

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX),	§	IN THE DISTRICT COURT OF
DALLAS BUYER'S CLUB, LLC (CA),	§	
TRUTH ENTERTAINMENT, LLC	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
VOLTAGE PICTURES, LLC and	§	
NICOLAS CHARTIER	§	
<i>Defendants.</i>	§	284th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA) and Truth Entertainment LLC (collectively referred to herein as "Plaintiffs") files this their First Amended Petition against Voltage Pictures, LLC ("Voltage") and Nicolas Chartier ("Chartier"):

DISCOVERY CONTROL PLAN

1. This case is being conducted under Level 2 of Texas Rule of Civil Procedure 190.

PARTIES

2. Truth Entertainment, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas with Texas citizens as its members.
3. Dallas Buyer's Club, LLC is a California Limited Liability Company, with its principal place of business in Montgomery County, Texas with Texas citizens as its members.
4. Dallas Buyer's Club, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas with Texas citizens as members.
5. Voltage Pictures, LLC is a California Limited Liability Company and has filed a Special Appearance objection to personal jurisdiction through its attorney of record.

6. Nicolas Chartier is a California resident and has filed a Special Appearance objection to personal jurisdiction through its attorney of record.

VENUE AND JURISDICTION

7. Venue is proper in Montgomery County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs.

8. Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limits of this Court as required by law. See Tex. Const. Art. 5 § 8; Tex. Gov't Code § 24.007. Both Defendants are doing business in Texas and thus are subject to personal jurisdiction in Texas under the Texas long arm statute. This court has both general and specific jurisdiction.

9. The following show a non-exhaustive list of Defendants' doing business in Texas and minimum contacts with Texas.

10. The Owners (Dallas Buyers Club LLC and Truth Entertainment LLC) own the rights to the movie Dallas Buyers Club. In 2012, when the movie was in pre-production, Defendants approached Owners about the possibility of providing additional financing and acting as the foreign sales agent for the movie. All communication was in the form of email, phone calls, and additional correspondence received in Texas. Voltage and Chartier explicitly solicited the Owners, two Texas companies, to act as an agent for the movie owned by them. They not only solicited them, but ultimately they became the exclusive sales agent for Dallas Buyers Club, LLC to enter into Foreign Distribution Agreements around the world. (See copy of Canadian territory agreement Voltage, as agent for Dallas Buyers Club LLC, has with Remstar) As set out earlier, Dallas Buyers Club, LLC (TX) has sued Voltage and/or Chartier for breaching fiduciary duties,

fraud, fraudulent inducement related to their agency relationship with Dallas Buyers Club, LLC. There are hundreds of emails and/or phone calls sent from Voltage to the Owners both before becoming an agent for the Owners and subsequent to that help prove each element of the causes of action alleged. By way of example, Defendants have been sued for fraud and fraudulent inducement. They approached the Owners, who were located in Texas, and made fraudulent representations into Texas to induce the Texas Owners of the movie for Voltage to become the foreign sales agent. Voltage has profited greatly from the movie, all as a result of a movie owned by a Texas company. After the movie started receiving accolades, Defendants continued their pattern of misrepresentations all into the state of Texas. They also entered into, on behalf of the Texas company, 31 distribution foreign agreements, as "agent for Dallas Buyers Club, LLC" to act as foreign sales agent. Plaintiffs have alleged the Defendants have failed to do the job they were asked to do and any damages suffered necessarily would occur in Texas. Defendants have committed these torts in Texas. Defendants have made hundreds of thousands of dollars as foreign sales agent for the Dallas Buyers Club.

