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

3

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

6

7

8 WONDERBREAD 5,

9 Petitioner,

10 vs.

 Cancellation No. 92052150

11 PATRICK GILLES,

12 Registrant.

13 _____/

14 Deposition of

15 JAY SIEGAN

16 Tuesday, October 8th, 2013

17

18

19

20

21

22 REPORTED BY: JOAN F. MARTIN, CSR #6036

23

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25

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1 BE IT REMEMBERED THAT, pursuant to Agreement of
2 the Parties, and on Tuesday, the 8th day of October,
3 2013, commencing at the hour of 10:15 o'clock a.m.
4 thereof, at the Law Offices of Phillips, Erlewine &
5 Given LLP, 50 California Street, Suite 3240, San
6 Francisco, California, before me, JOAN F. MARTIN, a
7 Certified Shorthand Reporter of the State of
8 California, personally appeared

9 JAY SIEGAN,
10 called as a witness by the Petitioner, having been by
11 me first duly sworn, was examined and testified as
12 hereinafter set forth.

13 ---oOo---

14 APPEARANCES OF COUNSEL

15 Representing Petitioner:

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20 Representing Registrant (appearing via conference
21 call):

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25 Also present: Patrick Gilles (via conference call)

1 EXAMINATION BY MR. CARLIN

2 MR. CARLIN: Q. All right. Good morning,
3 Mr. Siegan. I'm Nicholas Carlin, and I represent the
4 petitioner in this matter, the Wonderbread 5.

5 I would like to ask you: How are you
6 currently employed?

7 MR. SWYERS: If I may stop for a moment, I'd like
8 to make my record before you begin. I thought I was
9 going to be given the opportunity to do so.

10 MR. CARLIN: All right. What would you like to
11 say?

12 MR. SWYERS: Thank you. This is Matthew Swyers
13 appearing on behalf of Patrick Gilles.

14 Prior, and I believe off the record, a
15 discussion was had in which I asked, for clarification,
16 as to whether or not Mr. Siegan is a party to this
17 proceeding or not. And it is a relatively simple
18 question, and to date I have not heard an answer.

19 And I would ask counsel to answer, pointblank:
20 Is Mr. Siegan a party to this proceeding or not? Prior
21 to this deposition continuing. Mr. Carlin?

22 MR. CARLIN: I'm not here to answer your
23 questions, Mr. Swyers. You can make your record. The
24 record speaks for itself.

25 MR. SWYERS: You can't answer one way or another

1 whether or not you're contending, as we sit here today,
2 he's a party of Wonderbread 5, or whether or not you
3 have attorney-client privilege or representative
4 capacity over this man in your office?

5 MR. CARLIN: Mr. Siegan is the manager of the
6 Wonderbread 5 and a member of the Wonderbread 5 general
7 partnership. That was in the petitioners' pre-trial
8 disclosures.

9 MR. SWYERS: Okay. That's your contention? Thank
10 you.

11 MR. CARLIN: And we do have --

12 MR. SWYERS: That's all I needed.

13 MR. CARLIN: And we do have an attorney-client
14 privilege.

15 MR. SWYERS: You're asserting attorney privilege;
16 I understand. Thank you.

17 MR. CARLIN: All right.

18 Q. Mr. Siegan, how are you currently employed?

19 A. I own my business, Jay Siegan Presents.

20 Q. All right. And what is Jay Siegan Presents?

21 A. We are an event production and artist
22 management company.

23 Q. Okay.

24 MR. CARLIN: Now, we -- I would like to mark as
25 our first exhibit a set of four printouts from your

1 website.

2 (Petitioner's Exhibit 1 marked for
3 identification.)

4 MR. CARLIN: Q. Mr. Siegan, showing you
5 Exhibit 1, can you describe what this portrays?

6 And for the record, we provided Mr. Swyers
7 with a copy of this last night.

8 MR. SWYERS: Thank you. Yeah.

9 THE WITNESS: These are image captures from my
10 website.

11 MR. CARLIN: Q. And showing you Page 2, what does
12 that depict?

13 A. Those are artists that we recommend for
14 events.

15 Q. And can you give the names of some of the
16 artists?

17 A. Wonderbread 5, Notorious, Duran Duran, Daft
18 Punk, The Cheeseballs, and so on and so forth.

19 Q. And do you manage some of these bands?

20 A. I manage some of these bands.

21 Q. All right. And how long have you been
22 involved in the -- in the business of event
23 presentation and band management?

24 A. Approximately 19 years.

25 Q. Can you tell us how you got involved in this

1 type of business.

2 A. I was a musician in a band, and I took a
3 liking to the business side of things and naturally
4 evolved into a capacity where I was helping fellow
5 artists with the business side of their bands.

6 Q. Can you tell us: Are you involved in any kind
7 of philanthropic activities?

8 A. One of our primary goals is philanthropic
9 endeavors for Music in Schools, both locally and on a
10 national level. We focus frequently on the communities
11 where I was raised, in Novato and Sonoma County, where
12 our bands are actively participating in fundraising
13 events for the community.

14 Q. What kind of institutions do you help to
15 fund-raise for?

16 MR. SWYERS: And I'm going to object on the
17 grounds of relevance at this juncture.

18 MR. CARLIN: Q. You can answer.

19 A. Schools, sports programs for youth, music
20 programs for youth, parks and development of play
21 spaces for children.

22 Q. What kind of schools are you talking about?

23 A. From preschools to colleges. Everything in
24 between.

25 Q. Are those in the Bay Area?

1 A. Mostly.

2 Q. All right. Can you give us the name of a few
3 of the schools you're involved with?

4 A. Sure

5 MR. SWYERS: Continuing objection.

6 MR. CARLIN: Q. You can answer.

7 A. Pleasant Valley in Novato, Cardinal Newman
8 high school in Santa Rosa, St. Ignatius High School in
9 San Francisco, Town boys' school in San Francisco,
10 Sacred Heart in the South Bay. The list goes on.
11 There might be over a couple of hundred, perhaps.

12 Q. When did you first become involved with the
13 Wonderbread 5?

14 A. Approximately 15 years ago now.

15 Q. Can you remember how it came about that you
16 became involved with them, or at least first heard
17 about them?

18 A. I knew a couple of the members prior to
19 considering working with them professionally, and I had
20 been looking for a new band to represent, so I went and
21 saw them, and we started a dialogue about working
22 together.

23 Q. And who was it that you first spoke with?

24 A. Jeffrey Fletcher.

25 Q. So the band had already been performing at

1 that point?

2 A. Correct.

3 Q. And who was in the band at that time?

4 A. Jeffrey Fletcher, Tommy Rickard, John McDill,
5 Chris Adams and Pat Gilles.

6 Q. Did you get them all?

7 A. I think we did.

8 MR. CARLIN: How many did he name there?

9 (Record read.)

10 MR. CARLIN: Q. And was that the same lineup
11 until Pat Gilles was terminated from the band?

12 A. It was.

13 Q. So what -- what was -- what was your
14 relationship with the band?

15 A. In a management to booking capacity, helping
16 them secure work, and providing guidance for their
17 career.

18 Q. So you were their manager?

19 A. I was and am.

20 Q. And how were the -- sorry.

21 When did you actually become their manager?

22 A. Approximately 15 years ago.

23 Q. So approximately in 1998 or so?

24 A. Correct. I'm not certain of the exact date.

25 Q. Now, at that point, once you became their

1 manager, was there an agreement as to how profits and
2 expenses would be shared?

3 A. There was.

4 Q. And what was that agreement?

5 A. That we split everything into sixths.

6 Q. So if you made -- if the band made \$6,000 at a
7 gig, how would that be divided?

8 A. \$1,000 a person, with expenses taken off the
9 top. For example, if we had to rent a sound system, we
10 would deduct that from the top and then divide it up
11 six ways. If we had to hire a sound person, we would
12 deduct that off the top and then divide it six ways.

13 Q. And how were -- how were decisions made about
14 various things having to do with the band?

15 A. Collectively.

16 Q. And were you involved in those?

17 A. Yes.

18 Q. And so were you the manager of the band up
19 through the time that Pat departed the band?

20 A. Yes.

21 Q. Are you still the manager of the band?

22 A. Yes.

23 Q. Did you consider the group -- the band and
24 yourself to be a general partnership?

25 A. Yes.

1 Q. Was that generally understood by the band?

2 A. Most certainly.

3 Q. Was -- was Pat Gilles the manager of the band?

4 A. Never.

5 Q. What was his involvement with the -- apart
6 from playing guitar in the band, what did he have to do
7 with the business of the band's partnership?

8 A. Theoretically, he was to participate with his
9 voice and his vote on different decisions. And he had
10 varying degrees of involvement, as per his own will.

11 Q. So were there any particular functions that he
12 had? Like, was he in charge of something?

13 A. No.

14 Q. Did he ever do any -- did he ever do any
15 marketing for the band?

16 A. I believe at some point he had participated in
17 some of the marketing conversations. He was in the
18 band early on, and so I would have to imagine that his
19 voice was being heard in various decisions around the
20 marketing of the group.

21 Q. Would you say that he undertook the majority
22 of the managerial functions of the band?

23 A. The majority?

24 Q. Right.

25 A. Never.

1 Q. That was your job?

2 A. Correct. The majority of the work being done
3 by the band was Tommy Rickard and Jeffrey Fletcher.

4 Q. So was Pat Gilles in charge of marketing the
5 band?

6 A. No.

7 Q. Let's talk about the -- the trademark the
8 "Wonderbread 5." How was that used?

9 A. We used the name professionally as the band's
10 brand to go out and secure work -- public events,
11 weddings, corporate events, things of that nature.

