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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052150
Party	Plaintiff Wonderbread 5
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5
(Registered on October 6, 2009)

WONDERBREAD 5, Petitioner, v. PATRICK GILLES, Registrant.	Cancellation No. 92052150

PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF

MOTION FOR MOTION SUMMARY JUDGMENT

Petitioner Wonderbread 5 ("Petitioner" or the "Band") is a 15-year musical group and a California general partnership. It began this proceeding to cancel Registration Number 3691948 for the Word Mark WONDERBREAD 5 (the "Mark"). The Registration was obtained by Patrick Gilles ("Registrant"), a former Band member, after he left the Band and without its knowledge or consent. As Registrant knew at the time, the Band intended to use, and continued using, the name "Wonderbread 5" in commerce after his departure and just as it had done for the previous 12 years. Indeed, a release he gave the Band for due consideration paid and received after he sued the Band contemplated that very thing.

As such, the Band seeks cancellation on the grounds that (1) the Mark is likely to be confused with a mark previously used and not abandoned by Petitioner; and (2) the Registration was fraudulently procured. The Band respectfully renews its request that the Board grant its motion for summary judgment on its Petition for Cancellation.

I. STATEMENT OF FACTS

The relevant facts have been set forth in the Petition for Cancellation, as well as in Petitioner's motion for summary judgment. As pertinent here, the undisputed facts are as follows: In late 1996, Registrant and current band member Jeffrey Fletcher decided to form a band (Reg. Aff.,[1] ¶¶ 1, 2), along with John McDill, Thomas Rickard, and Steve Brooks (Resp. Irg.[2] No. 12). In 1997, Brooks left the band and was replaced by Christopher Adams. (*Id.*) Although no written partnership agreement (or any other written agreement concerning ownership of Petitioner's intellectual property) was ever entered into, at all times, the Band operated as a general partnership. (Resp. Irg. No. 12.) In 2001 or 2002, Band manager and booking agent Jay Siegan became a member of the general partnership. (Resp. Irg. No. 11; Complaint,[3] ¶¶ 40-43.) Fletcher, McDill, Rickard, and Adams all remain Band members to date, and Siegan remains the Band's manager and booking agent. (Resp. Irg. No. 11.)

[1] "Reg. Aff." refers to the Affidavit of Patrick Gilles, attached as Exhibit 3 to Registrant's opposition brief.

[2] "Resp. Irg." refers to Petitioner's Responses to Registrant's First Set of Interrogatories, attached as Exhibit 1 to Registrant's opposition brief.

[3] "Complaint" refers to the Complaint Registrant filed against Petitioner in San Francisco Superior Court. Although the Complaint has previously been made part of the record in this action, for the Board's convenience, it is attached hereto as Exhibit A.

In March 2009, Registrant left the Band. (WB5 004.[4]) As he conceded under oath, Registrant knew that the Band intended to continue performing under the name "Wonderbread 5," and the Band in fact did so. (*Id.*, Reg. Depo.[5] at pp. 79-80, 144, 147, 186-87.) Nonetheless, within days of his termination, without the Band's knowledge or consent, Registrant filed an application for registration of the Mark in connection with "entertainment services in the nature of live musical performances." (Application, attached hereto as Exhibit C.)

Shortly thereafter, Registrant filed a Complaint against the Band, its individual members, and Siegan in San Francisco Superior Court, alleging various causes of action, all in connection with Registrant's involvement with the Band. (Complaint.) Registrant deliberately concealed the fact of the Registration during that litigation. (Given Dec.,[6] ¶ 3, Ex. A.) Nonetheless, the lawsuit settled when Registrant accepted Defendants' Offer to Compromise, in which the Band offered to buy out his interest in the Band in exchange for a release of *all* claims in and to the Band, including its name and related intellectual property. (*See* WB 16-17.[7])

II. ARGUMENT

A. Legal Standard

Summary judgment is proper where, as here, there is no triable issue of material fact. Fed. R. Civ. P. 56. Petitioner has presented affidavits and other evidence (including sworn testimony from Registrant, together with the judicial admissions embodied in his own court filings) establishing its right to judgment.

Under the present circumstances, Registrant may not rest on mere denials or conclusory assertions; rather, he *must* proffer countering evidence showing that there is a genuine factual dispute for trial. Fed. R. Civ. P. 56(e); *Octocom Systems, Inc. v. Houston Computer Services,*

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[4] Documents referred to by bates numbers "WB ____" were produced by Petitioner in discovery in this matter and are attached as Exhibit 2 to Registrant's opposition brief.

[5] "Reg. Depo." refers to the Deposition of Patrick Gilles, taken in the course of the lawsuit Registrant filed in San Francisco Superior Court. Although the relevant pages of the deposition transcript have already been made part of the record in this action, for the Board's convenience, they are attached hereto as Exhibit B.

[6] "Given Dec." refers to the Declaration of David M. Given in opposition to Registrant's Rule 56(f) motion for discovery, attached hereto as Exhibit D.

[7] Due to the poor quality of the copy of this document produced in discovery, a more legible copy is attached hereto as Exhibit E. The copy attached as Exhibit E was previously made part of the record in this action as an Exhibit to the Declaration of David M. Given in support of Petitioner's motion for judgment.

Inc., 918 F.2d 937 (Fed. Cir. 1990) (non-moving party's response was not supported by contradictory facts, but merely expressed disagreement with facts); *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1564 (Fed. Cir. 1987) ("mere conclusory statements and denials do not take on dignity by placing them in affidavit form").

In this connection, Registrant cannot create a dispute by contradicting his own prior admissions. *See Franks v. Nimmo*, 796 F.2d 1230, 1236-37 (8th Cir. 1990) (affidavit submitted in opposition to motion for summary judgment attempting to create a "sham fact issue" by contradicting prior admissions disregarded by court); *Scarano v. Cent. R.R. Co. of N. J.*, 203 F.2d 510 (3d Cir. 1953) (defendant's motion for summary judgment against plaintiff seeking reinstatement to job granted because plaintiff estopped from contradicting his claim in prior proceeding that he was permanently disabled from performing job duties).

Under the controlling standard, Registrant has failed to raise any disputed issue of material fact, and Petitioner is therefore entitled to cancellation as a matter of law. The undisputed facts demonstrate that (1) the mark is likely to be confused with a mark previously used and not abandoned by Petitioner, and (2) the Registration was fraudulently procured.

B. Petitioner Owns and Has Not Abandoned the Mark, and Registrant Retained No Rights to the Mark Upon Leaving the Band

1. The Mark Belongs to the Band as a Partnership

The first person or entity to use a trademark in commerce is the rightful owner of the mark. *Society Civile v. SA Consortium Vinicole*, 6 U.S.P.Q.2d 1205 (TTAB 1988). Registrant admits that the Band *as an entity* first used the Mark in commerce. Specifically, he admits that the Band was formed in 1996; the name "Wonderbread 5" was selected collectively by the Band members; and the mark was first used in commerce *by the Band* in Fall 1996. (Reg. Aff., ¶¶ 1-3; Complaint, ¶¶ 18, 19, 23-25.) Petitioner has consistently used the Mark in commerce at all times since. (*See, e.g.*, Resp. Irg. Nos. 3, 20; Reg. Depo at pp. 79-80, 144, 147, 186-87.) Registrant has presented no contradictory evidence whatsoever on this point. Therefore, the Band *as an entity* has owned the Mark at all times.

Furthermore, where two or more individuals operate a business for profit, absent an express agreement to the contrary, the business is presumed to be a general partnership. Cal. Corp. Code § 16202. Such businesses are subject to the California Corporations Code sections pertaining to the property rights of a dissociated member, all of which are fully consistent with Petitioner's position, set forth below, that all rights to the Mark remained with the Band when Registrant left, subject to his entitlement to a buyout of his interest. Cal. Corp. Code § 16701.

2. Registrant Retained No Rights in the Mark When He Left the Band

Controlling federal authority is all to the same effect: Upon a member's departure from a band, the trademark remains with the band and does not transfer to the leaving member.[8] *Robi v. Reed*, 173 F.3d 736, 740 (9th Cir. 1999) ("members of a group do not retain rights to use the group's name when they leave the group ... when [band member] left the group, *he took no rights to the service mark with him*") (emphasis added). *See also Kingsmen v. K-Tel Int'l, Ltd.*, 557 F. Supp. 178 (S.D.N.Y. 1983) (holding that former lead singer of a musical group did not have the right to use the group's name after his departure from the group); *Giammarese v. Delfino*, 197 U.S.P.Q. 162, 163 (N.D. Ill. 1977) (band name was partnership property, and former member lacked ownership interest). *See also Cesare v. Work*, 520 N.E.2d 586 (Ohio App. 1987) (name of music group was not personal to the performers, but identified and distinguished a style and rendition of music; departing members had no right to use of name).

For example, in *HEC Enterprises Ltd. v. Deep Purple, Inc.*, 213 USPQ 991 (C.D. Cal. 1980), former members of the band Deep Purple, including some of the founding members, began performing under the same band name, and they registered the name as a trademark. *Id.* at 992. The court held that mark belonged to the entity that had originally formed the band and that the former members had no right to use the mark. The court cancelled defendants' registration and enjoined them from further use of the mark. *Id.* at 994-95.

[8] Although an individual dissociating from a general partnership may have a right to have his interest in the assets of the partnership bought out (*see* Cal. Corp. Code 16701), such a buy-out does not constitute the sale of any intellectual property; ownership of intellectual property remains at all times with the partnership. *Cf. Bell v. Streetwise Records, Ltd.*, 761 F.2d 67 (1st Cir. 1985) (trademark is not divisible property and therefore cannot be owned separately by one member of a joint venture).

Relying exclusively on *Rick v. Buchansky*, 609 F.Supp. 1522 (S.D.N.Y. 1985), Registrant attempts to distinguish the facts of this case from those in the cases cited above on two grounds:[9] (1) Registrant was an original member of the Band, and he therefore claims he has rights to the Mark that are superior to the rights of the other members and of the partnership as a whole, and (2) Registrant acquired those rights by participating in the management of the Band. As demonstrated by undisputed evidence, however, neither ground applies to the facts here to justify departing from the rule that, absent unusual circumstances not present in this case, a departing band member retains no right to use the band name.

a. Registrant has no special rights by virtue of his status as an original band member

Although Registrant's argument on this point is not entirely clear, he seems to argue that, as a founding member of the Band, he has rights to the Mark superior to those of the other founding members or the partnership as it is currently constituted (*i.e.*, including two "replacement members").

As an initial matter, Registrant asserts that there is a dispute of fact as to the identities of the current members of the Band and their dates of membership. There is not. Petitioner's response to Interrogatory No. 12 states the names of each current and former Band members and the dates of their membership, and Registrant has presented no contradictory evidence.

The undisputed evidence concerning changes in the membership of the Band defeats Registrant's attempt to use *Rick v. Buchansk.* In *Rick*, the court held that a band manager – and not former band members who had formed a separate group using the same name – was the rightful owner of the band name where he had discovered the band's original members and managed the band consistently from its inception in 1961 through trial in 1985, and where there had been such significant turnover in the band's membership that the manager was held to be the group's "longest-playing member." *Id.* at 1528.

[9] Registrant also argues that the authorities Petitioner relies on are inapposite because he did not leave the Band voluntarily, but cites no authority and proffers no explanation as to how that fact affects his purported rights to the Mark.

Contrasting with the longevity of the manager's relationship with the band, within a year of the band's formation, three of its four original members had left. *Id.* at 1527. The fourth left and returned to the band on multiple occasions. Approximately 22 different performers were band members at various times during the 1960s and 1970s. *Id.* In sum, the *Rick* court concluded that, as the *only* person with a truly substantial and lasting involvement in the venture, the manager was the rightful owner of the mark. *Id.* at 1532-33.

Registrant's attempt to characterize himself as that person – more than any other original member of the Band – falls short. Far from the revolving door of performers at issue in *Rick*, the membership of the Band has been stable: Fletcher, McDill, Rickard, Brooks, and Registrant were the original five members. (Resp. Irg. No. 12.) Fletcher, McDill, and Rickard remain in the Band. Brooks left the Band in 1997 and was replaced by Adams, who is still a member. When Registrant left the band in 2009, he was replaced by Michael Taylor, a current member. (*Id.*) Thus, in 15 years, only two members of the Band have been replaced, and four of the five current members have been with the band since 1997. Similarly, Jay Siegan became the band's manager and booking agent, and a member of the general partnership, in 2000-01, and he remains the manager today. (Resp. Irg. No. 11; Complaint, ¶¶ 40-43.)

b. Registrant gained no special rights by "Managing" the Band

Registrant attempts to rely on *Rick v. Buchansky* in arguing that, because he participated in the management of the Band, he acquired some sort of ownership right superior to the other members of the Band. Again, Registrant's argument fails because the undisputed facts demonstrate the fundamental differences between this situation and the one in *Rick*.

With regard to "management activities," the *Rick* court held the band's manager to be the rightful owner of the mark based on the fundamental trademark principle that ownership of a mark is determined in large part by which person or entity has the *ability and right to control the quality* of the product or service bearing the mark. *Rick*, supra, 609 F.Supp at 1532-33 (manager had ability and right to control style, content and quality of band's performance). *Cf. FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, (9th Cir. 2010) (trademark owners have duty to control quality). In *Rick*, the manager was the only individual actively involved with the

band throughout a significant portion of its existence, and he exercised *exclusive* control over, for example, the group's finances, bookings, and personnel decisions. *Rick*, supra, 609 F.Supp. at 1532-33. Thus, his ownership of the mark arose not only through his management activities *per se* but by his exclusive ability to *control* the band's quality.