11. Further, Dallas Buyers Club, LLC has sued Voltage for breaching an Anti-Internet Piracy Authorisation (sic) giving Voltage a broad power of attorney to prosecute anti-piracy actions around the World, including Texas. (See attached as Exhibit "A") Despite the statement in the affidavit of Mr. Chartier, there is in fact an agreement directly between Voltage and Dallas Buyers Club, LLC. It is executed by Mr. Chartier on behalf of Voltage and by Mr. Newcomb on behalf of Dallas Buyers Club, LLC, a Texas company. Voltage is being sued in this very lawsuit over this Agreement. Mr. Newcomb was hesitant to allow Voltage to have such a broad power of attorney but was told by Voltage they needed to protect the copyright and Voltage would lose money if Mr. Newcomb did not agree. All of those discussions and correspondence were received

in Texas. Voltage clearly was soliciting the business of a Texas company so that it could make money off of the ownership rights of a Texas company. Further, the contract was performable, all or in part in Texas. Any funds recovered would necessarily flow to the Texas. Pursuant to this Agreement, Voltage hired lawyers to prosecute the Dallas Buyers Club anti-piracy claims against a number of Texas citizens in Federal Court in the Southern District of Texas. Voltage hired a local Texas lawyer to assist in the prosecution. Ultimately, Voltage decided to settle a number of claims against the Texas citizens for tens of thousands of dollars. Voltage has profited from those lawsuits filed against Texas citizens in Texas federal court.

12. Defendants have directly or indirectly filed lawsuits in the State of Texas and specifically retained counsel and filed lawsuits on behalf of, not only plaintiffs, but others in Texas and entered into settlement agreements with Texas residents.

13. Defendants advertise in the State of Texas and has in fact marketed Dallas Buyers Club in the U.S including Texas and has branded this movie with what they describe as its famous distinctive and registered trademark VOLTAGE PICTURES. This name which appears on the movie screen each time the movie is shown in Texas and elsewhere.

14. Defendant is a finance, production and distribution company in the movie industry.

15. Defendants directly or indirectly profit from ticket sales of movies in Texas.

16. Defendants market themselves in Texas and has solicited business in Texas including solicitations to plaintiffs.

17. Defendants have represented they intend on continuing to produce, finance and sell films throughout the world.

18. Defendants advertise their films in Texas through their website and otherwise.

19. Defendants have purposefully availed themselves of conducting activities within Texas thus invoking the benefits of Texas law. Defendants have gained a benefit, advantage and/or profit from conducting business in Texas such that Defendants could have reasonably anticipated being called into a Texas Court.

20. Defendants have had continuous and systematic contacts in Texas.

FACTS

A. Introduction

21. Truth Entertainment, LLC ("Truth") is a Texas movie production company based in The Woodlands, Texas. Joe D. Newcomb is the Chairman and CEO of Truth. Truth and Dallas Buyers Club LLC (TX) are the owners (collectively referred to as "Owners") of the rights to, and Truth was a producer of, the movie Dallas Buyers Club.

22. Voltage was a producer and was hired as the foreign sales agent for the movie responsible for all foreign sales. Mr. Chartier is the President of Voltage. Voltage entered into over thirty (30) agreements licensing to foreign distribution companies the right to distribute the movie in their respective territory as agents for Dallas Buyers Club, LLC.

B. The Movie

23. Dallas Buyers Club is a biographical movie about Ron Woodruff, (portrayed by Matthew McConaughey) a Dallas man who in 1985 was diagnosed with AIDS and his battle around the system to help get more effective medication for himself and other AIDS patients. He co-starred with Jennifer Garner and Jared Leto. It was met with critical acclaim after premiering at the Toronto Film Festival in 2013. The film was nominated for 6 academy awards including Best Picture and Best Original Screenplay for the 2014 Academy Awards. McConaughey was

nominated for and won the award for Best Actor and Jared Leto won for Best Supporting Actor. The movie had gross box office receipts in the US and Canada that amounted to over \$27,000,000.00 and foreign box office of nearly \$28,000,000 for a total of over \$55,000,000 in worldwide sales, just on box office sales alone.