12 Q. Did Pat Gilles ever indicate he thought the
13 trademark "Wonderbread 5" belonged to him? I'm talking
14 about prior to --

15 A. No.

16 Q. -- the time that he was terminated from the
17 band.

18 A. No, not at all.

19 Q. What was the understanding as to who owned the
20 trademark?

21 A. We were all 100 percent clear that it was a
22 partnership, always.

23 Q. Did Pat ever indicate that he thought that the
24 rest of the band members were just working for him?

25 A. No.

1 Q. Were the rest of the band members just working
2 for Pat?

3 A. No.

4 Q. Were they all just independent contractors
5 working for Pat?

6 A. No.

7 Q. I understand that from time to time other
8 people played with the band; is that right?

9 A. Sure. Subs.

10 Q. Were they -- were any of these subs considered
11 members of the partnership?

12 A. Never.

13 Q. How frequently would people have substitutes?
14 How frequently would the band have substitutes?

15 A. It varied per member. But the core members
16 were always those five, as I stated earlier, and anyone
17 else was a substitute player here and there. We're
18 talking about people that played very, very
19 occasionally. There was no confusion internally about
20 who was in the band.

21 Q. Did you personally attend the band's shows?

22 A. Many.

23 Q. How was the -- how was the money handled, in
24 terms of when the band was paid? How was that handled?

25 A. Generally we received the money on behalf of

1 the band and distributed it in accordance to the band.

2 Q. So when you say you "received the money," are
3 you referring to from the -- whoever hired the band?

4 A. Correct.

5 Q. The club or the -- the event planners or --

6 A. That's right.

7 Q. And so those -- those clients would pay the
8 money to -- who would they pay the money to?

9 A. We generally have them make it payable to Jay
10 Siegan Presents, and either a band member would pick up
11 a check and deposit it into the business account, or
12 they would mail it directly to us.

13 Q. Okay.

14 A. And once we were in receipt of full payment,
15 we would distribute it out to the band members in
16 accordance to our agreement.

17 Q. One-sixth to each person?

18 A. Generally.

19 Q. How were the substitutes paid?

20 A. Each member had a different agreement with
21 their substitute players. Some members would pay them
22 the full rate of what their sixth share is, and others
23 would keep some of the money and pay the performer
24 less.

25 I generally didn't manage or make the

1 decisions around the substitute players. We left that
2 to each member internally.

3 Q. So whoever -- the person who needed the
4 substitute would be responsible for that?

5 A. Correct.

6 Q. Do you know whether Pat Gilles ever set up a
7 bank account for the band, for the Wonderbread 5?

8 A. We did find out that he did.

9 Q. Was that done with the authorization of the
10 rest of the members?

11 A. No.

12 Q. Was it done with your authorization?

13 A. No.

14 Q. Do you know whether any money from clients
15 flowed into that bank account?

16 A. I don't think it did.

17 Q. What happened when the band found out that he
18 had opened up a bank account for the band --
19 purportedly for the band?

20 A. The band was upset and I believe asked him to
21 no longer have this account on their behalf. I think
22 they felt bamboozled by it.

23 Q. Did you personally feel bamboozled by it?

24 A. Yes.

25 Q. And did you personally authorize him to open a

1 bank account on behalf of the band?

2 A. No.

3 Q. Did you consent to it?

4 A. No.

5 Q. Did he ask you if he could have permission to
6 do that?

7 A. No.

8 Q. At some point, apparently, he also filed a
9 Limited Liability Company Articles of Organization.

10 Are you aware of that?

11 A. I'm aware of it now.

12 Q. When did you become aware of that?

13 A. Shortly after he was no longer in the group.

14 MR. CARLIN: Let me mark as our next exhibit,
15 No. 2, the Limited Liability Articles of Incorporation
16 previously produced by the respondents, their Bates
17 numbers 1 through 3.

18 (Petitioner's Exhibit 2 marked for
19 identification.)

20 MR. CARLIN: Q. Let me show you this. So showing
21 you Exhibit 2 --

22 And for the record, I'll say that this is a
23 Limited Liability Company Articles of Organization. It
24 was filed October 13th, 2000, with the State of
25 California.

1 Did Mr. Gilles ever consult you about --

2 And let me also state for the record that's in
3 the name of Wonderbread5.com LLC.

4 So did Mr. Gilles ever consult with the band
5 prior to filing these articles of incorporation?

6 A. Absolutely not. He snuck this in afterwards.

7 Q. Did he ever ask you about it prior to filing?

8 A. No. It's clear to me that he did this to take
9 revenge on, or somehow hurt, the band.

10 MR. SWYERS: Objection as to your knowledge of his
11 intent.

12 THE WITNESS: It's clear to me that this
13 happened --

14 MR. CARLIN: Q. Well, no. There's no question
15 pending.

16 A. Yeah.

17 Q. So were you -- so -- let me strike that.

18 Can you read, under Item No. 5, where it says
19 who the liability company will be managed by?

20 A. (Witness reviews document.)

21 Q. Do you see a check mark there?

22 A. It appears Pat checked off "Single member
23 limited liability company."

24 Q. All right. So in other words, this was filed
25 as a single member limited liability company.

1 A. Wow. Yeah.

2 Q. Now, he claims that he filed this without
3 objection from the other band members.

4 Did the other band members even know he was
5 doing this?

6 A. No. Of course not.

7 MR. SWYERS: Object, to the extent that he's
8 testifying to other band members' knowledge that are
9 not present here today, on foundation grounds.

10 MR. CARLIN: Q. Did he -- did he file these
11 articles of incorporation with your knowledge?

12 A. No.

13 Q. When did the band learn about the fact that he
14 had filed this limited liability company?

15 MR. SWYERS: Objection to the extent we keep
16 asking questions about the band's general knowledge. I
17 think it's foundation.

18 MR. CARLIN: Q. Did anyone in the band indicate
19 to you that they became aware that he had filed these
20 articles of incorporation?

21 MR. SWYERS: Objection. That would be hearsay.

22 MR. CARLIN: Well, it goes to --

23 Q. You can answer the question. The court will
24 rule on that.

25 A. The band did, indeed, find out about it after

1 the fact.

2 Q. And what was their reaction?

3 MR. SWYERS: Continuing objection.

4 THE WITNESS: They were shocked that he would go
5 as far as to try to take the band's name via a sole
6 member LLC like this.

7 MR. CARLIN: Q. Well, do you remember, was there
8 a meeting or phone calls or something? Was there some
9 event in which the band, you know, discussed the fact
10 of Pat having filed these articles of incorporation,
11 with the other members of the band?

12 A. We did, indeed, all discuss it.

13 Q. And what was communicated to Pat about this,
14 about the fact that he filed this LLC?

15 A. At that point --

16 MR. SWYERS: Objection to the extent it would be
17 hearsay if he's responding that others communicated to
18 Pat. If he communicated to Pat, it's not hearsay.

19 MR. CARLIN: Q. Go ahead.

20 A. Can you repeat the question.

21 Q. Did you communicate anything to Pat about the
22 band's reaction to his filing these articles of
23 incorporation?

24 A. No.

25 Q. Okay. Do you know whether anyone else in the

1 band did?

2 A. I don't know.

3 Q. Did the band have a corporate address?

4 A. My address served as the business address for
5 the band.

6 Q. Pat Gilles has stated in an affidavit filed in
7 this case, quote, "My house served as the official
8 address of record for the band's corporate address."

9 Is that true?

10 A. No.

11 Q. Was the -- this LLC the band's LLC?

12 A. No. This is Pat going out on his own, without
13 the band's knowledge, after he was asked to leave.

14 Q. Pat has stated in his affidavit filed in this
15 case, quote, "I was the only one authorized to act on
16 behalf of the band's LLC with the State."

17 Is his characterization of the LLC as the
18 band's LLC true?

19 A. No. Clearly he went and got this LLC without
20 our knowledge and didn't include anyone else on it.

21 MR. SWYERS: Objection as to our collective
22 knowledge. Testifying outside the scope. Foundation.

23 And, also, can we kindly note -- excuse me --
24 mark the affidavit if we're going to refer to it in his
25 official trial testimony?

1 MR. CARLIN: Sure. Let's mark the affidavit as
2 Exhibit 3.

3 (Petitioner's Exhibit 3 marked for
4 identification.)

5 MR. CARLIN: Q. So Mr. Swyers has objected on
6 foundational grounds to your talking about what the
7 band in general knew, so let me ask you some questions
8 about that.

9 As a member of the partnership, since you
10 started in around 1998, how frequently would you
11 discuss band business issues with members of the band?

12 A. Almost daily. All of them, with a primary
13 focus on speaking with Jeffrey Fletcher and Tommy
14 Rickard.

15 Q. So that's almost every day from 1998 to the
16 present?

17 A. Correct.

18 Q. And based upon your conversations with -- your
19 almost daily conversations with members of the band, do
20 you believe that you have a good understanding of how
21 the band feels about various business issues relating
22 to the band?

23 A. Of course.

24 Q. Can you describe what each band member's role
25 was in the business of the band?

1 A. Yes. Jeffrey Fletcher handled a majority of
2 the promotion and marketing of the group on a daily
3 basis; very active with social media, posters, flyers,
4 website updating, and all the other tertiary things
5 that come along with that.