At no time did Registrant exercise the degree of control over the Band that the manager in *Rick* exercised. Petitioner does not dispute, indeed admits, that Registrant participated in certain management activities, including efforts to promote and advertise the band. (*E.g.*, Resp. Irg. No. 3; Complaint, ¶ 34; Reg. Aff., ¶¶ 5-11.) The undisputed facts are that *every* member of the band and their booking agent/manager engaged in such activities.

According to Registrant, "[e]ach member of the band was delegated and/or assumed responsibility for running some aspect of the business of the Band. Fletcher performed most of the administrative duties. He voluntarily took on the role of creating and printing posters, updating the mailing lists, maintaining the website, uploading photos from each show to the website and generating graphic design." (Complaint, ¶ 52.) Likewise, "Rickard acted as the single point of contact to Siegan, Adams managed the website hosting for the website and often built new pages..." and "[i]t was McDill's role to generate the crucial backing tracks" at his home studio. (*Id.* at ¶¶ 54, 55; WB5 018.) Moreover, Siegan was solely responsible for booking the Band's events, receiving and distributing payments for the Band's performances, and preparing annual 1099 forms for each of the Band members. (*Id.* at ¶¶ 40-43.)

Thus, Registrant's reliance on *Rick* is misplaced. Based on these undisputed facts, Registrant obtained no greater rights to the Mark than any other member of Petitioner or Petitioner itself.

3. Any Rights Registrant Had in the Mark Were Extinguished Through a Buy-Out and Settlement of All Claims Against and Interest in Petitioner

Even assuming *arguendo* that Registrant possessed any right to the Mark separate and apart from his membership in the Band, all such rights were extinguished by the settlement of Registrant's state court action against Petitioner. Negotiations surrounding that lawsuit and its dismissal expressly addressed Registrant's interest, as a member of the general partnership, in

Petitioner's intellectual property. For instance, Registrant's attorney asserted that "there is significant value in the Partnership business ... *including its service mark name*, email marketing lists, website, etc." (WB5 007-008; *see also* WB5 005-006.) Furthermore, the settlement was intended to dispose of "all of [Registrant's] claims" against Petitioner and its members. (WB5 16-17). Neither Registrant nor his then-attorney contradicts these facts.

The only evidence Registrant presents on this issue is his own sworn statement that the state court action "was for lost wages." (Reg. Aff., ¶ 13.) This statement is not credible, as it is plainly refuted by documentary evidence, including Registrant's state court Complaint. While it more than speaks for itself, that complaint alleged ten causes of action, *nine* of which arose from the purportedly wrongful exclusion from partnership business.[10] Both Registrant's Complaint and his attorney's correspondence demonstrate conclusively that the settlement represented a buy out of Registrant's full interest in the partnership consistent with California Corporations Code section 16701.

In sum, none of Registrant's arguments creates a genuine dispute as to whether Petitioner owns the Mark by virtue of its prior use in commerce, whether Petitioner has abandoned the Mark, or whether confusion is likely to result from his use of an identical mark. Thus, Petitioner is entitled to summary judgment and to cancellation of the Registration.

C. Registrant Committed Fraud on the USPTO

Applicants for registration are prohibited from "making knowingly inaccurate or knowingly misleading statements" in their applications. *E.g., In re Bose Corp.*, 580 F.3d 1240, 1245 (Fed. Cir. 2009); *Bart Schwartz Internat'l Textiles, Ltd. v. FTC*, 289 F.2d 665, 669 (C.C.P.A. 1961). Intentional deception justifying cancellation of a registration is distinguished from more innocent false representations caused by "a misunderstanding, an inadvertence, a mere negligent omission, or the like." *Kemin Indus., Inc. v. Watkins Prods., Inc.*, 192 USPQ 327, 329 (T.T.A.B. 1976). In particular, fraud will not be found where the applicant's "subjective, honestly held, good faith belief" was that his statements to the USPTO were

[10] The tenth cause of action was for the alleged violation of California Civil Code section 3344, prohibits the use of an individual's name or likeness without consent.

accurate. *San Juan Prods., Inc. v. San Juan Pools of Kan., Inc.*, 849 F.2d 468, 472 (10th Cir. 1988). "[B]ecause direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence." *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.* 537 F.3d 1357, 1366 (Fed. Cir. 2008).

In a case factually indistinguishable from this one, the court found that Registrant intentionally committed fraud. In *HEC Enterprises*, *supra*, former members of the band Deep Purple, including some of the founding members, registered the mark "DEEP PURPLE" with both the State of California and the USPTO, despite knowing that the remaining members of Deep Purple continued to use the band name in commerce. 213 USPQ at 992-95. The court found that the defendant former members fraudulently obtained the registrations by representing under oath that no other person had the right to use the mark. *Id.*

This type of deliberate falsehood is easily distinguished from more innocent misstatements that do not warrant cancellation, such as that at issue in *In re Bose Corp.*, 580 F.3d 1240 (Fed. Cir. 2009). There, a declarant seeking to renew a registration represented that the mark at issue was still in use in commerce on *all* of the goods identified on the registration, even though he knew the company had stopped manufacturing and selling cassette players and recorders. *Id.* at 1242. The declarant explained that he believed the company continued to use the mark in commerce with regard to those devices because the company continued to repair them. The court concluded that the declarant's incorrect statement was "occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive." *Id.* at 1246-47.

Here, just as in *HEC Enterprises*, Registrant does not dispute that he had actual knowledge that the remaining members of the partnership continued to use the Mark, or that he concealed the fact of his Registration from Petitioner. The only evidence he adduces concerning his intent in representing to the USPTO that no one else had a right to use the Mark are the conclusory statement that he "never intended to deceive" the USPTO and the purported explanation that he "believed" himself to be the "rightful owner of the trademark." (Reg. Aff., ¶14.) These claims are not credible. *Sweats Fashions, Inc.*, *supra*, 833 F.2d at 1564 ("mere conclusory statements and denials do not take on dignity by placing them in affidavit form").

Registrant points to no *evidence* whatsoever that would have supported his purported belief that Petitioner did not have the right to use the Mark. What is apparent from the record is that Registrant was angry after being kicked out of the band, and was looking for ways to get even.

This circumstantial evidence, combined with the manifest falsity of Registrant's sworn statement to the USPTO, demonstrates Registrant's intent to deceive. However, should the Board determine that there is a triable issue of fact as to Registrant's intent, Petitioner is nonetheless entitled to summary judgment and to cancellation of the Registration on the grounds that it has not abandoned the mark, and Registrant's registration and use of the mark is likely to cause confusion.

III. CONCLUSION

For all of the reasons set forth above, Petitioner respectfully requests that the Board grant its Motion for Summary Judgment and cancel Registrant's improper registration of the mark.

Respectfully submitted,

WONDERBREAD 5

Dated: August 3, 2011

PHILLIPS, ERLEWINE & GIVEN LLP

By: /s/ Cari A. Cohorn

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CERTIFICATE OF SERVICE

I, Cari A. Cohorn, Esq. certify that on this 3rd day of August, 2011, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent by U.S. Mail to:

Matthew H. Swyers, Esq.
The Trademark Company
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Vienna, VA 22180

Dated: August 3, 2011

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EXHIBIT A

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SUMMONS ISSUED

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San Francisco County Superior Court
JUN 17 2009
GORDON PARK-LI, Clerk
BY: Deputy Clerk

ORIGINAL

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

PATRICK GILLES, an individual, on behalf of himself, Plaintiff, vs. JEFFREY FLETCHER, an individual; JOHN MCDILL, an individual; THOMAS RICKARD, an individual; CHRISTOPHER ADAMS, an individual; MICHAEL TAYLOR, an individual; JAY SIEGAN, an individual; JAY SIEGAN PRESENTS, an unknown business entity; and WONDERBREAD 5, a California general partnership; and DOES 1-10, inclusive, Defendants.	Case No. CGC-09-489573 COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF: 1. CONSTRUCTIVE FRAUD (CA CIV. CODE 1573) 2. BREACH OF CONTRACT 3. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING 4. INTENTIONAL INTERFEARENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE 5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS 6. VIOLATION OF STATUE (CA CORPORATIONS CODE 16401) ACTION UNDER CORPORATIONS CODE 16405 7. VIOLATION OF STATUE (CA CORPORATIONS CODE 16403) ACTION UNDER CORPORATIONS CODE 16405 8. VIOLATION OF STATUE (CA CORPORATIONS CODE 16404) ACTION UNDER CORPORATIONS CODE 16405 9. VIOLATION OF STATUE (CA CORPORATIONS CODE 16701) ACTION UNDER CORPORATIONS CODE 16405 10. VIOLATION OF STATUTE (CA CIVIL CODE 3344)

CASE MANAGEMENT CONFERENCE SET

NOV 20 2009 - 9:00 AM

DEPARTMENT 212

Plaintiff Patrick Gilles alleges as follows:

JURISDICTION

1. This complaint alleges violations of state and common law.

VENUE

2. Venue for this action in San Francisco County is proper under Code of Civil Procedure section 395.5 because Plaintiff and Defendants entered into the subject partnership business in this County and because Defendant's liability arose in this County and this County is the principal place of business of the subject partnership business.

PARTIES

3. Plaintiff, Patrick Gilles ("Plaintiff"), at all times herein mentioned was and continues to be a resident of the State of California whose principal residence is located at 240 Lovell Avenue Mill Valley, CA 94941.

4. Plaintiff is informed and believes, and on that basis alleges, that Defendant Jeffrey Fletcher ("Fletcher") is an individual, and at all times herein mentioned was a California resident whose current principal place of residence is located at 21 Linnel Avenue, Napa, CA 94559.

5. Plaintiff is informed and believes, and on that basis alleges, that Defendant John McDill ("McDill") is an individual, and at all times herein mentioned was a California resident whose current principal place of residence is located at 1995 Western Avenue, Petaluma, CA 94952.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant Thomas Rickard ("Rickard") is an individual, and at all times herein mentioned was a California

resident whose current principal place of residence is located at 13535 Wyandotte Street, Valley Glen, CA 91405.

7. Plaintiff is informed and believes, and on that basis alleges, that Defendant Christopher Adams ("Adams") is an individual, and at all times herein mentioned was a California resident whose current principal place of residence is located at 93 Elizabeth Way San Rafael, CA 94901.

8. Plaintiff is informed and believes, and on that basis alleges, that Defendant Michael Taylor ("Taylor") is an individual, and at all times herein mentioned was a California resident whose current principal place of residence is located at 34 Hawthorne Avenue, San Anselmo, CA 94960.

9. Plaintiff is informed and believes, and on that basis alleges, that Defendant Jay Siegan ("Siegan") is an individual, and at all times herein mentioned was a California resident whose current principal place of business is located at 1655 Polk Street, Suite 1, San Francisco, CA 94109.

10. Plaintiff is informed and believes, and on that basis alleges, that Defendant Jay Siegan Presents ("JSP") is an unknown business entity, that at all times herein mentioned was doing business in California with its principal place of business located at 1655 Polk Street, Suite 1, San Francisco, CA 94109.

11. Plaintiff is informed and believes, and on that basis alleges, that Defendant Wonderbread 5 ("WB5" or "the Band") is a California General Partnership, either formerly or ostensibly, that was formed in 1996 and that at all times herein mentioned was and is doing business in California and now has its

principal place of business located at 1655 Polk Street, Suite 1, San Francisco, CA 94109. Alternatively, Plaintiff is informed and believes and therefore alleges that Wonderbread 5 ("WB5" or "the Band") is a joint venture with its principal place of business located at 1655 Polk Street, Suite 1, San Francisco, CA 94109.

12. Plaintiff does not know the true names and capacities of those Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when such are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants sued herein as DOES 1 through 10 inclusive, is in some manner legally responsible for the wrongful acts alleged herein.

13. Plaintiffs are informed and believe, and on that basis allege, that Defendants, and each of them, are and were at all times herein mentioned, the agents, servants, employees, joint venturer's or co-conspirators of each of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, employment, or service in furtherance of the joint venture or conspiracy.

FACTUAL BACKGROUND AND ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

14. Prior to 1996, Plaintiff was the lead singer of a popular northern California three-piece rock band based out of Marin County California known as "The Fabulous Flesh Weapons."

15. The group was quite successful and one of only a few local bands that could sell out a 200-300 person venue at $5-$10 cover charge. Their popularity was due to their eclectic set of cover tunes and original songs.

16. Defendant Fletcher was a frequent attendee at many of the shows of The Fabulous Flesh Weapons and Plaintiff would often invite Fletcher up on stage with Plaintiff to sing Jackson 5 songs and Journey songs because of Fletcher's uniquely high voice and gracious demeanor at the shows. Plaintiff considered Fletcher a friend and a fan of the band.

17. At some point in mid 1996, the Fabulous Flesh Weapons began to wind down and dissolve. Plaintiff took a full time job with AAA insurance.

18. Later that same year (1996) Plaintiff and Defendant Fletcher were together at a nightclub/live music venue in San Rafael, CA called "The Faultline". Plaintiff and Fletcher discussed and both agreed that the Jackson 5 and Journey songs performed by the Fabulous Flesh Weapons were the most fun and very well received by the audience.

19. During this same conversation, Plaintiff and Fletcher decided to form a Jackson 5 tribute band.

20. Both Fletcher and Plaintiff put the word out for musicians and both Plaintiff and Fletcher quickly rounded out and formed what would be a new band.

21. The original lineup of the Band was Tommy Rickard on drums, John McDill on Bass and vocals, an individual named Stevenson on keyboards, Jeffery Fletcher on lead vocals and Patrick Gilles on guitars and vocals.