C. The Movie was Almost Never Made

24. Nearly two decades after the script was originally written and already having passed through multiple studios and potential financiers, money was finally secured to fund the movie. But more bad news came in August of 2012; just 10 weeks before the movie was set to begin production in Louisiana, the financing for the film fell through. The film was thought to be doomed. McConaughey had already lost 35 pounds for the part and had commitments in January that prevented any further delays. The makers of the movie were scrambling. A Hollywood producer approached Mr. Newcomb to see if he had any interest in the movie. He read the script, loved it, and immediately began to raise funding and used his American Express card to pay for a number of the costs of filming the movie because of the huge time crunch. Within a few weeks, Mr. Newcomb and his business partner, formed Dallas Buyers Club, LLC (Texas) ("DBC") and, through it, raised \$1,600,000.00 from local investors to finance the production of the movie. In return, DBC and its investors were to receive a 15% return on the investment plus 35% of all backend "net proceeds". Voltage and/or an affiliate was also brought on and invested \$3,000,000 to be a co-producer and company in charge of all foreign sales with an agreed upon 15% return. With the addition of a tax incentive from the State of Louisiana the movie started production on November 11 and was amazingly completed within a mere 25 days within its \$5.6 million budget.

THE DISPUTE

A. The Deception Begins

25. Fast forward to early 2014, after the movie had been released and received its accolades, a statement was issued showing the funds received for the movie. The statement showed that Voltage and/or its affiliated company had been paid back the original \$3,000,000.00 investment plus a 15% agreed upon return on that investment. However, the DBC investors had only been paid back a little over \$1,200,000 of the original \$1,600,000.00 investment nor the agreed upon 20% return on that investment. Needless to say, the investors and Mr. Newcomb were concerned and wanted answers to some basic questions. They were still owed \$720,000.00.

26. Mr. Newcomb and the investors asked about updates on the foreign box office and requested on a number of occasions copies of the foreign distribution agreements from Mr. Chartier. Mr. Chartier refused to give them copies of the foreign distribution agreements. He refused to give them even basic information about the expectations from foreign sales.

27. When Voltage entered into the licensing agreements with the foreign distribution companies each foreign distribution company was to pay a negotiated minimum amount for the licensed rights to the movie, known as "minimum guarantees." For example, the Canadian rights were purchased by Remstar for a minimum guarantee of \$400,000.00. In paying the minimum guarantee the foreign companies would directly send the funds to a collection account operated by Fintage Collection Account Management ("Fintage"). Voltage would tell Fintage what the minimum guarantees were and Fintage would account for them when they were paid.

28. In May, after Fintage issued its statement for April, Plaintiffs noticed that nearly \$700,000.00 in minimum guarantees had not been paid that should have been paid. That money should have come in and the DBC investors should already have been paid back all of the

investment. The Plaintiffs asked for a copy of the foreign distribution agreements and an accounting for all of the foreign countries. The response from Mr. Chartier to Mr. Newcomb, the President of Voltage (agent for foreign sales) was the following: [email from Nicolas Chartier dated May 21, 2014]

Joe how many times do we need to explain you? Seriously? We don't do accounting? Fintage does!!! And the buyers in foreign are not sending reports every quarter!!!! Can you please stop asking the same dumb stupid idiotic questions every week???? We keep telling you the same answer, emailing you the same answer, calling you with the same answer!!! Read your emails! Stop! Get a life! Go deal with your partners suing you!!! We told you a thousand times the same thing!!!!!! You're a moron. We got it. Now stop!!!

29. Mr. Chartier refused again to provide copies of the foreign distribution agreements despite Voltage's clear duty to provide information to its principal when asked. That was pointed out to Mr. Chartier, and he continued, and to this day continues to refuse to produce the foreign distribution agreements.

30. When asked about updates on the status of the minimum guarantee collections, why he was not timely responding to requests, and not living up to his own promises it was quite apparent that Voltage was too busy to deal with the Plaintiffs seemingly reasonable requests. Mr. Chartier admitted on a number of occasions that he was dealing with more than 14 movies in production or post production, he had lost staff, he was moving offices etc.... He also had already collected the money Voltage had invested plus a \$450,000.00 return on that investment.

B. The Tip of the Iceberg?

31. Despite the fact that Voltage refused and continues to refuse to provide a copy of the foreign distribution agreements, the Plaintiffs were able to obtain copies of a few of the agreements from other sources. After reviewing these agreements, it is apparent that Mr. Chartier did not want Plaintiffs to see them because they are different than what Mr. Chartier has represented them to be.