6 Chris Adams built the website and maintained
7 it, and also helped it evolve as we would rebrand and
8 come up with fresh looks for the band.

9 John McDill would help create many of the
10 backing tracks that the band used for performance,
11 which was a labor-intensive endeavor where he was in a
12 studio, frequently without other band members, helping
13 build this up.

14 Tommy Rickard served as a liaison between JSP
15 and the band on almost a daily basis, discussing all of
16 the inner workings with me, strategizing, approving or
17 disapproving of gigs, and collaborating with me on
18 strategies to secure the band more work.

19 Q. And Pat?

20 A. Pat had helped with a radio promotion or two
21 because he had a relationship with some folks at one
22 station in San Francisco. That's all I recall right
23 now.

24 Q. Of these five band members, could you put sort
25 of in order who actually did the most work in the

1 business of the band, to the least? I don't want to
2 put you on the spot, so if you can't do that, that's
3 okay.

4 A. Jeff and Tommy always did the most work, that
5 I could see. And then I would say Chris Adams and John
6 McDill and, I think, by all accounts, Pat did the
7 least.

8 Q. Okay. Let's -- let's talk about Pat -- Pat's
9 relationship with the band.

10 What kind of -- what kind of issues did the
11 band have with Pat that led, ultimately, to his being
12 terminated?

13 A. There were issues --

14 MR. SWYERS: Objection on the grounds of
15 foundation and possible hearsay, depending on the
16 answer.

17 MR. CARLIN: Q. We've already established the
18 foundation that you spoke with band members every day.
19 So . . . anyway, the court can rule on his objection.

20 You're allowed to answer the question.

21 MR. SWYERS: He can speak -- if we're going to do
22 speaking objections, that's fine.

23 He can speak in reference to his impression.
24 He can't speak on anything in reference to what people
25 told him, if I'm not mistaken.

1 MR. CARLIN: Q. You can just answer the question.

2 A. Can you repeat the question.

3 Q. Sure. What -- what -- what were the factors
4 that led to Pat's ultimately being terminated by the
5 band?

6 A. Pat almost completely disconnected from the
7 band, communication-wise. He was performing in a
8 substandard fashion. He would literally face a wall
9 when on stage performing, slowly destroying the
10 goodwill of the band to the point where we were getting
11 comments about it regularly. And it was concerning for
12 all of us.

13 Q. Let me -- let me go back a little bit.

14 You say he would turn to face the wall. Is
15 this something that you personally observed?

16 A. I did.

17 Q. On how many occasions?

18 A. Multiple.

19 Q. And why was that a problem?

20 A. Because the band's show is based on
21 interacting with the crowd, and the show is simply
22 designed as a high-energy dance party that's engaging
23 with an audience.

24 Pat was the furthest of being engaged of any
25 performer I had seen in one of these bands, literally

1 facing a wall. He was shut off.

2 Q. So he was the least-engaged performer you had
3 seen in -- in when, your career? Or --

4 A. Of all --

5 Q. -- last couple years, or what?

6 A. Of all of my bands at that point. He wasn't
7 like that the entire time he was in the band; he became
8 that way.

9 Q. So when did he start becoming that way?

10 A. I don't recall.

11 Q. Was it just days before he was terminated, or
12 weeks or months?

13 A. No.

14 Q. Or years? Or --

15 A. Years.

16 Q. And were efforts made to get him to change?

17 A. Many. Lots of members reached out to him
18 individually. The group reached out to him as a group.
19 I tried to communicate with him about it. I had called
20 him personally and warned him that I think the band
21 would ask him to leave if he didn't change. The band
22 attempted to do counseling with him.

23 I found the band to be particularly
24 communicative with him and trying to reach out and
25 resolve the interpersonal issues. But they -- Pat's

1 resentment appeared to grow and grow and grow to the
2 point where he wouldn't talk to them. And it created a
3 situation where the band's performances weren't being
4 perceived as very good anymore.

5 Q. Did you receive any complaints from clients?

6 A. Many.

7 Q. Can you describe a few of those?

8 A. People noticing how disconnected Pat was.
9 People noticing Pat being rude to them, the clients.
10 Things of that nature.

11 Q. Did that affect --

12 MR. SWYERS: I'll object on the grounds of hearsay
13 and also not produced in discovery to any client
14 complaints that Mr. Siegan may or may not have
15 received, and/or the -- the entity that is opposing --
16 or, excuse me -- petitioning to cancel the instant
17 trademark.

18 MR. CARLIN: Q. Were these complaints made to you
19 in writing or orally?

20 A. Orally.

21 Q. Can you give me an example --

22 MR. SWYERS: In that case I'll renew my objection
23 to hearsay.

24 MR. CARLIN: It's not hearsay. But . . .

25 Q. What --

1 A. Many long-term clients had expressed
2 disappointment in the evolution of the band,
3 particularly around Pat. Some of these are clients
4 that we worked with multiple times who observed the
5 band over the course of multiple years and noticed how
6 much things had changed due to Pat's performance.

7 If need be, I could certainly --

8 MR. SWYERS: Continuing objection as to hearsay to
9 the extent he's testifying that things, that other
10 people, who are not here testifying today, allegedly
11 told him, who are not parties.

12 MR. CARLIN: It goes to the band's state of mind
13 as to why they terminated Pat.

14 THE WITNESS: That's just part of why they
15 terminated Pat.

16 MR. CARLIN: Q. What other reasons were there?
17 Well, sorry.

18 Before I -- before I get into that, did the --
19 did the complaints from the clients result in reduction
20 in the amount of gigs the band was getting?

21 A. Yes.

22 Q. Can you quantify that at all?

23 A. There are a few examples of people who would
24 not move forward and hire the band because they
25 perceived the band as not on top of their game any

1 longer, while Pat was in the group, and it was quite
2 clear.

3 Q. And after Pat left, what happened to business?

4 A. Business increased because you could see the
5 relief in the band and the pleasure of having the
6 camaraderie of the entire collective of the group again
7 when we secured our new guitar player.

8 So the band had a renewed positive energy
9 which certainly affected things in a good manner.

10 Q. What were the other reasons that Pat was
11 terminated?

12 A. Many of the band members had an objection to
13 Pat's infidelity, because it had grown to a level where
14 it was constant and it was upsetting to the band
15 members. He was cheating on his wife, Maryanne Gilles,
16 on a regular basis in front of the band. The band had
17 to -- the band felt like they had to lie in front of
18 Maryanne, when they didn't want to. My understanding
19 is a few of them had friendships with her prior to Pat
20 marrying her.

21 He was bringing his girlfriends to events
22 where it wasn't appropriate to have girlfriends;
23 certainly if he was to bring someone, it should have
24 been his wife.

25 We had an event somewhere outside of the

1 country; I can't recall where. Maybe it was a -- maybe
2 it was just the U.S. Virgin Islands. I'm not sure
3 where --

4 MR. SWYERS: Mr. Siegan and Mr. Carlin, if I may
5 interject; not trying to interrupt your testimony.
6 However, I would like to designate this portion of the
7 record as confidential, as I have before.

8 So please continue. But we would like to
9 designate any of these types of testimony in reference
10 to these allegations as confidential. Thank you.

11 MR. CARLIN: Right. And per our previous
12 discussion on this, my understanding is you were going
13 to review the transcripts and designate those portions
14 you wanted designated --

15 MR. SWYERS: Yes. That would be wonderful.

16 MR. CARLIN: And you don't need to object because
17 we have a continuing agreement that you will not waive
18 that objection, and that you can do it then.

19 MR. SWYERS: Okay. Great. I won't do that again.
20 Thank you.

21 MR. CARLIN: Sure.

22 THE WITNESS: The band had a lot of reservations
23 around the volume of cheating. There was also concern
24 around a statutory rape issue. There was also concern
25 around an issue where Pat kicked someone at a

1 performance. There was also an issue where Pat
2 threatened the life of the lead singer's wife and
3 children, although now that I say that out loud, I
4 believe that was after he was asked to leave.

5 MR. CARLIN: Q. Okay. What about Pat's
6 involvement in sort of the business of the band in the
7 last year or so before he was terminated, did -- did
8 that change, the amount of his involvement and
9 engagement?

10 A. He had little involvement in the first place,
11 but his level of engagement on stage had gone down to
12 very little, and all he would do, when I talked to him,
13 is let me know how much he hated the rest of the band.

14 Q. Did Pat's behavior, in your opinion, affect
15 the -- the value of the trademark --

16 A. Absolutely.

17 Q. -- of Wonderbread 5? In what way?

18 A. Negative energy, poor performances, bad
19 attitude with clients, no communication with the band.
20 All of those things combined to make for a very tough
21 situation internally. He was deflating the band's
22 spirit.

23 Q. So just to be clear, did any of the clients
24 specifically tell you that Pat was performing in such a
25 way that it was a negative for them?

1 A. Yes.

2 Q. And was this just an isolated comment from
3 clients, or was it --

4 A. No. There were multiple comments.

5 MR. SWYERS: Again, continuing objection on
6 hearsay of persons not here today testifying.

7 MR. CARLIN: It goes to state of mind.

8 THE WITNESS: I can produce --

9 MR. SWYERS: It wasn't -- the direct question is,
10 did anyone comment and what were the comments.

11 THE WITNESS: I can produce names of clients, if
12 need be.

13 MR. SWYERS: Unfortunately, they weren't produced
14 in discovery. So, no, you can't.

15 MR. CARLIN: All right. Mr. Swyers, you don't get
16 to tell us what we can or can't do, or tell Mr. Siegan
17 what he can or can't do. You can take up whatever the
18 issues are with the court.