22. The Bands first rehearsals were at Plaintiff's home in Novato, California where Plaintiff had built a sound proof room in one bay of Plaintiff's garage. This was the "home base" of the band for the following 3-4 years.

23. During the first or second group rehearsal, the five members began to discuss possible names for the Band.

24. The five members all agreed that they needed to associate themselves with the Jackson 5 somehow, without using the name "Jackson 5". The members were brainstorming and every new suggestion was falling flat. Plaintiff suggested the name, "Cinco de Blanco". Then, Plaintiff suggested, "Jackson de Blanco". Another member brought up the word "Whitebread", then "Whitebread 5". Finally, it was McDill, Plaintiff believes, who suggested "Wonderbread" to replace "Whitebread". Shortly thereafter, the number 5 was appended to "Wonderbread" and the Band members all agreed on the name "Wonderbread 5".

25. The Bands first live performance was on a Thursday evening in November 1996 at the same Faultline nightclub in San Rafael. Plaintiff secured this first performance for Wonderbread 5 because of Plaintiff's personal relationship with the

Faultline owners as a result of Plaintiff's previous band's long standing success there.

26. For the next year, WB5 performed exclusively as a Jackson 5 tribute band in the Bay Area. The band performed approximately 2-3 shows per month to small, but enthusiastic crowds.

27. From the beginning, each member of the band adopted the persona of a corresponding Jackson family member by way of his instrument. That is, the drummer Rickard became "Jackie Jackson", the actual drummer of the actual Jackson 5. The bass player McDill became "Jermaine Jackson". Fletcher became "Michael Jackson". Stevenson became "Marlon Jackson" and Plaintiff became "Tito Jackson", the guitar player. Each member wore an afro wig and the Band modeled their costumes after the early Jackson 5's late sixties and early seventies era costumes.

28. The Bands posters highlighted each member's stage-character names and outrageous costumes. The Band began to strategically brand themselves as the "other Jackson 5". It was campy and fun. The live show was self-deprecating in costume, but backed up by well-executed musical performances. Everyone in the Band was an accomplished player and there was a natural chemistry and ease to the performances.

29. The Band's first private event performance was on September 6, 1997, in San Rafael, California at Plaintiff's wedding. Plaintiff and his fiancé invited the entire band to the wedding as guests and the Band, in turn, all agreed to perform five songs for Plaintiff's family and friends.

30. Around this time, the Band learned of a technique called "backing tracks", wherein, the Band would actually play along with synchronized pre-recorded music and additional vocals to provide a much larger and fuller sound. The Bands success and popularity really seemed to surge after that.

31. The Band began to see more and more people coming to the public events and more and more people asking if the Band would ever considering expanding its repertoire to include other disco and current rock hits.

32. Plaintiff quickly brought several non-Jackson 5 songs to the Band's set list because of Plaintiff's extensive history of playing cover tunes prior to the formation of WB5. Specifically, the Band's first non-Jackson 5 songs were "Brick House" by the Commodores and "Blister in the Sun" by the Violent Femmes, both of which Plaintiff sang in the Flesh Weapons and subsequently sang lead vocals on in the Wonderbread 5.

33. Once the Band realized how well the expanded set list was received, the Wonderbread 5 was no longer an exclusive Jackson 5 tribute band, but rather, an all-inclusive, "no songs barred" cover band with outrageous costumes, backing tracks and identifiable stage personas.

34. The Band began to market these unique attributes heavily with flyers, posters, handbills and logo stickers. Plaintiff volunteered and took on the duties of purchasing and coordinating all sticker, button, matchbooks and T-shirt manufacturing.

35. Around 1998, the Band had become better known and its popularity was growing exponentially. WB5 were performing in San

Francisco several nights a month, grossing $500 or more per show.

36. Stevenson, the keyboard player, regrettably left WB5 suddenly to spend more time with his growing family and busy computer career. Fletcher advised the rest of the WB5 that his old band mate and high school friend, Christopher Adams, might make a good addition on keyboards. The members of the Band all agreed and Adams was added as a member of the Band. Adams adopted Stevenson's appointed stage name "Marlon Jackson" and the WB5 continued with little disruption.

37. Between 1998 and 2000, the Band began to morph into a "party band" that could play bits and pieces of just about any song that could be shouted out from the audience. It became a part of the show and something the crowd could expect. People would ask for a random song and invariably, one or more of the members of the WB5 could put together a quick version for the appreciative crowd. The members enjoyed this challenge as well as the growing crowds that were drawn by the Band's uniquely interactive act. WB5 was being compared to a wild "heavy metal, disco version of San Francisco's long time show Beach Blanket Babylon".

38. The Band began to invite members of the crowd on stage at will. A WB5 show became known as less of an event to witness, but more of an interactive event to join in on. This became another unique and consistent trait of the Band's live show, which has been intentionally fostered and maintained to this day.

39. In 2000-2001 WB5 began to combine multiple songs into long, extended medleys that would easily go on for eight minutes or more. As the Band perfected this unique art form of morphing multiple songs into rhythms of one song and lyrics of another simultaneously into a new song, the Band's fan base rapidly grew. Soon, the WB5 began to incorporate the backing tracks to the medleys in order to better structure these unique musical pieces, most of which are still being performed today by the WB5. This new style of music, which later became known as "Mash Ups", along with the outfits, persona characters and great execution, became the primary ingredients that set the WB5 apart from all other local cover bands.

40. In 2000-2001, the Band's popularity caught the attention of Daniel Swann and Jay Siegan, two local booking agents who dealt primarily with corporate party bands and tribute bands.

41. The five band members agreed to meet with Swann and Siegan to discuss a possible business relationship. Swann declined to work with the band, but Siegan offered the band a simple business arrangement. Siegan proposed to take on all event bookings for the Band in return for 1/6th of the net receipts. The five members of the band agreed and began to allow Siegan to handle all bookings for WB5.

42. In the beginning of the relationship with Siegan, the Band was typically paid in cash or check made out to a single member, who would then have to deposit the funds in his personal account and distribute additional personal checks to each of the other members.

43. This method of payment to members became problematic and Siegan soon took on the duty of collecting all receipts from shows and dispersing the funds out to all members of the WB5 equally. In short, Siegan would distribute 1/6th of the pre-tax total net to each member, including Siegan himself. At the end of each calendar year, each member would receive a Form 1099 from JSP (Jay Siegan Presents). All check payments received from nightclubs or private clients would be made out to Jay Siegan Presents and deposited into the Jay Siegan Presents Band Trust Account.

44. In 2001, Plaintiff, on behalf of the Band, secured the name "Wonderbread5.com LLC" from the California Secretary of State's office. The fees were $1600 per year, which the Band quickly refused to pay. Plaintiff paid the fees for 2 years and subsequently requested the Secretary of State suspend the LLC filing.

45. The Band has always and continues to this day to operate as it had since its inception. Siegan takes all receipts and disperses monies to each member equally with a Form 1099 to follow at the end of each year.

46. Also in 2001, the entire group, along with Siegan secured a group bank account under the name "Wonderbread 5" with The Mission Bank in San Francisco, CA. Siegan and Plaintiff were the only two signatures and administrators on the account. All five band members and Siegan agreed to pull 25% of all income paid by check from clients and deposit that money into the "band account" for future expenses and other business ventures.

47. The Band checking account reached a balance of over $14,000 within the first year, but was soon closed because of individual members needing additional funds for living expenses, beginning with Rickard who opted out first.

48. Between 2002 and 2009, WB5 was booked every Friday and Saturday with little exception. Many times, the Band would play an additional weekday evening as well, totaling 10-15 performances per month on average, with gross receipts of approximately $3500 per show. The Band has grossed an average of $375,000 per year since 2002. Membership in the band was a full time job and the primary source of income for every person in the Band at one time or another.

49. Plaintiff distinctly recalls a congratulatory conversation wherein Siegan announced to the members of the Band on its 10 year anniversary that the Wonderbread 5 had generated net income in excess of one million dollars. This was a very proud and enlightening moment for all of the members of the Band including Plaintiff. The WB5 were one of the few bands that could boast this fact and also the fact that the Band had maintained their original line up since 1997.

50. Soon thereafter however, resentment and anger began to creep into the Band because of marital problems, money issues and lack of communication.

51. Because of each member's logistical constraints, respective family situations and lack of rehearsals, the Band's marketing machine, song creation and shared outside interests came to a near halt in mid 2006.

52. Each member of the band was delegated and/or assumed responsibility for running some aspect of the business of the Band. Fletcher performed most of the administrative duties. He voluntarily took on the role of creating and printing posters, updating the mailing lists, maintaining the website, uploading photos from each show to the website and generating graphic design.

53. Plaintiff handled the radio advertising including writing the radio copy, and placement of the ads, coordination etc. for the Band. In addition Plaintiff also edited videos from live performances and continued to coordinate the manufacturing of buttons, stickers and apparel. He also continued to produce the buttons, stickers and other related 'swag' for the Band.

54. McDill had eased into the role of putting together the backing tracks from his home studio, Rickard acted as the single point of contact to Siegan, Adams managed the website hosting for the Band and often built new pages or added to the website.

55. It was McDill's role to generate the crucial backing tracks and he would often utilize his close friend, Michael Philip Taylor, to play guitars on the Wonderbread 5 backing tracks.

56. From the outset Plaintiff objected to the use of Taylor's guitar playing on these tracks, because Taylor's playing style was not similar to Plaintiffs and Plaintiff found it difficult to synchronize with Taylor's rhythm style and note selection.

57. Plaintiff offered to perform these parts and sternly requested that the Band replace Taylor's parts with Plaintiff's own playing immediately.

58. McDill proffered many excuses why this was not possible, but primarily, McDill stated he worked on these tracks late at night with Taylor and it would not be conducive for Plaintiff to be at McDill's home recording studio at such late hours or for McDill to call Plaintiff for these 'impromptu' recording sessions with Taylor.

59. Although several of Taylor's performances remain to this day, Plaintiff has since been able to perform most of the backing track guitar parts himself.

60. In 2006, the Band remained very popular. WB5 was at its peak of success and ease of operation. Siegan had asked the Band for years to generate a new video, a new website and some new promotional materials to no avail. The Band just could not seem to commit to creating these important assets.

61. The tension between members of the Band became so great in 2006 that all the members agreed to seek a professional counselor to help better define each member's role and relieve the assumed resentment between members.

62. The outcome of the meeting with the counselor was very positive for all the members. The Band left with a new outlook, and 2006-2009 were without question the most successful and profitable period in the Band's history. The Band was flown to Mexico by Sammy Hagar (lead singer of Van Halen) to perform for 2 nights as his private guests in Cabo Wabo. The Band earned an all expense paid vacation and an additional fee of $10,000 for 2

shows. Plaintiff personally booked this weekend for the Band through his relationship with the Hagars.

63. The Band also had established a personal and close relationship with San Francisco's #1 morning radio show and were a regular topic of conversation, which brought otherwise unattainable levels of free mass-radio promotion. 600,000 listeners would repeatedly hear about how great WB5 was on a regular basis. The Band also performed for the morning show many times as live musical guests.

64. Local celebrities would regularly attend the WB5 shows and often perform on stage with the Band. The Band was a long-standing institution in the Bay Area and abroad with shows booked out a year in advance. WB5 had performed in over 12 states and 3 foreign countries with private engagements booked for Mexico, Puerto Rico and Canada.

65. The Band would learn new songs by emailing music files and instructions to one another and then work independently from home in preparation for the performance. This system has become the standard practice and has not changed since Rickard's move to Los Angeles in 2006. The Band would rehearse approximately 8-12 times per year between 2005 and 2009.

66. Finally, in early 2009, WB5 created a new promotional video and an accompanying website. Siegan was ecstatic. The Band was re-invigorated.

67. Unfortunately, Plaintiff was not aware that the other members of the Band and Siegan were conspiring to replace Plaintiff with Taylor.

68. Taylor is very proficient on guitar, drums, keyboards, bass guitar and could sing back up vocals adequately. Taylor has, at one time or another, substituted for every member of the Band on live performances, on their respective instrument except for lead vocals.

69. The first time Fletcher was forced to miss a performance, WB5 secured Taylor to play guitar and Plaintiff sang lead vocals in place of Fletcher. Plaintiff typically sings lead vocals on 30%-40% of all WB5 songs on any given night in any event and Plaintiff himself had used Taylor as a substitute on a prior occasion. Since that time Fletcher has secured other viable substitutes, which has allowed Plaintiff to stay on guitar and vocals.

70. Plaintiff continued to utilize the services of Taylor as a substitute on occasion but in early 2007 Plaintiff stopped using Taylor because of Taylor's sudden changing financial demands. Plaintiff had regularly paid Taylor $350 per performance but Taylor began to demand Plaintiff's entire net receipts regardless of the amount.

71. Siegan and the members of the Band supported Taylor's request and Plaintiff became alone in his opinion that Taylor had not "built the band's success" and was merely a substitute and should be paid fairly and accordingly.

72. It became obvious that Siegan and the members of the Band were hoping to admit Taylor as a full member of the Band with full pay and wanted to cast Plaintiff aside. Instead, Plaintiff declined Taylor's new financial demands and Plaintiff found two new substitute guitar players, Jon Axtell and Clay

Bell, both of who are very accomplished, perform regularly in other cover bands and are well received by the fans, but they were not the primary choice of the Band.

73. The other four members of the Band were not pleased with Plaintiff's decision to no longer utilize Taylor after 2007. They still preferred Taylor and expressed their disappointment with Plaintiff for not simply paying Taylor whatever he wanted.

74. There was friction in the Band between all the members on different occasions and for different reasons, but all issues seemed to work themselves out over time. After all, the Band was not shrinking, but rather maintaining a high volume of work. At no time did the Band ever lose a show or lose money due to personal problems between the members or a substitute player.