32. Voltage and Mr. Chartier misrepresented the amount of minimum guarantees owed.

33. For example, in the Scandinavian agreement governing Norway, Sweden, Denmark and Finland the minimum guarantee should be \$50,000.00 more than represented due to what should have been a charged box office bump.

34. Further, when asked about the status of a \$34,000.00 payment due from the distributor for CIS, Voltage responded that the "last payment was cancelled due to M. McConaughey and J. Leto cancelling their PR trip." Upon review of the agreement, there is no such language. The \$34,000.00 was due upon execution of the agreement. The agreement was executed in late 2012. Furthermore, the agreement provides that an additional \$30,000.00 is possibly due because the box office numbers in CIS exceeded \$500,000.00.

35. For the country of Italy, Voltage initially represented that the minimum guarantee was \$260,000.00. When asked why only \$130,000.00 had been collected, Mr. Chartier claimed that number was wrong and that it was only \$130,000.00 and therefore no money was due from Italy. When asked for a copy of the agreement, Chartier refused to provide a copy. Plaintiffs have yet to see a copy of that agreement.

36. When asked about the \$30,000.00 minimum guarantee for Hungary, Voltage stated that the distributor defaulted, cancelled and they were trying to resell. However, public reports show that the movie had box office receipts of nearly \$200,000.00 in the first 3 weeks of distribution and the agreement with the distributor provided that an initial payment was to be paid on execution of the agreement and the remainder on delivery of the picture.

37. Chartier also misrepresented the accounting requirements of the foreign distributors. He stated in his May 21 email "And the buyers in foreign are not sending reports every quarter!!!".

38. They should have been providing reports every month. After obtaining some of the foreign distribution agreements the terms, in the ones Plaintiffs were able to obtain, are crystal clear. "Complete accounting statements for the Picture shall be provided on a monthly basis for the first seven (7) months after the First Theatrical Release in the Territory and thereafter quarterly, and shall be accompanied by payment of any monies then due Licensor." Mr. Newcomb simply wanted to see these reports when he asked for them back in May. Instead of providing them, Mr. Chartier proceeded to ask Mr. Newcomb to stop asking "dumb, stupid, idiotic question every week." Not the response Mr. Newcomb expected from his fiduciary who is tact with utmost loyalty and good faith to its principal. Apparently Mr. Chartier either has them but refuses to provide them, or Voltage is not following through on its promises to ensure all monies are timely accounted for and collected.

C. Amazingly, Not One Dollar has been collected on Foreign Video or Pay-per View Sales

39. The most troubling aspect of the failures to provide simple information to the Plaintiffs is the lack of any funds coming from the foreign countries on pay-per-view and video sales. Through the first quarter of 2015, the domestic distributor has reported over \$45,000,000.00 in pay-per-view and video receipts in the United States---\$20,000,000 more than the gross box office in the United States.

40. For example, in Canada, the movie was released for video and pay-per-view sale on the exact same dates as it was in the United States. The Canadian distribution company has not reported a dollar in receipts. It has been nearly 16 months since it was first aired. The US distribution company has reported \$45 million collected--Canada \$0 and not one single accounting. The distribution agreement provides that it is to pay into the Fintage collection account

between 20% and 40% of receipts for video sales depending the type of sale. If the numbers for video are similar to Canada's box office numbers, like in the United States, that means there should have been another roughly \$900,000.00-\$1,800,000.00 deposited into the collection account. Why not? How much is it? Where is that money? The agent for foreign sales should know yet it refuses to answer those questions and provide a copy of most of the agreements and furnish not one accounting. That is just one country. If the United Kingdom, which published reports state the movie made \$8,755,794.00 in box office sales, has similar numbers then another \$3,000,000.00 to \$6,000,000.00 should have been or should be coming into the collection account. The Plaintiffs may be off on the potential numbers but have no way of knowing unless they see the agreements and the accounting statements from Voltage and its distributors. It has been over a year since that first request was made. Voltage should have over 200 statements form its distributors yet claim to have none.