19 MR. SWYERS: Well, if your intent today is to
20 produce witnesses' names that we've never heard of from
21 before in this matter, when I know my interrogatory
22 answers asked for all potential witnesses and other
23 matters of that regard, I don't even have to pull them
24 up. I'll just say I'll be happy to.

25 MR. CARLIN: I'm just saying we don't -- this is

1 not a conversation we have to have on the record of his
2 testimony. Okay?

3 MR. SWYERS: Well, so long as we continue to ask
4 highly objectionable questions, I have to state my
5 objections.

6 MR. CARLIN: You weren't -- you weren't --

7 MR. SWYERS: If you're going to allow people to
8 just continue to just testify against the rules of
9 evidence, then I'm going to have to state my
10 objections.

11 MR. CARLIN: You weren't stating an objection; you
12 were instructing my client on what he can and can't do.
13 Please -- please --

14 MR. SWYERS: Please continue -- please continue,
15 if you would like. If you want to produce names of
16 witnesses, you can. I will move to strike them.

17 MR. CARLIN: Please restrict --

18 MR. SWYERS: I don't mean to interrupt your pace.

19 MR. CARLIN: Please restrict your comments on this
20 record to objections.

21 Q. All right. So were you involved in the
22 decision to terminate Pat from the -- from the band?

23 A. No.

24 Q. How was that decision made?

25 A. Internally with the core members.

1 Q. And how was it communicated to you?

2 A. Via phone call.

3 Q. From who?

4 A. I believe multiple members of the band were on
5 the phone with me at the time.

6 Q. And did you concur?

7 A. I did.

8 Q. And then who communicated this decision to
9 Pat? If you know.

10 A. I don't recall.

11 Q. Did --

12 A. Pardon me. Chris Adams called him, I believe.

13 Q. So did Pat contact you after he had been
14 notified he was terminated from the band?

15 A. Yes.

16 Q. And how did that occur? Was it a call? Did
17 he come in person?

18 A. It was a call.

19 Q. And what did he say to you?

20 A. He was very frantic and upset and angry and
21 particularly vengeful. He -- I believe that is when he
22 expressed, perhaps for the second time, that he was
23 going to kill family members of other band members.
24 Started to sound really serious.

25 And I didn't know what his mental state was

1 like; he indicated numerous times that he had no more
2 reason to live. He made references to suicide. He
3 made references to his marriage ending. It was sad,
4 and I was empathetic to it.

5 Q. And when did this conversation take place?
6 Was it the same day he was notified?

7 A. It was the same day.

8 Q. And was that March 11th, 2009?

9 A. Yes.

10 Q. Did he -- did you have any further
11 conversations with him after that one phone call?

12 A. We did.

13 Q. When were those?

14 A. In the following days.

15 Q. So how did those come about?

16 A. He was calling me somewhat frequently to
17 discuss this. He had indicated to me multiple times
18 that he intended to show up to perform, and that if
19 there was an issue around that, there was going to be
20 violent repercussions.

21 Q. Meaning what, that if they wouldn't let him
22 join --

23 A. If they wouldn't let him join.

24 Q. -- on stage?

25 A. Yeah. Correct.

1 Q. Did you -- did you try and talk him out of
2 that?

3 A. I did. I let him know that I didn't think
4 that was a good idea, and that he didn't want to engage
5 in any kind of violence, and that no one wanted to have
6 a confrontation.

7 And I encouraged him to just give this time
8 and to not show up because, naturally, due to
9 heightened emotions, there would be conflict on site,
10 and my job is to make sure that we have as little of
11 that as possible

12 He continually told me that he was going to
13 show up for a performance in the Sacramento area that
14 was happening right afterwards.

15 Q. All right. And how long did these calls with
16 him continue?

17 A. For a few days.

18 Q. And then what -- what happened? Did he just
19 stop calling?

20 A. He did.

21 Q. In any of these phone calls with him, did he
22 ever tell you that he felt that Wonderbread 5 didn't
23 have the right to use the name Wonderbread 5 now that
24 he was out of the band?

25 A. No.

1 Q. Did he -- did he ask you, as the band's
2 manager, to tell the guys to stop using the name
3 Wonderbread 5?

4 A. No.

5 MR. SWYERS: Objection as to the form of the
6 question. Mr. Gilles hasn't testified that he was the
7 band's manager.

8 MR. CARLIN: No. I meant that -- perhaps that
9 question wasn't phrased very well. But I was referring
10 to Mr. Siegan as the band's manager. So maybe I could
11 rephrase that.

12 MR. SWYERS: Based upon his testimony today.

13 MR. CARLIN: Yeah.

14 MR. SWYERS: That's fine.

15 MR. CARLIN: Q. So, Mr. Siegan, did -- in any of
16 those phone calls, did Pat Gilles ask you to tell the
17 rest of the band members to stop using the name
18 Wonderbread 5?

19 A. No.

20 Q. Did he ever indicate to you, in any of those
21 phone calls, that he felt the band did not have the
22 right to use the name Wonderbread 5 anymore?

23 A. No. What he was asserting was that he was
24 going to continue to be in the band.

25 Q. Did he ever tell you that -- in those phone

1 calls, that the name Wonderbread 5 belonged to him?

2 A. No. I would think he'd know how absurd that
3 is.

4 Q. You mentioned some of the reasons that Pat was
5 terminated. What about credibility, was that an issue?

6 A. As far as?

7 Q. As far as one of the reasons that he was
8 terminated from the band.

9 A. Yes. The band didn't trust him any longer.
10 There were too many lies. The voluminous amount of
11 lies around his marriage and relationships with
12 different women were fairly profound, and it made the
13 band really uncomfortable.

14 And then the band starting catching him up in
15 numerous lies regarding the band and things that were
16 going on around it, and the trust level diminished to a
17 point where the band finally essentially cracked and
18 said, "I can't work with him anymore."

19 Q. Can you give some examples of these lies?

20 A. Reasons why he couldn't be at sound check,
21 reasons why he was late, what's going on with him
22 personally, where he was, why didn't he complete the
23 task of learning the song. It was permeating the
24 dialogue with the band and was . . . everywhere.

25 Q. All right. So sometime after Pat was

1 terminated from the band, did he file a lawsuit against
2 you and the others?

3 A. He did.

4 MR. SWYERS: All right. I'm going to mark the
5 Complaint in the Gilles versus Fletcher action as our
6 next exhibit in order, No. 4.

7 MR. SWYERS: Thank you. No objection.

8 (Petitioner's Exhibit 4 marked for
9 identification.)

10 MR. CARLIN: Q. Do you recognize this as the
11 Complaint that was filed against you and the others?

12 A. I do.

13 Q. Did you understand that in part what
14 Mr. Gilles was asking for in this Complaint was to be
15 paid for his interest in the Wonderbread 5 partnership?

16 A. I do understand that.

17 Q. Whatever that interest might be?

18 A. Whatever that interest might be.

19 Q. All right. And then subsequently you
20 understand that this lawsuit was settled, right?

21 A. Correct.

22 Q. And there was an offer to compromise which was
23 signed by Mr. Gilles's attorney resolving the -- the
24 lawsuit.

25 A. Correct.

1 MR. CARLIN: Let me have this Defendants' Offer to
2 Compromise marked as Exhibit 5.

3 MR. SWYERS: No objection.

4 THE WITNESS: Pat did indicate to me and others
5 that he was going to continue to sue us.

6 (Petitioner's Exhibit 5 marked for
7 identification.)

8 MR. CARLIN: Q. All right. Could you just read
9 the first sentence of this offer to compromise.

10 A. "Pursuant to Code of Civil Procedure 998,
11 Defendants Jeffrey Fletcher, John McDill, Thomas
12 Rickard, Christopher Adams, Michael Taylor and Jay
13 Siegan Presents and Wonderbread 5, collectively,
14 defendants, jointly offer to compromise this dispute
15 for payment to plaintiff in the total sum of
16 \$30,000.01, inclusive of reasonable attorney's fees and
17 costs incurred to the date of this offer, and otherwise
18 in satisfaction of all claims for damages, costs,
19 expenses, attorney's fees and interest in the" -- "in
20 this action."

21 Q. All right. So did you, then, understand that
22 this settlement that you and the other band members
23 paid Pat Gilles, \$30,000, that was in settlement of all
24 of these claims that were stated in the Complaint?

25 A. Correct.

1 Q. Including his claim to be paid off for his
2 interest in the partnership?

3 A. Of course.

4 MR. SWYERS: Objection. Foundation. That's not
5 in the Complaint.

6 MR. CARLIN: That's not an objection. That's an
7 argument.

8 MR. SWYERS: Your question assumes it's in the
9 Complaint and, accordingly, it's a foundation issue
10 with your question.

11 MR. CARLIN: The Complaint speaks for itself.

12 MR. SWYERS: So for form of the question or
13 foundation. It's not in the Complaint.

14 MR. CARLIN: The Complaint speaks for itself.

15 MR. SWYERS: It certainly does.

16 MR. CARLIN: Q. When did you first find out that
17 Pat Gilles had actually filed an application as to
18 register a trademark in the name Wonderbread 5?