75. Only one time has a single band member ever missed a show or forgotten about an engagement. It happened in 2008, when Adams, the keyboard player, forgot about a Wednesday evening private event in Sonoma. Adams missed the entire first 60 minute set. Each member of the Band began to call Adams's friends to find out if he was okay. Turns out, Adams had simply forgotten about the show and had gone on a motorcycle ride. The Band covered the parts and basically laughed it off as a "funny story" to talk about in later years.

76. There was no punishment or compensation demanded or offered for this breach. In fact, there has never been a punishment, garnishment or exclusion of any member in the entire history of the Band until March 10, 2009.

77. On Tuesday March 10, 2009, Plaintiff received a telephone message at Plaintiff's home from Adams advising Plaintiff to call Adams back.

78. That same evening Plaintiff telephoned Adams back. Adams advised Plaintiff that: "We all decided, you're out of the Band". Adams further advised Plaintiff not to attend the show scheduled for the following evening, Wednesday, March 11, 2009, in Sacramento, California.

79. Plaintiff told Adams that the Band could not just unilaterally decide to remove Plaintiff from the Band and that Plaintiff would indeed attend and planned to perform at the show the next evening. Adams advised Plaintiff not to come to the show because they would not let him play and that "it could get physical" then he hung up the phone and the call ended.

80. Subsequent to that conversation, that same evening, Plaintiff telephoned Siegan to discuss the matter. Siegan acted surprised as if he was not aware the Band was contemplating such a move. Siegan advised Plaintiff not to worry.

81. Plaintiff also telephoned Rickard that night and Rickard also advised Plaintiff not to attend the show in Sacramento.

82. The following night, Taylor was miraculously booked for the evening's engagement on Wednesday March 11, 2009. Taylor did perform 3 one hour sets (180 minutes of music). This feat would be virtually impossible without a serious and committed level of preparation and rehearsal.

83. Taylor had been informed of Plaintiffs wrongful exclusion well before Plaintiff was notified by Adams on March 10th.

84. In fact, WB5 had been rehearsing with Taylor prior to Plaintiffs notification of Plaintiffs ouster with the full intent of a seamless, clandestine and immediate replacement without Plaintiff's knowledge or consent.

85. On Thursday March 12, 2009, Plaintiff received an email letter from Barry Simons, a lawyer, on behalf of the members of the Band advising Plaintiff that Plaintiff was no longer a member of the Band and that the Band, "…shall continue to perform and conduct business under the name 'Wonderbread 5' and that Plaintiff [sic] shall relinquish all rights in the partnership business and shall no longer be entitled to any and all future proceeds from Artists' live performance engagements and any other business activities." **A true and correct copy of the email letter is attached hereto and labeled as Exhibit A.**

86. On or about March 14, 2009 Plaintiff received a check in the amount of $5,000.00 from Siegan marked "Wonderbar [sic] 5 final Payment".

87. Plaintiff advised Siegan that he would not cash the check because of the final payment notation and on or about March 17, 2009 Siegan reissued another check to Plaintiff in the amount of $5,000.00.

88. Subsequent to March 10, 2009 Plaintiff attempted to resolve Plaintiffs wrongful disassociation from the Band peacefully but was unsuccessful.

89. Since Plaintiff's wrongful disassociation and exclusion from the Band and without Plaintiffs consent, Defendants, and each of them, continue to use Plaintiff's photo and likeness (as well as Plaintiff's voice and guitar tracks) in Defendants live performances, website (www.wonderbread5.com), marketing and mass email notices.

90. Plaintiff was ultimately forced to retain counsel to protect Plaintiffs interest in the partnership business of the Band.

91. Plaintiff, through counsel, issued two demands to WB5 and its individual partners, the first on March 30, 2009 and the second on April 20, 2009 for an accounting and copies of the books and records of the partnership business pursuant to California Corporations Code 16403(b) and requesting a buyout under 16701. Both demands were met with hostility and refused by the Band.

92. The Band continues to operate as a profitable business and since March 10, 2009 Taylor has become a full time member of the Band while Plaintiff remains wrongfully excluded and disassociated from the business.

FIRST CLAIM FOR RELIEF - CONSTRUCTIVE FRAUD
California Civil Code Section 1573
(Against All Defendants)

93. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 92 above inclusive, as though fully set forth herein.

94. By virtue of the relationship between Plaintiff and these Defendants, and Does 1-10, and each of them, a fiduciary

duty existed because Defendants were acting in their capacity as partners, co-joint venturer's, managers, financial advisor and confidents for and with Plaintiff.

95. Pursuant to said duty, Defendants owed duties of the utmost good faith, fairness and full disclosure to Plaintiffs in all matters pertaining to the business and management concerning the Band, Wonderbread 5.

96. Defendants breached their fiduciary duty to Plaintiff, as alleged above, and in so doing gained an advantage over Plaintiff. In particular, in breach of their fiduciary duty, Defendants, among other things, conspired to and did in fact, unjustly remove, exclude and disassociate Plaintiff from Plaintiffs further participation in the business of the Band which allowed Defendants to earn excessive or greater income or profits and/or which deprived Plaintiff of Plaintiffs rightful share in the income and/or profits of the Band. If Defendants had disclosed to Plaintiff that Defendants were planning to remove, exclude and disassociate Plaintiff from the Band to Plaintiffs' financial detriment, Plaintiff would not have agreed or accepted the disassociation.

97. Defendants realized a profit from the practice of fraud as alleged and, accordingly, Defendants, and each of them, is required to disgorge their profits resulting from the fraud and Plaintiff is entitled to an award in the amount of these profits and interest on all such sums from the date of injury in addition to punitive damages.

SECOND CLAIM FOR RELIEF - BREACH OF CONTRACT
(Against Defendants Fletcher, McDill, Rickard, Adams, Siegan, JSP and WB5)

98. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 97 above, inclusive, as though fully set forth herein.

99. Defendants and Does 1-10, and each of them, agreed and operated a partnership business as a live performance band for nearly 13 years. At all times during the existence and operation of the partnership business; the partners equally distributed fee income amongst themselves and their manager in consideration for each partners, or members, services to the partnership business.

100. Plaintiff has duly performed all of its covenants and conditions on his part to be performed under the partnership agreement with Defendants, except as Plaintiffs performance was prevented or excused by Defendants conduct.

101. Defendants breached the agreement with Plaintiff by wrongfully and unjustly excluding and disassociating Plaintiff from the partnership business in violation of the law.

102. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered damages in an amount according to proof at trial but in an amount not less than $1,000,000.00.

THIRD CLAIM FOR RELIEF - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against Defendants Fletcher, McDill, Rickard, Adams, Siegan, JSP and WB5)

103. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 102 above, inclusive, as though fully set forth herein.

104. Defendants and Does 1-10, and each of them, agreed and operated a partnership business as a live performance band for nearly 13 years. At all times during the existence and operation of the partnership business; the partners equally distributed fee income amongst themselves and their manager in consideration for each partners, or members, services to the partnership business.

105. Defendants intentionally misled Plaintiff about Defendants intent with respect to Plaintiff and Plaintiffs status as a member or partner of the Band and business.

106. Defendants wrongfully and unjustly excluded and disassociated Plaintiff from the partnership business in violation of the law on or about March 10, 2009.

107. The conduct of Defendants, as aforesaid, breached the implied covenant of good faith and fair dealing.

108. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered damages in an amount according to proof at trial but in an amount not less than $1,000,000.00.

FOURTH CLAIM FOR RELIEF - INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(Against All Defendants)

109. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 108 above, inclusive, as though fully set forth herein.

110. Defendants and Does 1-10, and each of them, knew of Plaintiff's existing agreement and business relationship concerning the Band, Wonderbread 5.

111. Despite knowing of the ongoing business relationship, Defendants, and each of them, intentionally interfered with the relationship by conspiring and ultimately wrongfully and unjustly excluding and disassociating Plaintiff from the business.

112. As a direct and proximate result of Defendants actions and omissions, Plaintiff has been damaged in an amount according to proof due to the loss of income and damage to Plaintiff's professional reputation. Plaintiff has suffered damages in an amount according to proof at trial but in an amount not less than $1,000,000.00.

113. Defendants actions were undertaken with fraud, malice or oppression, or with conscious disregard of the rights of Plaintiff, and, therefore, Plaintiff is entitled to and award of exemplary and punitive damages against Defendants, and each of them, in an amount according to proof and at the courts discretion.

FIFTH CLAIM FOR RELIEF - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against All Defendants)

114. Plaintiffs realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 113 above, inclusive, as though fully set forth herein.

115. Defendants and Does 1-10, and each of them, by conspiring to interfere and to wrongfully exclude and disassociate Plaintiff from the partnership business of the

Band, engaged in conduct that was and is outrageous and an abuse of the fiduciary relationship with Plaintiff.

116. As a result of the conduct of Defendants, Plaintiff has sustained sever emotional distress, mental anguish and feelings of helplessness and desperation over the loss of income, sense of self worth and Plaintiff's ability to support his family.

117. Defendants intentionally caused the injury to Plaintiff and were substantially certain that Plaintiff would be injured as a result of Defendant's conduct.

118. By reason of the foregoing, Plaintiff has been required to seek the help of professional services for financial hardship.

119. As a direct and proximate result of the intentional, malicious, harmful unlawful and offensive acts of Defendants, Plaintiff sustained severe and serious injury to their persons, including but not limited to severe emotional distress all to Plaintiff's severe injury and damages in a sum according to proof at trial.

SIXTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Corporation Code Section 16401
(Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor, Siegan, JSP and WB5)

120. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 119 above, inclusive, as though fully set forth herein.

121. Defendants and each of them with Plaintiff are partners, members or fiduciary's of the partnership business commonly known as the Wonderbread 5.

122. Defendants and each of them violated California Corporations Code Section 16401 because they: 1) wrongfully excluded and disassociated Plaintiff from the partnership business thereby depriving Plaintiff of Plaintiff's equal share of the partnership profits; 2) denied Plaintiff equal right to the management and conduct of the partnership business; 3) wrongly admitted a new member to the partnership business without the consent of Plaintiff and 4) engaged in an act(s) outside the ordinary course of business without the consent of Plaintiff.

123. As a direct and proximate result of the statutory violations, Plaintiff has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof but in an amount not less than $1,000,000.00.

SEVENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Corporation Code Section 16403
(Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor, Siegan, JSP and WB5)

124. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 123 above, inclusive, as though fully set forth herein.

125. Defendants and each of them with Plaintiff are partners, members or fiduciary's of the partnership business commonly known as the Wonderbread 5.

126. Defendants and each of them violated California Corporations Code Section 16403 because they wrongfully denied Plaintiff access to the books and records of the partnership business as well as any and all information concerning the partnership business and affairs.

127. As a direct and proximate result of the statutory violations, Plaintiff has been forced retain counsel to bring this action to enforce Plaintiffs rights under the statue and has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof trial but in an amount not less than $1,000,000.00.

EIGHTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Corporation Code Section 16404
(Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor, Siegan, JSP and WB5)

128. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 127 above, inclusive, as though fully set forth herein.

129. Defendants and each of them with Plaintiff are partners, members or fiduciary's of the partnership business commonly known as the Wonderbread 5.

130. Defendants and each of them violated California Corporations Code Section 16404 because they: 1) breached the duty of loyalty and care owed to Plaintiff; 2) wrongfully failed to account to Plaintiff for any property, profit or benefit derived from the partnership business; 3) failed to discharge the duties owed to Plaintiff with good faith and in fair dealing.

131. As a direct and proximate result of the statutory violations, Plaintiff has been forced retain counsel to bring this action to enforce Plaintiffs rights under the statue and has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof trial but in an amount not less than $1,000,000.00.

NINTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Corporation Code Section 16701
(Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor, Siegan, JSP and WB5)

132. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 131 above, inclusive, as though fully set forth herein.

133. Defendants and each of them with Plaintiff are partners, members or fiduciary's of the partnership business commonly known as the Wonderbread 5.

134. Defendants and each of them violated California Corporations Code Section 16701 because they wrongfully excluded and disassociated Plaintiff from the partnership business with purchasing the Plaintiffs' partnership interest pursuant to the provisions of the code section.

135. Plaintiff, through his counsel, made an appropriate demand upon Defendants, in writing, to comply with the provision of 16701, however Defendants flatly refused to comply.

136. As a direct and proximate result of the statutory violation, Plaintiff has been forced retain counsel to bring this action to enforce Plaintiffs rights under the statue and has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof trial but in an amount not less than $1,000,000.00.

TENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Civil Code Section 3344
(Against All Defendants)

137. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 136 above, inclusive, as though fully set forth herein.

138. Defendants and Does 1-10, and each of them, Defendants, continue to use Plaintiff's photo and likeness (as well as Plaintiff's voice and guitar tracks) in Defendants live performances, website marketing and mass email notices.

139. The continued use of Plaintiffs name, voice and likeness in association with Defendants live performances, website, marketing and mass email notices is without the consent of Plaintiff.

