of suit, incurred herein;

23
24 13. For pre- and post-judgment interest at the maximum legal rate; and

25 //

26 //

27 //

28 //

1 14. For such other and further relief as this Court may deem just and proper.
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4 ALSCHULER GROSSMAN STEIN & KAHAN LLP
5

6 By: 

7 MICHAEL J. PLONSKER

8 Attorneys for Plaintiffs

9 PETER BRENNAN AND

10 PETER BRENNAN PRODUCTIONS, INC.
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: June 8, 2001

ALSCHULER GROSSMAN STEIN & KAHAN LLP

By: 

MICHAEL J. PLONSKER

Attorneys for Plaintiffs

PETER BRENNAN AND

PETER BRENNAN PRODUCTIONS, INC.