D. Everyone Involved in the Making of Dallas Buyers Club Has Been Harmed by Voltage's and Chartier's Actions

41. The DBC investors has finally recouped the original investment plus the 20% return but not through the collection of foreign receipts but through domestic collections and finally are now receiving back-end distributions as "net proceeds", as is Truth, to the tune of 35% of all net proceeds. McConaughey, Jennifer Garner, Jean Marc Valle, the writers, Craig Borten and Melissa Wallack and a number of other participants in the movie are to receive the remaining 65% of the "net proceeds". If foreign video/pay per view is in line with the US numbers there should have been or to be collected money in the tens of millions all of which will be distributed to those who are to receive back-end monies.

E. Anti-Piracy Actions

42. DBC entered into an Agreement with Voltage for Voltage to act as its agent to enforce Anti-piracy actions against people who have illegally downloaded or otherwise obtained the ability to watch the movie without paying for the right to watch it. (See attached as Exhibit 'B') The Agreement provides that DBC is to receive updates and assist in enforcing these actions. DBC has received virtually no updates and has not had any input into the actions Voltage is taking around the World. The only updates DBC receives are thorough, mostly negative, media reports about the actions of Voltage around the World. DBC has not received any funds, reports, updates or any information from Voltage on the status numerous lawsuits filed around the World in the name of DBC.

CAUSES OF ACTION

A. Breach of Fiduciary Duty

43. Voltage is the agent for DBC in charge of foreign sales and collection. As such it owes a fiduciary duty to its principal-DBC. Voltage has the duty to act with the utmost good faith, loyalty and care. Voltage has clearly breached this duty. Plaintiffs have been severely damaged by these fiduciary breaches and seeks full monetary and equitable recompense in this Court. It seeks actual and exemplary damages from Voltage. It further seeks fee forfeiture and disgorgement of all compensation and all benefits Voltage received for the years during which it was breaching its fiduciary duties to Plaintiffs. It seeks its attorney's fees and expenses in the work it has, and had to do to collect the money it is owed. It also seeks an accounting from Voltage for all monies it and its distributors has received from the movie and the imposition of equitable relief.

B. Fraudulent Inducement

44. Defendants represented that it had the requisite experience and staffing to take on the role of foreign sales agent its agency duties had a duty to speak regarding its capacity to follow through on its job as foreign sales agent to collect and account for foreign sales. If Plaintiffs had known that Defendants did not have the requisite man-power to follow through on its job, DBC would not have used them as foreign sales agent.

C. Fraud

45. Defendants made material misrepresentations that were false, and that Defendants knew were false or were made recklessly without regard to their truth. Defendants made such misrepresentations with the intent that Plaintiffs rely on them, and reasonably did reasonably rely on Defendants' misrepresentations. Defendants' fraud caused Plaintiffs harm. Plaintiffs seek recovery from Defendants for its actual damages, exemplary damages, pre-judgment and post-judgment interest, costs of court, and attorneys' fees.

D. Breach of Contract

46. Voltage has breached its Anti-Internet Piracy Agreement whereby Voltage was granted a power of attorney to prosecute copyright infringers in the United States and abroad. DBC has been damaged by this breach and demands its actual damages, pre-judgment and post judgment interest, court costs and attorney's fees as allowed by law.

CONDITIONS PRECEDENT

47. All conditions precedent to Plaintiffs claims for relief against Defendants have been performed or have occurred.

JURY DEMAND

48. Plaintiffs demands a trial by jury on all claims and counterclaims at issue in this action, and has tendered the applicable jury fee, pursuant to Rule 216 of the Texas Rules of Civil Procedure.

PRAYER

Plaintiffs pray that the Court conduct a jury trial on all claims against Voltage and Chartier. Plaintiffs further pray for recovery on their claims and causes of action against Voltage and Chartier, and for all damages, including all actual and special damages, attorneys' fees, pre-judgment and post-judgment interest, costs of court, and exemplary damages – including uncapped exemplary damages where applicable.