140. As a direct and proximate result of the statutory violation, Plaintiff has been forced retain counsel to bring this action to enforce Plaintiffs rights under the statue and has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof trial but in an amount not less than $750.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief against each of the Defendants as follows:

A. On the First Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 1709 and 1333 and according to proof;
2. For consequential damages pursuant to Cal. Civil Code Section 3343;

3. For punitive damages pursuant to Cal. Civil Code Section 3294(b)(3) and for treble damages pursuant to Cal. Civil Code Section 3345;

4. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3288 & 3291;

5. For an award of damages equal to the profit realized from Defendants conduct, as alleged;

6. For attorney fees under Cal. Corporations Code Section 16701(i);

7. For Plaintiff's pain, suffering and emotional distress as well as for sums incurred for services of hospitals, physicians, nurses and other medical supplies and services, if any;

8. For preliminary and permanent injunctive relief enjoining and restraining Defendants their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;

9. For costs of suit and for such other and further relief as the court deems proper.

B. <u>On the Second Cause of Action</u>

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3300 and according to proof;

2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;

3. For an award of damages equal to the profit realized from Defendants conduct, as alleged;

4. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3289;

5. For attorney fees and costs of suit and for such other and further relief as the court deems proper.

C. On the Third Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3300 and according to proof;

2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;

3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291;

4. For an award of damages equal to the profit realized from Defendants conduct, as alleged.

D. On the Fourth Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;

2. For consequential damages pursuant to Cal. Civil Code Section 3343;

3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291;

4. For punitive damages pursuant to Cal. Civil Code Section 3294(a)and for treble damages pursuant to Cal. Civil Code Section 3345;

5. For an award of damages equal to the profit realized from Defendants conduct, as alleged;

6. For Plaintiff's pain, suffering and emotional distress as well as for sums incurred for services of hospitals, physicians, nurses and other medical supplies and services, if any;

7. For injunctive relief as provided by Cal. Civ. Procedure Section 526;

8. For costs of suit and for such other and further relief as the court deems proper.

E. <u>On the Fifth Cause of Action</u>

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;

2. For consequential damages pursuant to Cal. Civil Code Section 3343;

3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291;

4. For punitive damages pursuant to Cal. Civil Code Section 3294(a)and for treble damages pursuant to Cal. Civil Code Section 3345;

5. For an award of damages equal to the profit realized from Defendants conduct, as alleged;

6. For Plaintiffs pain, suffering and emotional distress as well as for sums incurred for services

of hospitals, physicians, nurses and other medical supplies and services, if any;

7. For costs of suit and for such other and further relief as the court deems proper.

F. <u>On the Sixth Cause of Action</u>

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;
2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291 and Corporations Code 16701(c);
4. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief enjoining and restraining Defendants, their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the partnership business and the income derived there from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code Section 16701(i) and costs of suit and for such other and further relief as the court deems proper.

G. <u>On the Seventh Cause of Action</u>

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;
2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291 and Corporations Code 16701(c);
4. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief enjoining and restraining Defendants, their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the partnership business and the income derived there from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code Section 16701(i) and costs of suit and for such other and further relief as the court deems proper.

H. On the Eighth Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;
2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291 and Corporations Code 16701(c);
4. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief enjoining and restraining Defendants, their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the partnership business and the income derived there from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code Section 16701(i) and costs of suit and for such other and further relief as the court deems proper.

I. <u>On the Ninth Cause of Action</u>

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;
2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291 and Corporations Code 16701(c);
4. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief enjoining and restraining Defendants, their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the partnership business and the income derived there from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code Section 16701(i) and costs of suit and for such other and further relief as the court deems proper.

J. On the Tenth Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3300 and according to proof;
2. For consequential and lost profits damages in amount not less than $1,000,000.00 and according to proof;
3. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
4. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3289;
5. For Punitive damages pursuant to Civil Code 3344(a);
6. For immediate injunctive relief prohibiting the Defendants, and each of them, from using or otherwise exploiting Plaintiffs name, voice, likeness or music in association with the Band, its marketing, promotion and performances or any other commercial activity;
7. For attorney fees pursuant to Civil Code 3344(a) and costs of suit and for such other and further relief as the court deems proper.

Dated: June 16, 2009

By: _____
Mr. Douglas B. Wroan
For: The Wroan Law Firm, Inc.
Attorneys for Plaintiff

EXHIBIT A

Flag this message

Wonderbread 5

Thursday, March 12, 2009 9:07 PM

From:

"Barry Simons" <barry@yourmusiclawyer.com>

View contact details

To:

"Patrick Gilles" <patrickgilles@yahoo.com>

Cc:

jeffreyafletcher@me.com, jmcdill@mac.com, tommy@tommyrickard.com, chip@wonderbread5.com, jay@jaysleganpresents.com

Dear Pat:

I have been asked to contact you on behalf of Jeffrey Fletcher, Thomas Rickard, Christopher Adams, and John McDill, the members of the musical group professionally known as the "Wonderbread 5" (hereinafter referred to as "Artist"). This email is in furtherance to the verbal communication between you and Christopher Adams on behalf of the band on Monday March 9th, 2009.

It is with great regret that the other members of Artist have decided unanimously that you shall no longer be a member. It has taken a long time to reach, and they are greatly saddened by this very difficult decision. They feel that notwithstanding considerable efforts by everyone to improve communications with you, including through professional mediation and other means, the relationship between you and the other members has been strained to the point that it has become irreconcilable.

Please be advised that Artist shall continue to perform and conduct business under the name "Wonderbread 5", that you shall relinquish all rights in the partnership business, and shall no longer be entitled to any and all future proceeds from Artist's live performance engagements and any other business activities.

Notwithstanding the foregoing, Artist will promptly forward to you a check in the amount of Five Thousand Dollars ($5000) as a gesture of good faith, and as thanks for your hard work and dedication to the band. We hope this will help alleviate some financial distress which may result from your dismissal.

They request that you please refrain from attending their shows in order to provide for a smooth transition, and to avoid any conflict. They will agree to remove your name and likeness from Artist's website and any promotional materials as soon as possible (with the exception of their video, which was produced and owned by the band)

Lastly, the members of the band requested that I convey to you that they wish you the best in the future. They are willing to keep open, friendly lines of communication via e-mail, but that Jeffrey, Thomas, Christopher, John and Jay all be copied on any such communications.

This letter is without waiver or prejudice of any all rights at law or in equity, and all of such rights and remedies are hereby expressly reserved.

Thank you very much for your cooperation regarding this matter.

Barry Simons

Law Office of Barry Simons
1655 Polk St. Suite #2
San Francisco , CA 94109

ph: (415) 674-0900
fax: (415) 674-0911

barry@yourmusiclawyer.com
www.yourmusiclawyer.com

EXHIBIT B

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3

4

5 PATRICK GILLES, an individual,
on behalf of himself,
6
Plaintiff,
7
vs. No. CGC-09-489573
8
JEFFREY FLETCHER, an
9 individual; JOHN MCDILL, an
individual; THOMAS RICKARD,
10 an individual; MICHAEL TAYLOR,
an individual; JAY SIEGAN, an
11 individual; JAY SIEGAN
PRESENTS, an unknown business
12 entity; and WONDERBREAD 5, a
California general partnership;
13 and DOES 1-10, inclusive,

14 Defendants.
_____/
15
Deposition of

16 PATRICK E. GILLES

17 Tuesday, August 11, 2009

18 Volume I

19

20

21 REPORTED BY: CINDY TUGAW, CSR #4805

22

23 NOGARA REPORTING SERVICE
130 Battery Street, Suite 580
24 San Francisco, California 94111
(415) 398-1889
25

1 Q. Anywhere else?

2 A. Yes. I can't recall, but locations before

3 shows, when we had free time. I remember doing

4 something in Los Angeles backstage with my guitar

5 and his laptop.

6 Q. Anywhere else?

7 A. Not that I can recall.

8 Q. Did you have any role other than the

9 actual recording of your part in terms of the

10 production of the backing tracks?

11 A. Yes.

12 Q. What role was that?

13 A. It was what's considered to be mixing,

14 which is level – choosing the level of the

15 instrument within the groups of the other

16 instruments. And this would happen either onsite

17 during mix or after John would prepare a mix for the

18 band. And he would present it to us and we would

19 get back to him with notes. Rarely did I request

20 changes because John is competent, very competent.

21 Q. Are you aware of any backing tracks that

22 the band is currently using that feature your

23 performance or performances?

24 A. I was instructed not to attend any shows,

25 so I cannot be sure, and I haven't interviewed

1 people to do so. The few videos that I've seen, I
2 do not know.
3 Q. So the answer is no?
4 A. I do not know, yeah. No, I do not know --
5 have not seen the band since.
6 Q. So the answer is no?
7 A. The answer is no. I apologize, I was not
8 trying to be evasive.
9 Q. I understand. You're entitled to answer
10 the way you want. I need to get answers, too.
11 Tell me about how Jay Siegan got involved
12 with Wonderbread 5.
13 A. He learned about us -- this is just my
14 understanding, he learned about the band as we were
15 becoming popular, and saw, I think, great potential
16 in us and also great potential for himself and his
17 growing young company, booking artists, managing
18 artists. I remember meeting with him in San
19 Francisco with the rest of the members.
20 Q. When was that?
21 A. I want to say that it was around -- it's
22 hard for me -- it's in the complaint. I'm guessing
23 it was around '98, may have been as late as 2000. I
24 apologize.
25 Q. And what was discussed at that meeting?

1 MR. GIVEN: Q. I wanted to give the court
2 reporter back her copies of Defendants' Exhibit 2
3 which are the documents that you produced us today,
4 Mr. Gilles, but I wanted to ask you just a couple of
5 questions before I give her back this pile.
6 You have some -- I guess they're
7 screenshots, right, of Wonderbread 5 on YouTube?
8 A. Yes.
9 Q. And just starting with the last one
10 first -- do you have your copy?
11 MR. ADKINS: Our copy is now black and white,
12 but yes.
13 MR. GIVEN: Q. So this is a publicity poster
14 for a show at the Powerhouse Pub?
15 A. Correct.
16 Q. And you have -- this is your handwriting
17 at the bottom?
18 A. Correct.
19 Q. And it says "PG," that's you, right?
20 A. Yes.
21 Q. "Patrick Gilles's, body, guitar, et
22 cetera, bad form"?
23 A. Correct.
24 Q. So what do you mean by that?
25 A. I thought in their letter from Barry Simon

1 happening. Your likeness -- I didn't ask Barry
2 Simon to do that. Barry Simon told me it was. And
3 I guess my words "bad form" is that they're not
4 following with what they said they would do.
5 Q. Well, April 17th, that would have been
6 less than a month after you left the band, right?
7 A. Nope.
8 Q. No?
9 A. March 10th.
10 Q. So about a month after you left the band?
11 A. Correct.
12 Q. And this 19 Broadway show, do you have any
13 idea when that was?
14 A. No. That would be in your client's record
15 of when he generated that poster.
16 Q. We can look that up. Are you currently
17 aware of any other images that the band is currently
18 using that feature your face?
19 A. Yes.
20 Q. And what are those?
21 A. Page prior of that, on the Web site
22 probably as we sit here today, that photograph image
23 and biography is on the Wonderbread 5 Web site.
24 Q. This is the --
25 A. Wonderbread 5 bio.

1 their clothes are made of plastic.

2 Q. How long have you been using them as a

3 band? How long have you been purchasing costumes

4 from them?

5 A. Me personally? I know John and Jeff did

6 it independently for awhile. But I have bought

7 three things from Lip Service that I know of.

8 Q. Over what period of time?

9 A. Two years.

10 Q. So when did you first learn that you had

11 been fired from the band?

12 A. March 10th, unlike Barry's letter that

13 says March 9th. It was actually March 10th around

14 6:00 or 7:00 o'clock at night on a telephone call.

15 Q. And who was the call from?

16 A. Chris Adams.

17 Q. And what did he say to you and what did

18 you say to him in that telephone call?

19 A. His words were "We decided you're out." I

20 think I asked him to repeat it and he said, "We

21 decided you're out."

22 And I said, "You can't do that."

23 And he said, "We did."

24 And I said, "Well, I will be there

25 tomorrow." We had a show the next day. And I said,

1 "I'll be there tomorrow."

2 And he goes, "No, you won't."

3 I said, "I'll be there tomorrow. You

4 can't do this."

5 And then I began to suggest that they

6 reconsider for primarily my benefit that this was

7 just a poorly laid plan that was probably illegal

8 but without compassion, at best.

9 And then he said something like, "Don't

10 embarrass yourself. It's over." And then he hung

11 up briefly. And I wanted to talk to somebody, so

12 that was it.

13 Q. That was the end of the conversation?

14 A. Yeah.

15 Q. Why did you say, "You can't do this"?

16 A. Because I was positive that this was a

17 partnership that required some kind of arrangement,

18 my involvement.

19 Q. I'm not sure I'm following. Was it the

20 agreement of the partnership that everybody would

21 stay together in perpetuity? Is that your

22 understanding of what the band partnership agreement

23 was?