19 A. I believe that was in October of 2009.

20 Q. That was after you paid him the money?

21 A. Correct.

22 Q. Did he ever -- he didn't tell any -- well, he
23 didn't tell you before that time that he was planning
24 to file a trademark registration in the name of
25 Wonderbread 5?

1 A. No. He most certainly did not.

2 Q. In those phone calls in which -- which he had
3 with you on the day and the days after his termination,
4 did he ever mention to you that he was going to be
5 filing a trademark application for the Wonderbread 5?

6 A. He did not. What he mentioned is he was going
7 to ruin the band's lives, go after everyone as much as
8 he could, but he didn't indicate specifically how or
9 what.

10 MR. CARLIN: I assume we have the trademark
11 application in the record, but since I'm coming to this
12 a little later, let me just mark this as an exhibit
13 just in case.

14 Let's mark the trademark application as
15 Exhibit 6

16 MR. SWYERS: No. Objection.

17 (Petitioner's Exhibit 6 marked for
18 identification.)

19 MR. CARLIN: Q. So showing you Exhibit 6, I'll
20 represent this is Mr. Gilles's trademark application
21 dated March 12th, 2009, the day after he was terminated
22 from the band.

23 And I'd like you to read under the
24 "declaration" section of that application this portion
25 starting with the words "He/she believes" -- I'm sorry.

1 Wait a minute. Actually, "to the best of his or her
2 knowledge." Can you read that part.

3 A. Sure.

4 Q. Just from here to here (indicating).

5 A. Okay. "To the best of his/her knowledge and
6 belief, no other person, firm, corporation or
7 association has the right to use the mark in commerce."

8 Q. He's talking about the Wonderbread 5 mark.

9 Is it at all plausible that Mr. Gilles could
10 have legitimately believed that the band did not have
11 the right to use the name Wonderbread 5 on March 12th,
12 2009?

13 A. Of course not. It's just being sneaky.

14 MR. CARLIN: Do you want take a break? We've been
15 going for about an hour. What time is it? Yeah. Why
16 don't we take a short five-minute break, Matthew.

17 MR. SWYERS: That's fine. I have two -- well,
18 11:15 your time?

19 MR. CARLIN: Yeah

20 MR. SWYERS: Come back about 11:20?

21 MR. CARLIN: Sure.

22 MR. SWYERS: All righty. I'll call back in.

23 Thank you.

24 (Brief recess.)

25 MR. CARLIN: All right. And we're all here as

1 well. Let's go back on the record.

2 Q. So, Mr. Siegan, I want to ask you about the
3 Red Devil Lounge. I understand that at some point you
4 and Pat Gilles were in business together in connection
5 with the Red Devil Lounge; is that correct?

6 A. That's correct.

7 Q. And how did that come about?

8 A. Many of the band members had talked about
9 saving money together to perhaps go into some sort of
10 investment. It was in the ether, specifically, what we
11 were going to do, but there was talk of maybe buying
12 property together or starting some sort of business.
13 And in fact that might have been the account Pat
14 opened; I don't recall.

15 But Pat and I were sort of the last two
16 standing. I believe that Pat and I were putting in
17 shares of some money that we'd earned somewhere. I
18 honestly just don't recall. But it turned out to be,
19 really, only Pat and I that were saving in the end.
20 And him and I kept dialogue going outside of the band.
21 And it grew naturally into a desire to buy a business
22 together, and we ended up doing so.

23 Q. And approximately when was this?

24 A. May 2002, I believe, is when we actually
25 commenced opening the doors of the business. It had

1 been in the works for a while prior to that.

2 Q. And what is the Red Devil Lounge?

3 A. It's a live music venue.

4 Q. In?

5 A. San Francisco.

6 Q. So did you form any kind of business entity?

7 A. Yes. In fact, Pat took the lead on forming
8 those entities, and I believe he formed the LLC. There
9 was also a third partner.

10 Q. Okay. So there was an LLC for your Red Devil
11 Lounge business?

12 A. Correct.

13 Q. And what was that called?

14 A. It was called Wonderbar LLC, which, as you may
15 guess, has a slight Wonderbread 5 reference there. In
16 fact, I'm not sure if that's the LLC -- I'm mixing up
17 LLCs here, so forgive me.

18 But, yes, that was the LLC formed by Pat for
19 the Red Devil.

20 Q. Did -- how long did he remain a member of this
21 LLC?

22 A. I believe Pat stayed in Wonderbar LLC for
23 approximately six years, give or take. And then he let
24 me know he wanted to leave.

25 Q. So that was in around 2008, then, that he quit

1 that business?

2 A. Approximately.

3 Q. And what did he say his reasons were?

4 A. I don't believe he had the bandwidth to put
5 the time and energy into the business.

6 Q. Were you --

7 A. And he wasn't as passionate about it as I was.

8 Q. Were you having any difficulties with him as a
9 business partner in that venture?

10 A. I didn't feel like he was putting in the same
11 amount of work as I did, and so there was some tension
12 around that. But I believe he tried. And then he
13 gracefully exited.

14 Q. You mentioned an incident with, potentially,
15 statutory rape. What was that about?

16 A. The band had a --

17 MR. SWYERS: And I'll put an objection on the
18 record before the witness testifies in regard to FRE
19 403.

20 That being said, please continue, subject to
21 objection. Sorry.

22 THE WITNESS: The band had been discussing their
23 concern around an issue where Pat was having sexual
24 relations with a minor, and if that could bring legal
25 trouble to the band and/or damage their reputation

1 because, apparently, this girl knew others in the
2 band's community. And there was a great deal of
3 concern around what that could result in.

4 MR. SWYERS: And I'll also put an objection after
5 the fact, now that I heard the testimony, as to
6 hearsay. Thank you.

7 MR. CARLIN: Q. What time period was this?

8 A. Prior to Pat leaving.

9 Q. And how did you learn about this issue?

10 A. From multiple band members. There was quite a
11 bit of dialogue around it.

12 Q. And you're saying that some -- someone was
13 accusing Pat of having engaged in statutory rape?

14 A. Yes.

15 Q. And who was accusing him of that?

16 A. A girl in the Sacramento area.

17 Q. Had she made any demands on --

18 MR. SWYERS: At this juncture, I'll have to add in
19 to my 403 objection and my hearsay objection, "not
20 previously produced in discovery" objection as well.
21 Thank you.

22 MR. CARLIN: Q. Had this woman made any demands
23 on Pat?

24 A. I don't know.

25 Q. Did she make any demands on the band?

1 A. I don't know.

2 Q. Were the band members concerned that she might
3 make some demands on the band?

4 A. Yes. More specifically I believe they were
5 concerned that this would damage the goodwill of the
6 band even further. This is a band that plays family
7 events and cares about their reputation in the
8 community.

9 Q. Do you know whether she actually made a demand
10 for money on Pat?

11 A. I do not know.

12 Q. Do you know whether he paid her any money?

13 A. I don't know.

14 MR. CARLIN: All right. I think that's all the
15 questions I have at this time. I'll reserve some
16 redirect, but you can do your cross, if you like.

17 MR. SWYERS: Why, thank you. I shall.

18 EXAMINATION BY MR. SWYERS

19 MR. SWYERS: Mr. Siegan, again, my name is Matthew
20 Swyers, and I represent Mr. Gilles in this matter.

21 Q. Before we really get started, I just want to
22 clarify your position again. I believe you testified
23 that you were both the booking agent and the manager
24 for the band; is that correct?

25 A. No.

1 Q. How is it incorrect?

2 A. I function in the capacity of a manager, and I
3 think it's semantics, which title you choose to use.

4 Q. Well, let's say legal semantics, so indulge
5 me.

6 A. Manager.

7 Q. Okay. So you're a manager. Do you -- thank
8 you.

9 So you would act as the actual manager of the
10 band, yes?

11 A. Yes.

12 Q. And you have acted -- it's your testimony that
13 you have acted in that capacity since being -- or
14 becoming associated with the band in roughly 1998,
15 correct?

16 A. I would say it evolved into that.

17 Q. Well, earlier you said it was that. So when
18 did it evolve into that?

19 A. Sometime shortly thereafter me being involved
20 with the band.

21 Q. Define "shortly thereafter," please.

22 A. I don't recall.

23 Q. Okay. Was it 1999?

24 A. I don't recall.

25 Q. 2000?

1 A. I don't recall.

2 Q. 2001?

3 A. Some -- somewhere around there. I don't
4 recall.

5 Q. Okay. Sometime between 1998 and 2001, in that
6 three-year period?

7 A. Somewhere in there.

8 Q. You became the manager of the band?

9 A. Correct.

10 Q. And it's your testimony that the band
11 understood that you were the manager of the band?

12 A. Correct.

13 Q. Now, during this time, also, you were the
14 booking agent; is that correct?

15 A. No.

16 Q. All right. How does the band get their work?

17 A. We have many relationships with multiple
18 hiring parties, and we all work together to procure
19 employment.

20 Q. Very well. Now, you don't actually play in
21 the band, correct?

22 A. No. Pat incorrectly listed me as playing in
23 the band, but I don't.

24 Q. Oh, well, we may touch on that later, but --
25 so you're the -- you testified you're the manager of

1 the band, and now I thought you testified previously
2 you also did bookings for them, but now you're saying
3 you don't do bookings for them. Or do you? Which is
4 it?