Plaintiffs also pray equitable relief as set forth above, disgorgement of all fees and wages paid to or collected by Defendants, disgorgement of all profits that Defendants made as a result of their breaches of fiduciary duty.

Plaintiffs further pray for all other relief, at law or in equity, to which they are entitled.

Respectfully submitted,

MCBRIDE LAW, P.C.

By: /s/ James T. McBride

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that pursuant to the Tex. R. Civ. P. 21, a true and correct copy of the foregoing was served via (hand delivery ____; CMRR ____; fax or efile notification X) to the following counsel of record on the 8th of March, 2016.

/s/ James T. McBride

James T. McBride

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ANTI-INTERNET PIRACY AUTHORISATION

The following matters, issues and decisions shall be completely and wholly within the sole authority and exclusive discretion of VOLTAGE PICTURES LLC and DALLAS BUYERS CLUB LLC hereby grants to VOLTAGE PICTURES LLC a limited Power of Attorney to act as DALLAS BUYERS CLUB LLC could otherwise lawfully act with respect to:

- A. The methods and means used to investigate, detect and collect evidence of unlawful copying, publication and distribution of the work "Dallas Buyers Club" by Infringers;
- B. The decision whether to pursue legal claims against any Infringer;
- C. The selection, retention, and oversight of legal counsel engaged to pursue legal claims on behalf of DALLAS BUYERS CLUB LLC against Infringers of the work "Dallas Buyers Club";
- D. The decision whether to pursue, negotiate and enter into settlements with any Infringers and the determination of the terms of any Settlement Agreement and the means by which to seek to enforce any said Settlement Agreement;
- E. The authority to enter into and execute Settlement Agreements and releases issued to Infringers on behalf of DALLAS BUYERS CLUB LLC which shall be fully binding upon DALLAS BUYERS CLUB LLC and dispositive of any rights or claims of DALLAS BUYERS CLUB LLC released thereby;
- F. The decision whether to, and the right to direct legal counsel to pursue to judgment a claim against any Infringer and the means by which to enforce said judgment;
- G. The decisions regarding the acceptance and collection of proceeds from Settlement Agreements with and judgments against Infringers;
- H. The selection and retention of any agent or attorney to perform all or any portion of the services listed in paragraph 1 of this Agreement.
- I. The direction given to legal counsel to pursue, not pursue, settle with and/or otherwise deal with, in any manner, any Infringer or potential Infringer.
- J. The DALLAS BUYERS CLUB LLC agrees to be bound by any agreement VOLTAGE PICTURES LLC enters on its behalf provided that VOLTAGE PICTURES LLC shall provide DALLAS BUYERS CLUB LLC with copies of any agreements or documents executed on its behalf within 5 business days of execution except for any settlement agreements entered into with individuals which will be made available upon request.
- K. To act as the sole and exclusive agent on the DALLAS BUYERS CLUB LLC's behalf to apply for a an Order to the appropriate court in England and Wales to disclose the names and addresses of potential infringers for the work "Dallas Buyers Club" and authorize VOLTAGE PICTURES LLC to manage and conduct all of the affairs in regard to application to the court

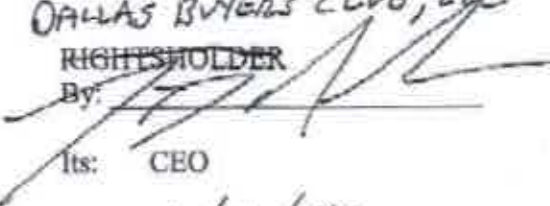
The rights granted herein shall at all times be subject to the following: (i) VOLTAGE PICTURES LLC shall exercise its good faith business judgment while acting on behalf of



DALLAS BUYERS CLUB LLC; and (ii) VOLTAGE PICTURES LLC shall keep DALLAS BUYERS CLUB LLC apprised of all material developments related to the foregoing matters.

DALLAS BUYERS CLUB, LLC

RIGHTSHOLDER

By: 

Its: CEO

Date: 1/31/14

JOE D NEWCOMB

VOLTAGE PICTURES LLC, LLC.

By: 

Its: President

Date: 1/31/14