24 A. Until such time that the partnership gets

25 together by the California corporate code and

EXHIBIT C

Document Description: **Application**
Mail / Create Date: **12-Mar-2009**

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77689156
Filing Date: 03/12/2009

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77689156
MARK INFORMATION	
***MARK**	Wonderbread 5
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Wonderbread 5
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	Patrick Gilles
DBA/AKA/TA/Formerly	AKA Wonderbread 5 and/or Wonderbread Five
***STREET**	240 Lovell Avenue
INTERNAL ADDRESS	240 Lovell Avenue
***CITY**	Mill Valley
***STATE (Required for U.S. applicants)**	California
***COUNTRY**	United States

*ZIP/POSTAL CODE (Required for U.S. applicants only)	94941
PHONE	415 827 0405
FAX	415 380 1983
EMAIL ADDRESS	patrickgilles@yahoo.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services in the nature of live musical performances
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/31/1996
FIRST USE IN COMMERCE DATE	At least as early as 10/31/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT6\IMAGEOUT6\776\891\77689156\xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	Simple name of musical group. The "name" takes many shapes, colors, textures and styles, but spelling remains constant. We are primarily seeking the name spelled in this unique sequence.
CORRESPONDENCE INFORMATION	
NAME	Patrick Gilles
FIRM NAME	dba Wonderbread 5
STREET	240 Lovell Avenue
INTERNAL ADDRESS	240 Lovell Avenue
CITY	Mill Valley
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	94941

PHONE	415 827 0405
FAX	415 380 1983
EMAIL ADDRESS	patrickgilles@yahoo.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/patrick gilles/
SIGNATORY'S NAME	Patrick Gilles
SIGNATORY'S POSITION	Founding member
DATE SIGNED	03/12/2009

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77689156
Filing Date: 03/12/2009

To the Commissioner for Trademarks:

MARK: Wonderbread 5 (Standard Characters, see mark)
The literal element of the mark consists of Wonderbread 5.
The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Patrick Gilles, AKA Wonderbread 5 and/or Wonderbread Five, a citizen of United States, having an address of
240 Lovell Avenue,
240 Lovell Avenue
Mill Valley, California 94941
United States
requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.
International Class 041: Entertainment services in the nature of live musical performances

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class _____, the mark was first used at least as early as _____, and first used in commerce at least as early as _____, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

Correspondence Information: Patrick Gilles
dba Wonderbread 5
240 Lovell Avenue
240 Lovell Avenue
Mill Valley, California 94941
415 827 0405(phone)
415 380 1983(fax)
patrickgilles@yahoo.com (authorized)

A fee payment in the amount of $325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /patrick gilles/ Date Signed: 03/12/2009
Signatory's Name: Patrick Gilles
Signatory's Position: Founding member

RAM Sale Number: 7707
RAM Accounting Date: 03/12/2009

Serial Number: 77689156
Internet Transmission Date: Thu Mar 12 10:44:32 EDT 2009
TEAS Stamp: USPTO/BAS-76.126.198.240-200903121044320
89443-77689156-40082274d2e5b147bcd124411
6f5de4bcbe-CC-7707-20090312101502409587

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- ***Technical help**: For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail Electronic Business Support, or call 1-800-786-9199.*
- ***Questions about USPTO programs**: Please e-mail USPTO Contact Center (UCC).*

***NOTE**: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.*

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5
(Registered on October 6, 2009)

WONDERBREAD 5, Petitioner, v. PATRICK GILLES, Registrant.	Cancellation No. 92052150

DECLARATION OF DAVID M. GIVEN IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

1. I am a partner in the law firm Phillips, Erlewine & Given, LLP, counsel of record for Wonderbread 5 ("Petitioner") in this matter as well as in San Francisco Superior Court Case No. 09-489-573, *Patrick Gilles v. Jeffrey Fletcher et al.* Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and, if called to testify as a witness, could and would testify competently thereto.

2. On June 17, 2009, Patrick Gilles ("Registrant" or "Gilles") filed a complaint in San Francisco Superior Court against Petitioner, its individual members and its agent and manager. I represented the defendants in that lawsuit. A true and correct copy of the Complaint

is attached as Exhibit A to Petitioner's Request for Judicial Notice.

3. At no time during the course of the state court litigation did Registrant ever disclose that he had registered the WONDERBREAD 5 mark, despite the fact that I served Registrant with a document request and deposed him on this subject. Attached hereto as **Exhibit A** are true and correct copies of the Notice of Deposition served upon Registrant in that action and pages 10-22 of the deposition transcript.

4. On September 3, 2009, defendants served Registrant with an Offer to Compromise pursuant to California Code of Civil Procedure section 998. A true and correct copy of that document is attached hereto as **Exhibit B.**

5. Attached hereto as **Exhibit C** is a true and correct copy of my letter to Registrant's counsel dated September 15, 2009.

6. Registrant accepted defendants' Offer to Compromise on October 1, 2009. Attached hereto as **Exhibit D** is a true and correct copy of the Offer to Compromise, signed by Registrant's attorney to indicate acceptance of said offer.

7. Defendants remitted payment to Registrant on October 8, 2009. On October 22, 2009, Registrant dismissed his lawsuit with prejudice. A true and correct copy of that dismissal is attached as Exhibit B to Petitioner's Request for Judicial Notice.

8. Petitioner filed its Petition for Cancellation on March 1, 2010. A true and correct copy of that Petition is attached hereto as **Exhibit E**.

\\ \\

\\ \\

\\ \\

9. A true and correct copy of Registrant's Answer, filed on April 8, 2010 is attached hereto as **Exhibit F**.

I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct.

Dated: July 30, 2010

/s/
David M. Given

Exhibit A

David M. Given (State Bar No. 142375)
Feather D. Baron (State Bar No. 252489)
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 35th Floor
San Francisco, California 94111
Telephone: (415) 398-0900
Facsimile: (415) 398-0911
dmg@phillaw.com
fdb@phillaw.com

Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PATRICK GILLES, an individual, on behalf of himself, Plaintiff, v. JEFFREY FLETCHER, an individual; JOHN MCDILL, an individual; THOMAS RICKARD, an individual; CHRISTOPHER ADAMS, an individual; MICHAEL TAYLOR, an individual; JAY SIEGAN, an individual; JAY SIEGAN PRESENTS, an unknown business entity; and WONDERBREAD 5, a California general partnership; and DOES 1-10, inclusive, Defendants.	CASE NO. CGC-09-489573 **NOTICE OF DEPOSITION OF PLAINTIFF PATRICK GILLES**

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that on **August 11, 2009**, commencing at **9:30 a.m.**, defendants will take the deposition of plaintiff **PATRICK GILLES**. The deposition will be taken at Phillips, Erlewine & Given, LLP, 50 California Street, 35th Floor, San Francisco, CA 94111. The testimony will be recorded by stenographic and videotape means and will continue from day to day thereafter until completed.

YOU ARE FURTHER NOTIFIED that said deponent is to bring and make available at the deposition the following documents in his possession, custody or control:

1. All documents, including but not limited to e-mails, letters, correspondence and notes, which relate and/or refer to Wonderbread 5.

DATED: July 24, 2009

PHILLIPS, ERLEWINE & GIVEN LLP

By: _____
Feather D. Baron
Attorneys for Defendants

PROOF OF SERVICE

I, Mara Lefkowitz, declare that I am over the age of eighteen and not a party to this action. My business address is Phillips, Erlewine & Given LLP, 50 California Street, 35th Floor, San Francisco, California 94111, which is located in the City and County of San Francisco where the service described below took place.

On the date below, at my place of business at San Francisco, California, a copy of the following document(s):

NOTICE OF DEPOSITION OF PLAINTIFF PATRICK GILLES

was addressed to:

Douglas B. Wroan, Esq
5155 West Rosecrans Ave., Ste. 229
Los Angeles, CA 90250

[X] BY FIRST CLASS MAIL: I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices as indicated above.

[ ] BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof.

[ ] BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed envelope. I caused such envelope(s) to be handed to our messenger service to be delivered as indicated above.

[ ] BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I caused such envelope(s) to be delivered to the above address(es) by overnight express.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 24, 2009 at San Francisco, California.

Mara Lefkowitz

Phillips, Erlewine & Given LLP
50 California Street
35th Floor
San Francisco, CA 94111
(415) 398-0900

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3

4

5 PATRICK GILLES, an individual,
on behalf of himself,
6
Plaintiff,
7
vs. No. CGC-09-489573
8
JEFFREY FLETCHER, an
9 individual; JOHN MCDILL, an
individual; THOMAS RICKARD,
10 an individual; MICHAEL TAYLOR,
an individual; JAY SIEGAN, an
11 individual; JAY SIEGAN
PRESENTS, an unknown business
12 entity; and WONDERBREAD 5, a
California general partnership;
13 and DOES 1-10, inclusive,

14 Defendants.
_____/
15
Deposition of

16 PATRICK E. GILLES

17 Tuesday, August 11, 2009

18 Volume I

19

20

21 REPORTED BY: CINDY TUGAW, CSR #4805

22

23 NOGARA REPORTING SERVICE
130 Battery Street, Suite 580
24 San Francisco, California 94111
(415) 398-1889
25

1 Q. Why?
2 A. The band was functioning at a very high
3 level, profiting, had just finished a all-important
4 series of assets that had been requested by the
5 manager for nearly four years, including a video,
6 Web site, song lists, outfits.
7 Q. Anything else?
8 A. Well, when I say "assets," photographs,
9 photo session, all the assets the manager, Jay
10 Siegan, had requested since 2004 were completed in
11 early 2009.
12 Q. Anything else that you can remember?
13 A. I can't think of any other assets.
14 Q. Were you happy in the band in March of
15 2009 when you were asked to leave?
16 A. Yes.
17 Q. And you thought the band was functioning
18 well at that time?
19 A. Yes.
20 Q. And you thought that you were a part of
21 that?
22 A. Yes.
23 MR. GIVEN: So can we put what's been marked
24 as Defendants' Exhibit 1 in front of the witness.
25 Q. Now, you've seen this document before,

1 Mr. Gilles?

2 A. Oh, yes. Yes.

3 Q. This is your deposition notice, right?

4 A. Correct.

5 Q. And on Page 2 of the deposition notice is

6 a request for documents. Do you see that?

7 A. Yes.

8 Q. And you've come here today with some

9 documents for us, and we'll get into that in a

10 second. What I wanted to ask you first is what did

11 you do to make available to us today the documents

12 that we've asked for in this deposition notice?

13 A., I searched my e-mail. I searched my

14 physical folder where I had one folder that had

15 Wonderbread 5 documents in it. I searched my

16 computer hard drive, my current existing computer

17 hard drive for any documents or photos.

18 Q. Anything else?

19 A. I looked for records within my house and

20 found nothing. I have moved three times and owned

21 three homes since the beginning of the band but

22 could not find anything other than what I've brought

23 today.

24 Q. Let's talk about the physical folder.

25 Where did you find that?

1 A. In my filing drawer in my home office.

2 Q. And did the folder have a name at the top

3 that said "Wonderbread 5," is that how you knew --

4 A. Yes.

5 Q. -- that it pertained to this?

6 A. Yes.

7 Q. And did you go through that entire filing

8 drawer to see if there were any other files or

9 papers that pertained to the band?

10 A. I did, yes.

11 Q. And you didn't find anything?

12 A. No.

13 Q. You mentioned looking for e-mails. How

14 did you search for e-mails?

15 A. In a Yahoo folder that I had assigned the

16 name Wonderbread 5. And a search in my general

17 folders, I did a search in general folders. I

18 didn't find anything else.

19 Q. What e-mail addresses do you use?

20 A. Patrickgilles@yahoo.com.

21 Pat@patrickgilles.com.

22 Q. Are those the only two?

23 A. Yes.

24 Q. So you went through the Yahoo folder that

25 was assigned the name Wonderbread 5?

1 A. Yes.
2 Q. And did you produce all of the e-mails in
3 that folder --
4 A. Yes.
5 Q. -- to us today?
6 One thing I should remind you is the court
7 reporter can't take down both of us speaking over
8 each other.
9 A. Was I quick? I'm sorry.
10 Q. Yes, you were. So you should wait until I
11 finish my question and then you can give me your
12 answer.
13 And did you also go through the other
14 folders in your Yahoo account?
15 A. Only by a search but did not individually
16 go through each folder.
17 Q. And what search did you execute?
18 A. I searched WB5, Wonderbread 5, two
19 searches.
20 Q. And did those searches yield any results?
21 A. They did not.
22 Q. So it's fair to say that all of the
23 e-mails that you had in your Yahoo account that
24 pertained to Wonderbread 5 were in a separately
25 designated folder that was assigned the name

1 Wonderbread 5, is that correct?

2 A. Yes.

3 Q. Now, tell me what, if anything, you did to

4 search your e-mail account at pat@patrickgilles.com.

5 A. I have no folders.

6 Q. Did you execute any searches to see if

7 there were any e-mails in that account that

8 pertained to Wonderbread 5?

9 A. I did not.

10 Q. Why not?

11 A. It is a new account, and I was relatively

12 sure that I had never used that e-mail address for

13 band business.

14 Q. When did you start using the account

15 pat@patrickgilles.com?

16 A. 2007 when I purchased the URL

17 patrickgilles.com. It came with free e-mail

18 address.

19 Q. And you were still in the band in 2007?

20 A. Yes.

21 Q. What did you use that e-mail account for?

22 If you didn't use it for band business, what did you

23 use it for?

24 A. If anyone clicked on the URL

25 patrickgilles.com, under a Contacts, which is a free

1 service they give you, it would shoot an e-mail to
2 Patrick or -- pat@patrickgilles.com in case anyone
3 wanted to contact me from that Web site.
4 Q. And did anybody contact you via that Web
5 site at this e-mail address, pat@patrickgilles.com,
6 concerning band business?
7 A. No.
8 Q. How about concerning the band generally?
9 A. No.
10 Q. Now, how long have you had the Yahoo
11 account, the patrickgilles@yahoo.com?
12 A. I can only estimate 2000 -- gosh, it's
13 hard for me to remember. 2000, maybe. The
14 millennium, 1999, 2000, 2001.
15 Q. Did you have any e-mail accounts prior to
16 the Yahoo account?
17 A. Yes.
18 Q. What were those?
19 A. I don't recall the exact name, but it was
20 my name -- maybe pgilles. This is -- I'm
21 guessing -- not guessing, but trying to remember,
22 pgilles@earthlink.net.
23 Q. And do you recall how many years you
24 maintained that e-mail account?
25 A. Approximately, five years.