5 MR. CARLIN: Misrepresents his testimony.
6 Objection. Misrepresents his testimony.

7 MR. SWYERS: That's fine. He can testify anew
8 again.

9 Q. Just tell me: Do you do bookings for the band
10 or not? Yes or no.

11 A. Yes.

12 Q. Simple question.

13 MR. CARLIN: Objection. Asked and answered.

14 Go ahead.

15 MR. SWYERS: I'm allowed to cross-examine, because
16 I'm trying to figure out what he's doing for the band.

17 Q. It's a simple question: Do you do bookings
18 for the band?

19 A. Yes.

20 Q. Thank you. But you're not the booking agent?

21 A. I used the term "manager."

22 Q. You're their booking manager?

23 A. I used the term "manager."

24 Q. Okay. So as the manager, part of your
25 function is to book the band for its next work?

1 A. Yes.

2 Q. Okay. And so your website also, I think,
3 prominently sets that forth.

4 We've already entered that into an exhibit,
5 correct?

6 A. Correct.

7 Q. People would contact Jay Siegan Presents in
8 order to book the Wonderbread 5 for their next event,
9 correct?

10 A. Sometimes.

11 Q. Sometimes. Well, they're not going to --
12 unfortunately, they're not going to always contact Jay
13 Siegan Presents, but that is a major function of the
14 website, correct, to actually get people to contact you
15 to book the band? That's your role in the band,
16 correct?

17 A. That is one of the functions.

18 MR. CARLIN: Objection. Compound.

19 MR. SWYERS: Okay.

20 Q. You testified earlier that the band operates
21 as a general partnership, correct?

22 A. Correct.

23 Q. And you are part of that general
24 partnership --

25 A. Correct.

1 Q. -- correct? All right.

2 Can you agree -- or can we agree you don't
3 perform with the band?

4 A. Correct.

5 Q. Okay. You don't play an instrument, and you
6 don't sing on stage. Correct?

7 MR. CARLIN: Objection. Compound.

8 THE WITNESS: I play many instruments.

9 MR. SWYERS: I can separate them out if you like.

10 Q. You don't sing on stage. Correct?

11 A. I have sung on the stage before.

12 Q. Do you do that frequently?

13 A. Somewhat.

14 Q. Are you part of the band now?

15 A. No.

16 Q. Do you perform or otherwise play an instrument
17 for the band?

18 A. No.

19 Q. So your function with the band is in a
20 managerial capacity, correct?

21 A. Correct.

22 Q. And in the context of that managerial
23 capacity, among other things, you also book the band
24 for future engagements, correct?

25 A. Correct.

1 Q. What is your talent agency license number for
2 the State of California, Mr. Siegan?

3 A. I don't have it with me.

4 Q. I see. Do you have one?

5 A. Yes.

6 Q. And you understand you're under oath. Okay?
7 You do have one?

8 A. Yes.

9 Q. And what year did you actually get that
10 license?

11 A. I don't recall.

12 Q. All right. Was it 1998?

13 A. I don't recall.

14 Q. Are you not going to recall whatsoever, or can
15 you at least give it to me in a time, like what year it
16 was? You know, like a couple years' window like we did
17 before?

18 A. No.

19 Q. Okay. Is it fair to say you don't have a
20 talent agency license in the State of California,
21 Mr. Siegan?

22 A. That's incorrect.

23 Q. All right. What is the name under which your
24 talent agency license exists with the State of
25 California, Mr. Siegan?

1 A. Jay Siegan Presents.

2 Q. Okay. If I did a search during your
3 deposition today of the California state records, which
4 are readily available, and it did not come back with
5 any results for "Jay Siegan Presents," would that be a
6 surprise to you?

7 A. That would.

8 Q. Okay. But you can't tell me when you became a
9 licensed member?

10 A. I cannot.

11 Q. Excuse me. A licensed talent agency.
12 Correct?

13 A. Correct.

14 Q. And your testimony is, today, you are clearly
15 licensed by the State of California?

16 MR. CARLIN: Objection. Asked and answered. This
17 is harassment, Matthew. You've already got your answer
18 on the record. Harassment. Move on.

19 MR. SWYERS: Q. As a licensed talent agent in the
20 State of California, are you generally familiar with
21 the laws surrounding talent agencies in California?

22 MR. CARLIN: Objection. Calls for legal
23 conclusion, legal opinion

24 MR. SWYERS: That doesn't call for a legal
25 conclusion; it's asking if he's generally aware of the

1 laws.

2 Q. You may answer.

3 A. Generally.

4 Q. In the State of California, can you both be a
5 manager and a booking or talent agent? Is that legal?
6 If you know.

7 MR. CARLIN: Objection. Relevance. Calls for a
8 legal opinion.

9 MR. SWYERS: It goes to the credibility of the
10 witness.

11 MR. CARLIN: Calls for a legal opinion.

12 MR. SWYERS: Q. Can you -- if you know. Can
13 you -- generally, can you be a manager and a booking
14 agent, Mr. Siegan?

15 MR. CARLIN: Objection.

16 MR. SWYERS: Q. Is that legal?

17 MR. CARLIN: Objection. Relevance. Calls for a
18 legal opinion.

19 MR. SWYERS: Q. Is it your impression that it is
20 legal?

21 And it is relevant; it goes to the credibility
22 of the witness.

23 MR. CARLIN: Objection. Calls --

24 MR. SWYERS: Q. Mr. Siegan, you may answer the
25 question until your counsel wants to instruct you not

1 to answer the question.

2 MR. CARLIN: Objection. Calls for a legal
3 opinion; and relevance.

4 MR. SWYERS: Thank you. Your objection is
5 preserved. I would like the witness to answer the
6 question, however.

7 THE WITNESS: Can you repeat the question.

8 MR. SWYERS: Q. Preserving counsel's objection,
9 so he doesn't have to interject again, preserving all
10 objections on this point, what is your impression as to
11 whether or not you can legally operate as both a
12 manager of a band and a booking agent or talent agent
13 for that band in the State of California? Can you do
14 that?

15 A. I don't know.

16 Q. Thank you.

17 A. You're welcome.

18 Q. You testified, you know, today, regarding
19 multiple issues concerning Mr. Gilles, multiple alleged
20 issues concerning Mr. Gilles, including your knowledge
21 of him in the Wonderbread 5, as well as your
22 partnership with him in the Red Devil Lounge.

23 Would you ever work with Mr. Gilles again?

24 A. No.

25 Q. When did you form that opinion?

1 A. When he threatened to kill Jeffrey Fletcher's
2 wife and children.

3 Q. Not admitting to that, of course, but do you
4 know approximately when that was? Was that -- I think
5 you had maybe said that was around the time they asked
6 him to leave the band.

7 A. Correct.

8 Q. Okay. And so at that juncture, you would
9 never have worked with him again?

10 A. Correct.

11 Q. Okay. Do you recognize the e-mail
12 "jaysiegan@me.com"? And I can spell it for you, if you
13 would like.

14 A. Please do.

15 Q. j-a-y-s-i-e-g-a-n, at, m-e dot-com.

16 A. I'm sorry; can you repeat that.

17 Q. Of course. j-a-y-s-i-e-g-a-n, at -- that's
18 the "at" sign -- m-e dot-com.

19 A. That sounds familiar.

20 Q. Would it be fair to say it's your e-mail
21 address, or one that you've used in the past?

22 A. Yes.

23 Q. Okay. And did there come a time that --
24 following the dismissal of the civil suit you testified
25 today, that you e-mailed from that account to

1 Mr. Gilles expressing that you would still like to work
2 with him in the future?

3 A. I don't recall.

4 Q. Specifically on Monday, December 21st, 2009,
5 at approximately 12:09 p.m., Pacific Daylight Time.
6 You don't recall one way or another whether or not you
7 sent Mr. Gilles an e-mail stating that you would like
8 to have some acoustic-Y-cover type things and other
9 matters done by Mr. Gilles on your behalf?

10 MR. CARLIN: Has this document been produced in
11 discovery?

12 MR. SWYERS: Rebuttal evidence.

13 MR. CARLIN: Excuse me? Was this document
14 produced in discovery?

15 MR. SWYERS: I believe it's rebuttal evidence.
16 I'm not sure if it was at this juncture. I'm just
17 asking a simple question.

18 If your objection is it was not produced in
19 discovery, got to make the objection, and we can deal
20 with it later.

21 MR. CARLIN: All right. I'll object it was not
22 produced in discovery

23 MR. SWYERS: Your objection is noted. Thank you.

24 Q. Does that bring -- does that -- do you have
25 any recollection of sending that e-mail to Mr. Gilles?

1 A. No.

2 Q. Or any other e-mails after the civil suit was
3 supposedly settled?

4 A. No.

5 Q. You became associated with Wonderbread 5 in
6 1998, correct?

7 A. Around that time.

8 Q. Okay. It was after the band was already
9 founded, correct?

10 A. Yes.

11 Q. Okay. Forgive me. I'm checking my notes.
12 Bear with me for one moment.

13 A. Okay.

14 Q. I want to direct your attention to the
15 documents that have been entered into the record here,
16 and specifically, I guess, Exhibit 4, the Complaint in
17 the civil matter. And forgive me; I'm going to go with
18 Exhibit 5. But it was the -- it was the offer for
19 judgment that was entered in as well.

20 You testified that it was your impression that
21 this resolved all issues with Mr. Gilles, including,
22 presumptively, buying out his interest in the band; is
23 that correct?