1 Q. And that would have been from about 1995
2 to 1999 or 2000?
3 A. Yes.
4 Q. And do you have any of those e-mails in
5 your computer hard drive or anywhere else?
6 A. No.
7 Q. Stored anywhere else?
8 A. I'm sorry, no.
9 Q. Would there have been e-mails to and from
10 that account that would have pertained to
11 Wonderbread 5?
12 A. I can assume, yes. Yes, could be.
13 Q. That was your only e-mail account for that
14 period from 1995 to about 2000?
15 A. Yes.
16 Q. So other than the patrickgilles@yahoo.com,
17 pat@patrickgilles.com, and pgilles@earthlink.net,
18 are there any other e-mail accounts that you
19 used --
20 A. No.
21 Q. -- or have used?
22 A. No.
23 Q. And you also mentioned that you searched
24 your computer hard drive. What computer did you
25 search?

1 A. I searched my home family's desktop
2 computer. I searched my recently purchased desktop
3 Apple computer.
4 Q. Is that it?
5 A. That's it.
6 Q. Do you have a laptop?
7 A. I do.
8 Q. You didn't search your laptop?
9 A. I did not. It does not -- I don't permit
10 that to go online.
11 Q. So it's fair to say that the laptop
12 doesn't have any e-mail traffic on it?
13 A. Yes.
14 Q. Did you search the laptop for any
15 electronic files pertaining to Wonderbread 5?
16 A. No.
17 Q. Why not?
18 A. I haven't used that laptop -- quite
19 frankly, I didn't think to do so. I don't use it
20 for band business. I do use it to produce videos.
21 Q. So would it have band videos on it?
22 A. Yes.
23 Q. What kind of laptop is it?
24 A. It is a Dell Inspiron 8500, I think.
25 Q. When did you purchase it?

1 A. Approximately, 2005.
2 Q. And have you used it consistently since
3 then?
4 A. No.
5 Q. Why not?
6 A. It is a Windows-based computer, and I used
7 it for video editing. And I switched to a program
8 called Final Cut Pro which is a Apple-based computer
9 program. So the computer was obsolete for myself
10 for those purposes.
11 Q. And when did it become obsolete for those
12 purposes?
13 A. 2007.
14 Q. And you haven't used it since then?
15 A. Yes, I have used it.
16 Q. For what?
17 A. Gaming with my kids. It became relegated
18 to sort of a stand-alone computer for my children to
19 play their DVD games that were windows-based.
20 Webkinz, is the one I can think of now.
21 Q. And when did you purchase the Apple
22 computer?
23 A. 2007 or early 2008.
24 Q. And what kind of computer is that?
25 A. Mac Pro Quad 4.

1 Q. And what do you use the Apple computer
2 for?
3 A. Video editing, some online searching. But
4 I try to keep it off the Internet for fear of any
5 kind of viruses or contamination to my media.
6 Q. Do you receive e-mail on your Apple
7 computer?
8 A. Yes.
9 Q. And did you search that computer to see if
10 there were any e-mails pertaining to Wonderbread 5?
11 A. That is the computer I searched for my
12 Yahoo account online. I also performed the same
13 search on the Windows computer before but didn't
14 save any information. The first search was done on
15 my Windows-based computer.
16 Q. On the Dell Inspiron?
17 A. No, that's the laptop.
18 Q. On the home family desktop?
19 Q. On the home family desktop, that's the
20 online computer. And that was just to investigate
21 and see what was there. Then I researched, knowing
22 what was there, on my Apple desktop, placed them
23 onto a file and took them to Kinko's to be copied.
24 Q. And were there any documents that you
25 found through those searches that you have not

1 produced to us today?

2 A. No.

3 Q. And what type of computer is the home

4 family desktop that you described?

5 A. HP, Hewlett-Packard.

6 Q. And when did you purchase that computer?

7 A. I'm guessing -- speculating 2004, possibly

8 '3.

9 Q. And that, it's fair to say, Mr. Gilles,

10 that that's the computer that you primarily use for

11 online communications?

12 A. The family desktop computer, is that what

13 you're asking?

14 Q. Yes.

15 A. Yes.

16 Q. So just to verify, handing the witness

17 what is marked as Exhibit 2 for identification -- I

18 can take that back -- these were the documents that

19 you handed to me this morning before we started.

20 Is it correct to say that those are all

21 the documents that you found pursuant to the

22 searches that you've just described to us?

23 A. Yes, along with the DVD.

24 Q. And the DVD has been marked as Exhibit 3.

25 A. Would you like this back?

1 Q. Sure. Tell me what's on Defendants'
2 Exhibit 3.
3 A. There are graphic -- when I say graphic, I
4 just mean vector-based -- graphics of fliers,
5 posters that were generated by members of the band.
6 There are photographs that I had, for some reason or
7 another been able to save, that date back as early
8 as 2000 -- early 2000s. Those are live photographs,
9 some backstage photographs.
10 There is -- the majority of this disk is
11 approximately a hundred or more photographs of a
12 photo session that took place at my residence, 240
13 Lovell Avenue, that wound up on my computer because
14 the photographer wanted to download and the band
15 wanted to inspect pictures onsite. So those were in
16 my computer as well. And that's all.
17 I use -- most of the photographs that I
18 would view of the band were hosted by the
19 partnership band Web site and third-party Web sites
20 such as Sac Scene, Napkin Nights and some other
21 groups that hosted photos. So I did not personally
22 retain or keep a lot of photographs. These are all.
23 Q. So it's fair to say that the photographs
24 and other material that is embodied in the DVD
25 that's been marked as Defendants' Exhibit 3

1 constitute all of the graphic data that you have
2 that pertains to the band?
3 A. No.
4 Q. What other graphic data is there that is
5 not on this DVD that you have?
6 A. After speaking with you, I have raw
7 footage on videos that were given to me through my
8 camera. I would hand my video camera out to friends
9 or fans of the band to try to capture media assets
10 to later be put on the Web site.
11 Q. Anything else that you can think of now?
12 A. No, not that I can think of. I apologize
13 for the video.
14 Q. How much videotape is there?
15 A. Actual tapes would be maybe eight tapes.
16 They were erased and recycled. If you would like me
17 to estimate what data may be on the computer, I can
18 do that.
19 Q. Sure.
20 A. There may be a total of anywhere from 500
21 megabytes to over two gig -- gigabytes of that same
22 footage in raw form and edited video form, some of
23 which is currently posted and hosted on the business
24 Web site.
25 Q. The band's business Web site?

Exhibit B

David M. Given (State Bar No. 142375)
Feather D. Baron (State Bar No. 252489)
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 35th Floor
San Francisco, California 94111
Telephone: (415) 398-0900
Facsimile: (415) 398-0911
dmg@phillaw.com
fdb@phillaw.com

Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PATRICK GILLES, an individual, on behalf of himself, Plaintiff, v. JEFFREY FLETCHER, an individual; JOHN MCDILL, an individual; THOMAS RICKARD, an individual; CHRISTOPHER ADAMS, an individual; MICHAEL TAYLOR, an individual; JAY SIEGAN, an individual; JAY SIEGAN PRESENTS, an unknown business entity; and WONDERBREAD 5, a California general partnership; and DOES 1-10, inclusive, Defendants.	CASE NO. CGC-09-489573 **DEFENDANTS' OFFER TO COMPROMISE** **[CCP § 998]**

Pursuant to Code of Civil Procedure § 998, defendants JEFFREY FLETCHER, JOHN MCDILL, THOMAS RICKARD, CHRISTOPHER ADAMS, MICHAEL TAYLOR, JAY SIEGAN, JAY SIEGAN PRESENTS and WONDERBREAD 5 (collectively, "defendants"), jointly offer to compromise this dispute for payment to plaintiff in the total sum of THIRTY THOUSAND DOLLARS ($30,000.01) and ONE CENT, inclusive of reasonable attorney's fees and costs incurred to the date of this offer,

and otherwise in satisfaction of all claims for damages, costs, expenses, attorney's fees and interest in this action.

Plaintiff may indicate acceptance of this offer by signing, or having his attorney sign, the statement to that effect set forth below or by signing a separate statement that the offer is accepted.

DATED: September 3, 2009

PHILLIPS, ERLEWINE & GIVEN LLP

By: _____
David M. Given
Attorneys for Defendants

Plaintiff accepts the above offer on the terms stated.

DATED: _____, 2009

THE WROAN LAW FIRM, INC.

By: _____
Douglas B. Wroan
Attorneys for Plaintiff

PROOF OF SERVICE

I, Greg Gheorghiu, declare that I am over the age of eighteen and not a party to this action. My business address is Phillips, Erlewine & Given LLP, 50 California Street, 35th Floor, San Francisco, California 94111, which is located in the City and County of San Francisco where the service described below took place.

On the date below, at my place of business at San Francisco, California, a copy of the following document(s):

DEFENDANTS' OFFER TO COMPROMISE [CCP § 998]

was addressed to:

Douglas B. Wroan, Esq.
5155 West Rosecrans Avenue, Ste. 229
Los Angeles, CA 90250

[X] BY FIRST CLASS MAIL: I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices as indicated above.

[ ] BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof.

[ ] BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed envelope. I caused such envelope(s) to be handed to our messenger service to be delivered as indicated above.

[ ] BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I caused such envelope(s) to be delivered to the above address(es) by overnight express.

[ ] BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I delivered each of said envelopes by hand to the person(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 3, 2009 at San Francisco, California.

Greg Gheorghiu

Exhibit C

PHILLIPS, ERLEWINE & GIVEN LLP
ATTORNEYS AT LAW
50 CALIFORNIA STREET, 35TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 398-0900
FAX (415) 398-0911
WWW.PHILLAW.COM

DAVID M. GIVEN
dmg@phillaw.com

September 15, 2009

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
5155 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250

Re: Gilles v. Wonderbread 5, et al.
S.F. Superior Court Case No. CGC-09-489573

Dear Mr. Wroan:

I understand our clients' Offer of Compromise has reached you.

To the extent Corporations Code § 16701 applies to this case, this letter shall serve as the band's offer to pay for your client's "interest" in the band. The band is ready, willing and able to pay this amount forthwith, in settlement of all your client's claims and subject to dismissal of your client's legal action with prejudice.

Our August 25th letter together with the enclosed serves as an explanation of how the amount contained in the Offer of Compromise was reached. As previously discussed, the band has no assets or (known) liabilities (and therefore no liquidation value), and no balance sheet or income statement is available. Notwithstanding the enclosed, the band disputes it owes your client anything and reserves all rights on this subject, including without limitation on any damages incurred by it as a result of your client's actions.

Very truly yours,

David M. Given

DMG:hs
Encl

GILLES v. WONDERBREAD 5
S.F. Superior Court Case No. CGC-09-489573

C.C.P. §998 Offer of Compromise

Data:

Gilles Annual WB5 Gross Income
(per 1099s – rounded to nearest dollar)

2004 - $51,754
2005 - $57,755
2006 - $68,787
2007 - $56,904
2008 - $59,308

Average = $58,902

Assumptions:

Multiplier = 1

Replacement Allocation Reduction = 1/3

Value of Share before Setoffs = $38,875

Setoffs:

Severance Payment Received = ($5,000)

Pro Rata Share of Transaction Costs to Band = ($4,000 est.)

Damages to Band Caused by Gilles = TBD

Total Est. Value:

Rounded to $30,000

-END-

Exhibit D

David M. Given (State Bar No. 142375)
Feather D. Baron (State Bar No. 252489)
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Attorneys for Defendants

PHILLIPS, ERLEWINE & GIVEN LLP
RECEIVED
OCT 8 2009
DOP RGE DMG NAO MMB FDB GAG YYC FILE CALENDAR

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PATRICK GILLES, an individual, on behalf of himself, Plaintiff, v. JEFFREY FLETCHER, an individual; JOHN MCDILL, an individual; THOMAS RICKARD, an individual; CHRISTOPHER ADAMS, an individual; MICHAEL TAYLOR, an individual; JAY SIEGAN, an individual; JAY SIEGAN PRESENTS, an unknown business entity; and WONDERBREAD 5, a California general partnership; and DOES 1-10, inclusive, Defendants.	CASE NO. CGC-09-489573 **DEFENDANTS' OFFER TO COMPROMISE** [CCP § 998]

Pursuant to Code of Civil Procedure § 998, defendants JEFFREY FLETCHER, JOHN MCDILL, THOMAS RICKARD, CHRISTOPHER ADAMS, MICHAEL TAYLOR, JAY SIEGAN, JAY SIEGAN PRESENTS and WONDERBREAD 5 (collectively, "defendants"), jointly offer to compromise this dispute for payment to plaintiff in the total sum of THIRTY THOUSAND DOLLARS ($30,000.01) and ONE CENT, inclusive of reasonable attorney's fees and costs incurred to the date of this offer,

and otherwise in satisfaction of all claims for damages, costs, expenses, attorney's fees and interest in this action.

Plaintiff may indicate acceptance of this offer by signing, or having his attorney sign, the statement to that effect set forth below or by signing a separate statement that the offer is accepted.

DATED: September 3, 2009

PHILLIPS, ERLEWINE & GIVEN LLP

By: _____
David M. Given
Attorneys for Defendants

Plaintiff accepts the above offer on the terms stated.

DATED: 10/1, 2009

THE WROAN LAW FIRM, INC.

By: _____
Douglas B. Wroan
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I work in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 5155 West Rosecrans Avenue, Suite 229, Hawthorne, California 90250.

On October 1, 2009, I served the within document described as: **PLAINTIFF'S ACCEPTANCE OF DEFENDANT'S OFFER TO COMPROMISE [CCP §998]** on the interested parties in this action, by placing XX a true copy thereof / __ the original thereof enclosed in a sealed enveloped addressed as follows:

David M. Given
Feather D. Baron
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 35th Floor
San Francisco, CA 94111

XXX **BY MAIL:** I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of the collection in the ordinary course of business. The sealed envelope and postage fully prepared was placed for collection and mailing on the above date following ordinary business practices.

____ **BY FAX TRANSMISSION:** I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was _(415) 398-0911. No error was reported by the facsimile machine that I used.

____ **BY OVERNIGHT DELIVERY (FED EX/UPS/DHL):** I enclosed said documents(s) in an envelope or package provided by _____ (name of carrier) and addressed it to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of _____ or delivered such document(s) to a courier or driver authorized by _____ to receive document(s).

____ **BY PERSONAL DELIVERY:** I caused such envelops/document(s) to be delivered by hand in person to the office of the addresses listed in the Service List.

____ **(FEDERAL ONLY):** I declare that I am employed in the office as a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 1, 2009, at Hawthorne, California.

Douglas Wroan

Exhibit E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5, registered on October 6, 2009

WONDERBREAD 5,	)	
	)	Cancellation No._____
Petitioner,	)	
	)	
v.	)	
	)	
PATRICK GILLES,	)	
	)	
Registrant.	)	
	)	

PETITION FOR CANCELLATION

Petitioner WONDERBREAD 5, a California general partnership, having a place of business at c/o Jay Siegan Presents, 1655 Polk Street, San Francisco, CA 94109, believes that it is and will continue to be damaged by Registration No. 3691948 and hereby petitions to cancel said registration under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064 on grounds that the registration was obtained through fraud on the United States Patent and Trademark Office, is likely to be confused with a mark previously used and not abandoned by Petitioner, and that the registrant cannot lawfully use the mark.

To the best of Petitioner's knowledge, the name and address of the current registrant are as follows: Patrick Gilles, 240 Lovell Avenue, Mill Valley, CA 94941.

As grounds for cancellation, Petitioner alleges the following:

1. Petitioner is a decade-plus old musical group named WONDERBREAD 5, based in the San Francisco Bay Area, and comprised of the following members: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor (individually and collectively the "Band"). Since its inception, the Band has operated as a general partnership.

2. On information and belief, Registrant is an individual residing in Mill Valley, CA.

3. Petitioner has performed and continues to perform under the name WONDERBREAD 5 for over ten years, and during that time, has developed a substantial client and fan base. As a result, the Wonderbread 5 name has become well-known in the San Francisco Bay Area and beyond as referring to the Band.

4. For the past 12 years, the Band has maintained the website located at www.wonderbread5.com as a promotional vehicle and a means of keeping its fans updated about future performances and other news concerning the Band.

5. In light of the Band's continuous use in commerce of the name WONDERBREAD 5 and the fact that it is universally known by that name, the Band is the rightful owner of the WONDERBREAD 5 mark (the "Mark").

6. The current registrant of the Mark, Patrick Gilles ("Registrant"), is a former member of the Band. Registrant left the Band on or about March 9, 2009. At that time, Registrant ceased to be a member of the Band or the WONDERBREAD 5 general partnership.

7. Three days after he was terminated from the Band, Registrant filed an application for registration of the WONDERBREAD 5 mark in connection with "[e]ntertainment services in the nature of live musical performances." **Exhibit A**. Registrant filed this application without the knowledge or consent of the Band.

Registrant Releases All Interest in the Band

8. On June 17, 2009, Mr. Gilles filed a Complaint against the Band, its individual members, and its agent and manager in San Francisco Superior Court (the "Lawsuit"). See **Exhibit B.** The Complaint stated various causes of action, all in connection with Registrant's involvement in and entitlements from his connection with the Band.

9. Nowhere in the 37-page Complaint, did Registrant claim ownership of the WONDERBREAD 5 mark or mention that he had filed an application for the Mark.

10. On September 3, 2009, the defendants in the Lawsuit served Registrant with an Offer to Compromise, pursuant to California Code of Civil Procedure section 998. Section 998 is a California statute that promotes settlement by allowing a party to make an offer to compromise before trial. See **Exhibit C.**

11. Following service of that Offer, counsel for the Bank informed counsel for Registrant, in writing, that the Offer constituted "the [B]and's offer to pay for your client's 'interest' in the [B]and." See **Exhibit D.**

12. On October 1, 2009, Registrant accepted the Band's offer. See **Exhibit E.** The Band remitted payment to Registrant on October 8, 2009, and Registrant dismissed his Complaint, with prejudice, on October 22, 2009. See **Exhibit F.** As such, Mr. Gilles released all claims in and to the Band, including the name WONDERBREAD 5.

Registrant's Wrongful Use of the Mark

13. Despite that Registrant has released, in exchange for monetary compensation, all claims in and to the Band, Registrant attempts to claim ownership of, and derive rights from, the Band's mark and trade name.

14. During the course of the above-described litigation, Registrant never disclosed that he had filed an application for the WONDERBREAD 5 mark.

15. Following settlement of the litigation, the Band members discovered that Registrant had registered the domain name www.thewonderbread5.com. The website contains a single page, containing a photograph of Registrant beneath the caption "Get ready to fall in love all over again! Bigger, Faster, Louder, Nicer" and a photograph of the trademark certificate at issue here along with a photograph of Registrant performing as a member of the Band. See **Exhibit G.** It appears that the domain name was registered in April 2009.

16. Also following settlement of the litigation, the Band members discovered that Registrant had also created a new MySpace page under the name "thewonderbread5." The Band has operated a MySpace page under the name "wonderbread5" for approximately five years.

17. Following Registrant's creation of the above sites, the Band received many calls and emails from fans and clients inquiring as to why Registrant appeared to be operating under the Wonderbread5 name.

Registrant's Fraudulent Procurement of the Mark

18. In his trademark application, Registrant declared, under penalty of perjury, that "no other person, firm corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used

on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive." Exhibit A.

19. At the time of his filing, Registrant clearly knew that the term "WONDERBREAD 5" had previously been used, and was continuing to be used, by the Band.

20. On information and belief, at the time of his filing of the trademark application, Registrant knew that members of the general public encountering the Mark in connection with musical performances understood the Mark to identify the Band.

21. On information and belief, Registrant misrepresented the nature of his use in commerce of the Mark and misrepresented his rights to the Mark at the time he submitted his Application and continued to prosecute the trademark application leading to the registration that is the subject of this petition.

22. On information and belief, the aforementioned false statements were made with the intent to induce authorized agents of the USPTO to grant said registration, and reasonably relying on the truth of said false statements, the USPTO, did, in fact, grant said registration to Registrant.

23. Petitioner believes that it has been and will continue to be damaged by Registrant's registration of the Mark.

24. In view of the above-listed statements, Registrant is not entitled to Registration No. 3691948 because Registrant, upon information and belief, committed fraud in the procurement of the subject registration, has released all interest in the Band and therefore cannot lawfully use the Mark and because Petitioner has previously used and not abandoned the same mark.

WHEREFORE, Petitioner respectfully requests that Registration No. 3691948 be cancelled.

Respectfully submitted,

WONDERBREAD 5

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/

David M. Given
Meagan McKinley Ball
50 California Street, 35th Floor
San Francisco, CA 94111
Telephone: (415) 398-0900
Fascimile: (415) 398-0911
Email: dmg@phillaw.com
mmb@phillaw.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Meagan McKinley-Ball, Esq. Certify that on this 26th day of February, 2010, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent by U.S. Mail to:

Patrick Gilles
240 Lovell Avenue
Mill Valley, CA 94941

Douglas B. Wroan, Esq.
5155 West Rosecrans Avenue, Ste. 229
Los Angeles, CA 90250

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/
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Email: dmg@phillaw.com
mmb@phillaw.com
Attorneys for Petitioner

Exhibit F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

PHILLIPS, SHEWINE & GIVEN LLP
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FILE
CALENDAR

In the matter of Trademark Registration No. 3691948
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

ANSWER AND GROUNDS OF DEFENSE

COMES NOW, the Registrant, Patrick Gilles (hereinafter "Registrant"), by and through counsel, The Trademark Company, PLLC, and files his Answer and Grounds of Defense to the Petition for Cancellation and in response to Petitioner's allegations states as follows:

ANSWER

In response to the specifically enumerated paragraphs of the Petition for Cancellation, Registrant responds as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Petition for Cancellation and therefore denies the same.

2. Registrant admits the allegations of Paragraph 2.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Petition for Cancellation and therefore denies the same.

4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Petition for Cancellation and therefore denies the same.

5. Registrant denies the allegations set forth in Paragraph 5 of the Petition for Cancellation and demands strict proof thereof.

6. Registrant denies the allegations set forth in Paragraph 6 of the Petition for Cancellation and demands strict proof thereof.

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Petition for Cancellation and therefore denies the same.

8. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Petition for Cancellation and therefore denies the same.

9. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Petition for Cancellation and therefore denies the same.

10. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Petition for Cancellation and therefore denies the same.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Petition for Cancellation and therefore denies the same.

12. Registrant denies the allegations set forth in Paragraph 12 of the Petition for Cancellation and demands strict proof thereof.

13. Registrant denies the allegations set forth in Paragraph 13 of the Petition for Cancellation and demands strict proof thereof.

14. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Petition for Cancellation and therefore denies the same.

15. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Petition for Cancellation and therefore denies the same.

16. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Petition for Cancellation and therefore denies the same.

17. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Petition for Cancellation and therefore denies the same.

18. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Petition for Cancellation and therefore denies the same.

19. Registrant denies the allegations set forth in Paragraph 19 of the Petition for Cancellation and demands strict proof thereof.

20. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Petition for Cancellation and therefore denies the same.

21. Registrant denies the allegations set forth in Paragraph 21 of the Petition for Cancellation and demands strict proof thereof.

22. Registrant denies the allegations set forth in Paragraph 22 of the Petition for Cancellation and demands strict proof thereof.

23. Registrant denies the allegations set forth in Paragraph 23 of the Petition for Cancellation and demands strict proof thereof.

24. Registrant denies the allegations set forth in Paragraph 24 of the Petition for Cancellation and demands strict proof thereof.

Registrant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Registrant prays that the Petition for Cancellation be dismissed.

DATED this 8th day of April, 2010.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Telephone (800) 906-8626 ext. 704
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Attorney for Registrant Patrick Gilles

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of Trademark Registration No. 3691948
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
Petitioner,	:	
vs.	:	Cancellation No. 92052150
Patrick Gilles,	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing Answer and Grounds of Defense this 8th day of April, 2010, to be served, via first class mail, postage prepaid, upon:

Meagan McKinley Ball
Phillips, Erlewine & Given LLP
50 California Street, 35th Floor
San Francisco, CA 94111

/Matthew H. Swyers
Matthew H. Swyers

CERTIFICATE OF SERVICE

I, Meagan McKinley-Ball, Esq. Certify that on this 30th day of July, 2010, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent by U.S. Mail to:

Matthew H. Swyers, Esq.
The Trademark Company
344 Maple Avenue West, Suite 151
Vienna, VA 22180

Dated: July 30, 2010 PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/
David M. Given
Meagan McKinley Ball
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Email: dmg@phillaw.com
mmb@phillaw.com
Attorneys for Petitioner

EXHIBIT E

PHILLIPS, ERLEWINE & GIVEN LLP
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WWW.PHILLAW.COM

DAVID M. GIVEN
dmg@phillaw.com

September 15, 2009

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
5155 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250

Re: Gilles v. Wonderbread 5, et al.
S.F. Superior Court Case No. CGC-09-489573

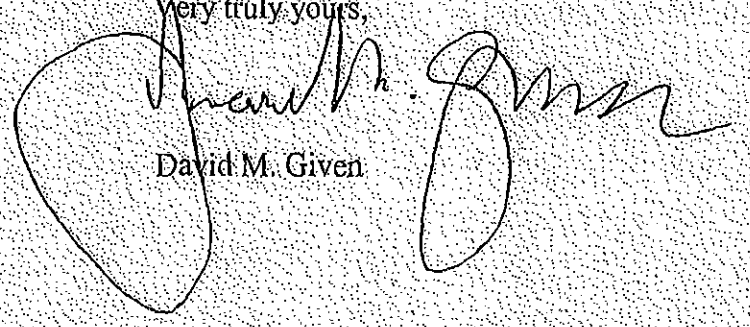
Dear Mr. Wroan:

I understand our clients' Offer of Compromise has reached you.

To the extent Corporations Code § 16701 applies to this case, this letter shall serve as the band's offer to pay for your client's "interest" in the band. The band is ready, willing and able to pay this amount forthwith, in settlement of all your client's claims and subject to dismissal of your client's legal action with prejudice.

Our August 25th letter together with the enclosed serves as an explanation of how the amount contained in the Offer of Compromise was reached. As previously discussed, the band has no assets or (known) liabilities (and therefore no liquidation value), and no balance sheet or income statement is available. Notwithstanding the enclosed, the band disputes it owes your client anything and reserves all rights on this subject, including without limitation on any damages incurred by it as a result of your client's actions.

Very truly yours,



David M. Given

DMG:hs
Encl.

GILLES v. WONDERBREAD 5
S.F. Superior Court Case No. CGC-09-489573

C.C.P. §998 Offer of Compromise

Data:

Gilles Annual WB5 Gross Income
(per 1099s – rounded to nearest dollar)

2004 - $51,754
2005 - $57,755
2006 - $68,787
2007 - $56,904
2008 - $59,308

Average = $58,902

Assumptions:

Multiplier = 1

Replacement Allocation Reduction = 1/3

Value of Share before Setoffs = $38,875

Setoffs:

Severance Payment Received = ($5,000)

Pro Rata Share of Transaction Costs to Band = ($4,000 est.)

Damages to Band Caused by Gilles = TBD

Total Est. Value:

Rounded to $30,000

-END-