24 A. Yes.

25 Q. Now, you would agree with me there are no

1 other writings between the entity opposing -- or excuse
2 me -- petitioning to cancel Mr. Gilles's trademark
3 and -- forgive me -- and you, in regard to any other
4 transfer of ownership, correct?

5 MR. CARLIN: I'm going to object --

6 MR. SWYERS: Q. About the trademark rights.

7 MR. CARLIN: I'm just going to object that that
8 question was complex and incomprehensible.

9 Can you rephrase it.

10 MR. SWYERS: I will be happy to try and rephrase.
11 I do that from time to time.

12 Q. The only right that is signed -- in this case,
13 it was by Mr. Gilles's former attorney, and I believe a
14 member of your current attorney's office, regarding
15 rights associated with that case with the offer of
16 compromise judgment; is that correct?

17 A. I can't even understand what you're saying.

18 Q. Do you have any settlement agreement between
19 you or the Wonderbread 5, as they're currently alleged,
20 and Mr. Gilles, outside of documents that have been
21 entered here today?

22 A. No.

23 Q. Thank you. Sorry it took me three -- three
24 rephrases to actually I think get it to -- get the
25 question to a state where it was easy to understand.

1 A. It's okay.

2 Q. So the only agreement, or otherwise, between
3 the parties in that former case and Mr. Gilles, that
4 are signed by representatives of both sides, that you
5 are aware of, is the document that's been entered in
6 today, correct?

7 A. Correct.

8 Q. Now, when Mr. Gilles -- and, forgive me; back
9 in 2009 when Mr. Gilles was no longer allowed to play
10 with the band, you testified that you had conversations
11 with Tommy Rickard and/or Jeff Fletcher almost every
12 day from 1998 through, presumably, 2009.

13 Would that be accurate?

14 A. Correct.

15 Q. And so I believe you also testified that you
16 were aware of the alleged issues that led to
17 Mr. Gilles's departure from the band or, you know, not
18 being allowed to perform with them anymore. Correct?

19 A. I was aware of some of them.

20 Q. Were you also aware that the band had been
21 rehearsing with Mr. Taylor, Mike Taylor, prior to not
22 allowing Mr. Gilles to continue with the band?

23 A. No.

24 Q. After Mr. Gilles was allowed not to continue
25 with the band, are you aware that Mr. Taylor was ready

1 to step in and was easily substituted for Mr. Gilles?

2 A. Mr. Taylor had substituted for Mr. Gilles
3 multiple times, so in general he was prepared as a more
4 competent guitar player.

5 Q. And you were able to -- as a manager of the
6 band, you know, as you've testified, were you able to
7 see a seamless transition from Mr. Gilles to
8 Mr. Taylor?

9 A. No, it wasn't seamless.

10 Q. Again, checking my notes. Your indulgences
11 for a moment or two.

12 A. Sure.

13 Q. You talked about the trademark
14 "Wonderbread 5." Obviously, that's a major component
15 of this case.

16 You contend you're a member of a general
17 partnership which currently performs under the name
18 Wonderbread 5, correct?

19 A. Correct.

20 Q. If they were required to change their name by
21 law, that would be detrimental to you and your
22 business, would it not?

23 A. It would.

24 Q. So would it be fair to say that you wouldn't
25 want Wonderbread 5, the folks you're associated with,

1 to have to stop performing under that name, correct?

2 A. Can you repeat the question, please.

3 Q. Of course.

4 Would it be fair to say that you would not
5 want the Wonderbread 5 you are currently booking for
6 shows in Northern California and elsewhere, to have to
7 change their name, correct?

8 A. My preference would be for them to retain
9 their name that they rightfully have.

10 Q. Why?

11 A. Because it's the name we've used since the
12 beginning of the band.

13 Q. And there's goodwill associated with that,
14 correct?

15 A. Yes.

16 Q. Now, to be clear, I think your testimony was
17 you were surprised to learn that Mr. Gilles had formed
18 an LLC in 2009; is that correct? Under the name -- I'm
19 sorry -- Wonderbread5.com, as you had testified?

20 MR. CARLIN: Object. That mischaracterizes the
21 testimony as to the date.

22 MR. SWYERS: Q. When did you first learn that
23 Mr. Gilles had formed an LLC, as testified to earlier
24 today, and your counsel put documents into the record
25 to that effect?

1 A. I don't recall.

2 Q. And just to make sure that I can understand
3 the depth of your not recalling, was it prior to today?

4 A. Yes.

5 Q. Was it prior to the civil suit?

6 A. Yes.

7 Q. Was it prior to the day that Mr. Gilles was
8 asked no longer to perform with the band?

9 A. I don't recall.

10 Q. Would it be fair to characterize your
11 testimony, then, if that was in 2009, you don't know
12 when you learned of it, 2009 previous; is that correct?

13 MR. CARLIN: Could you rephrase that? It was
14 complex. I'll object --

15 MR. SWYERS: Sure.

16 MR. CARLIN: -- it was complex.

17 MR. SWYERS: And if I may, I'll go through the
18 logical steps and then put the question at the end.

19 Q. What I'm trying to do is just back us back to
20 when you first learned -- or could not recall whether
21 or not you had learned of the existence of this LLC.

22 And so I took us back in time today, and
23 then the next date in time would have been this civil
24 suit, and then prior to that would have been Mr. Gilles
25 having been asked to leave band, or however you want to

1 phrase that today.

2 Your testimony was, "I just don't recall if I
3 had known about the LLC in 2009 around the time
4 Mr. Gilles was not allowed to perform with the band
5 anymore."

6 And what I'm trying to narrow down is, okay,
7 so at that juncture, you don't know if you learned
8 about it then in 2001 -- and this will compound, but
9 just bear with me -- 2001, 2002, 2003, et cetera, up to
10 2009. You just know, up until 2009, "I don't know if I
11 heard about it or not at that juncture."

12 MR. CARLIN: Look. I appreciate you're trying to
13 do this as a preamble, but that question was so long
14 and convoluted. Can you please just ask a simple
15 question? I'm going to object that it was long,
16 complex, convoluted, incomprehensible. So please just
17 ask a simple question.

18 MR. SWYERS: I'll do it again.

19 Q. Did you know about the LLC in 2001?

20 A. I don't recall.

21 Q. I in 2002?

22 A. I don't recall.

23 Q. In 2003?

24 A. I don't recall.

25 Q. 2004?

1 A. I don't recall.

2 Q. 2009?

3 A. I don't recall.

4 Q. 2006?

5 A. I don't recall.

6 Q. 2007?

7 A. I don't recall.

8 Q. And finally, 2008?

9 A. I don't recall.

10 Q. Thank you.

11 You testified also in reference to the bank
12 account that Mr. Gilles had opened.

13 Are you aware that that was opened at Mission
14 Bank (verbatim)?

15 A. I don't recall.

16 Q. Have you ever had an account at Mission Bank,
17 Mr. Siegan?

18 A. Can you repeat the question.

19 Q. Have you ever had a bank account at Mission
20 Bank --

21 A. I have. Yes.

22 Q. -- Mr. Siegan?

23 Do you recall going and opening the account
24 you testified to earlier today actually with
25 Mr. Gilles?

1 A. I recall opening accounts with Mr. Gilles, but
2 I believe I could be confusing Wonderbar, LLC accounts
3 with what you're discussing today. And that might be
4 the point of the confusion here.

5 Q. Fair enough. And we can speak about that a
6 little more fully.

7 Do you recall opening a bank account for
8 Wonderbread 5 with Mr. Gilles at Mission Bank?

9 A. I recall opening a bank account, and I
10 honestly can't remember if that was on behalf of the
11 band, when we were talking about saving money together,
12 or whether that was in direct conjunction with
13 Wonderbar, LLC.

14 Q. Do you recall signing a signature card to that
15 effect for that account?

16 MR. CARLIN: I'll object that it's vague and
17 ambiguous as to "that effect."

18 MR. SWYERS: Thank you. I'll rephrase.

19 Q. Speaking in reference to an account opened at
20 Mission Bank for Wonderbread 5 during the time
21 Mr. Gilles was performing with Wonderbread 5 --

22 MR. CARLIN: Hello? I think we lost the
23 connection.

24 (Discussion off the record.)

25 MR. SWYERS: I apologize; I had a technical issue

1 here in my office. Off the record, if I may.

2 (Discussion off the record.)

3 MR. SWYERS: Sorry about that, gentlemen. And
4 again, if I'm being redundant -- back on the record --
5 we'll deal with it. So, thank you.

6 Q. Mr. Siegan, in reference to a -- an account
7 opened by Mr. Gilles on behalf of Wonderbread 5, a bank
8 account opened at Mission Bank, do you recall actually
9 going to Mission Bank with Mr. Gilles and signing a
10 signature card opening that bank account? Again, for
11 the band?

12 A. I don't have a recollection of specifically
13 what it was for, but I do recall going to Mission
14 National Bank with Patrick.

15 Q. And if you don't have a recollection of what
16 it was for, you don't know one way or the other,
17 correct?

18 A. Correct.

19 Q. Earlier today it was my impression that you
20 testified that you were surprised to find out that
21 Mr. Gilles had opened a bank account for the band.

22 Is that still your testimony?

23 A. Correct.

24 Q. Even though you testified now that you vaguely
25 recall that having happened --

1 MR. CARLIN: Objection.

2 MR. SWYERS: Q. -- and being a part of it?

3 MR. CARLIN: He testified he didn't recall one way
4 or the other. So that mischaracterizes his testimony.

5 MR. SWYERS: Q. So that doesn't change your
6 earlier testimony?

7 MR. CARLIN: Sorry. Can you restate your
8 question.

9 MR. SWYERS: Sure.

10 Q. The discussions that you and I have now had,
11 Mr. Siegan, doesn't change our earlier testimony in
12 reference to the bank account that you were discussing
13 on direct exam; is that correct?

14 A. My memory is being jogged for a possibility
15 that there was another account open, but I honestly
16 cannot differentiate between the two, just based on
17 memory.

18 Q. What were these two accounts that you're
19 speaking of?

20 A. Well, there were multiple accounts being
21 opened for the Red Devil Lounge at different times, and
22 Pat was handling most, if not all, of that. So I was
23 not taking the lead on that. So there's some confusion
24 for me on what account was what.

25 Q. Fair enough.

1 But Mr. Gilles was allowed to take the lead on
2 the Red Devil Lounge, the accounts -- well, strike
3 that.

4 Back to this Wonderbread 5 bank account that
5 we're trying to jog your memory on now; maybe this will
6 assist. Did there come a time that you sent periodic
7 e-mails to the band members about the balance of these
8 accounts -- or this account? Excuse me.

9 A. Yes. That sounds familiar.

10 Q. Okay. Where was that account held?

11 A. That's what I don't recall. I don't recall
12 whether we left that money in my account, or there was
13 a separate account created, or something else. So
14 pardon me if that's where the confusion is. I just
15 simply don't remember if there was an additional
16 account or not.

17 Q. That's fine.

18 That -- the periodic e-mails that I'm speaking
19 about showing the account balance, was that an account
20 outside of Jay Siegan's accounts --

21 A. That's --

22 Q. -- or not?

23 A. That's what I don't remember.

24 Q. So you couldn't say one way another whether or
25 not these periodic e-mails dealt with your own personal

1 Jay Siegan Presents accounts, or this account that
2 we're speaking about down at Mission National Bank?

3 A. I had multiple accounts at Mission National
4 Bank, and I'm just not clear which one we're talking
5 about. Pardon me; which one --

6 Q. Have you --

7 A. -- we were updating the band about.

8 Q. Right. And I'm speaking about the one that --
9 I'm asking: Have you ever signed a signature card,
10 with Pat Gilles in the room, for Wonderbread 5 at
11 Mission National Bank?

12 A. The answer is I don't recall if it was for
13 Wonderbread 5 or Wonderbar, LLC, or for something else.

14 Q. What would the something else have been, out
15 of curiosity?

16 A. Another account related to the purchase of the
17 club prior to us forming an LLC; perhaps an escrow
18 account or something of that nature.

19 Q. So you can't recall that they -- you had, you
20 know, one venture with Mr. Gilles, the Red Devil
21 Lounge; and nothing else that you would have, in
22 theory, done banking with Mr. Gilles on.

23 And so your testimony -- this is what I'm
24 trying to understand, is, "I can't recall if it was the
25 Red Devil Lounge or something else." And I'm saying,

1 what else could there have been besides the
2 Wonderbread 5 band? Is there anything else we need to
3 know about?

4 A. No.

5 Q. So it would either have been for the
6 Wonderbread 5 or the Red Devil Lounge?

7 A. Wonderbread 5 or Wonderbar, LLC, and the
8 various --

9 Q. Which was the company for Red Devil Lounge?

10 A. Wonderbar, LLC was the company that purchased
11 the Red Devil Lounge.

12 Q. Thank you.

13 And so it would have been for one of those
14 two, correct?

15 MR. CARLIN: If you know.

16 THE WITNESS: I don't recall. I believe that we
17 had multiple accounts open for the Red Devil as we were
18 starting. Whether we formed it as an LLC or not, and
19 whether we had to switch things over, those are things
20 I just don't remember.

21 MR. SWYERS: Q. All right. Now, your current
22 contention is that you are the manager and booking
23 agent for Wonderbread 5, the entity that has petitioned
24 to cancel my client's trademark. You're further
25 contending that you are part of a general partnership

1 that makes this up.

2 How are the current Wonderbread 5 members
3 paid?

4 A. Via check or cash or wire transfer.

5 Q. And I'm sure there is some type of reporting
6 that goes on with this for both the State and Federal
7 Government. Take me through that.

8 Are they issued 1099s, or are they issued
9 partnership distributions under state or federal law?
10 How do you go about that?

11 A. Currently we issue 1099s.

12 Q. If I'm not mistaken, a 1099 is actually
13 reporting for an independent contractor, correct?

14 MR. CARLIN: Objection. Calls for a legal
15 conclusion.

16 MR. SWYERS: Q. Are you the gentleman who
17 actually issues the 1099s?

18 A. No.

19 Q. All right. Who issues the 1099s on your
20 behalf?

21 A. Various people.

22 Q. Okay. Are you familiar with what a 1099 is?

23 A. I am.

24 Q. All right. What is a 1099?

25 MR. CARLIN: Objection to the extent it calls for

1 a legal conclusion.

2 MR. SWYERS: Q. What is your impression as to
3 what a 1099 is?

4 MR. CARLIN: I don't see how you can separate his
5 impression from asking for a legal conclusion.

6 MR. SWYERS: I'm not asking him to testify as a
7 legal expert; I'm just simply asking him his knowledge
8 as to what a 1099 is. If he's right or if he's wrong,
9 such is life. But I'm allowed to, you know, ask what
10 his impression is.

11 Your objection is noted. Are you instructing
12 him not to answer the question, or may he answer the
13 question over objection? Or subject to objection;
14 excuse me.

15 MR. CARLIN: I'm going to instruct him not to
16 answer.

17 (Question marked pursuant to CCP
18 Section 2025.)

19 MR. SWYERS: Okay. Rather than to reconvene this,
20 I'm going to come back to this in a few minutes. I may
21 get us on the phone with the interlocutory attorney and
22 do a motion to compel -- an instant motion to compel,
23 if the interlocutory attorney is available, and so we
24 can actually move forward through this. But I'll
25 reserve that, depending on how the rest of this goes.

1 Q. Your counsel has now instructed you not to
2 answer questions in this trial testimony concerning the
3 payment of the band, as I understand it.

4 Mr. Carlin, have I accurately stated that?

5 MR. CARLIN: No.

6 MR. SWYERS: All right.

7 MR. CARLIN: The record speaks for itself. You
8 asked a question about what -- what he understood a
9 1099 was, or meant, or what his impression was of a
10 1099, and I objected that it calls for a legal
11 conclusion.

12 MR. SWYERS: All right.

13 Q. What, if any, partnership documents have you
14 filed with the State of California?

15 A. Can you repeat the question.

16 Q. What, if any, partnership documents have you
17 filed with the State of California?

18 A. There are various private documents that I
19 filed that I wouldn't be discussing here that aren't
20 related to anything around this.

21 MR. CARLIN: I think he's --

22 MR. SWYERS: Q. Was there anything, a public
23 record that you filed with the Secretary of State of
24 California concerning the alleged partnership that you
25 contend you are a part of?

1 MR. CARLIN: Are you referring to the
2 Wonderbread 5? Does your question refer to the
3 Wonderbread 5 partnership?

4 MR. SWYERS: I'm referring to whatever partnership
5 he's alleged at the beginning of his deposition to be a
6 part of.

7 MR. CARLIN: All right. I just think --

8 MR. SWYERS: Yes. That's been part of the issue.
9 We can't figure out who you guys are, and you keep
10 moving people in and out. And we can't figure it out.
11 So I'm only asking a general question.

12 THE WITNESS: There was only one person moved out.

13 MR. CARLIN: Don't answer the question. Wait.
14 Hold on.

15 I'm just saying there was confusion as to
16 whether you were referring to the Wonderbread 5
17 partnership or to any other partnerships he might have
18 ever been a part of, right? So I'll object --

19 MR. SWYERS: Fair enough.

20 MR. CARLIN: -- to the extent the question is
21 calling for any other partnerships, as being
22 irrelevant.

23 If your question has to do with did he file
24 any documents with the State of California with respect
25 to the Wonderbread 5 partnership, if that's your

1 question, then I'll allow him to answer it.

2 MR. SWYERS: We can agree to that, of course.

3 MR. CARLIN: Okay.

4 MR. SWYERS: Q. Mr. Siegan?

5 A. Can you repeat the question.

6 Q. Have you filed -- what, if any, documents have
7 you filed with the State of California concerning the
8 partnership that -- as I understand it, that you are
9 here to testify on today known as the Wonderbread 5?

10 A. None.

11 Q. What, if any, federal documents, including but
12 not limited to tax documents, have you filed in regard
13 to the partnership, as I understand it, that you're
14 here to testify to today, the Wonderbread 5?

15 MR. CARLIN: I'll object to the extent it calls
16 for -- well, to the extent you asked about tax
17 documents, as violating the taxpayer's privilege.

18 So I'll instruct him not to answer that.

19 (Question marked pursuant to CCP
20 Section 2025.)

21 MR. SWYERS: I'm not asking what they said. I'm
22 just asking if he's filed it.

23 MR. CARLIN: I think that --

24 MR. SWYERS: This goes to the issue of whether or
25 not a partnership exists.

1 MR. CARLIN: I think that --

2 MR. SWYERS: And I'm allowed to ask whether or
3 not. You guys have contended one exists. This is
4 completely within the scope. I'm allowed to ask, in
5 any way or reference to, if you're going to contend
6 it's a partnership, let's talk about partnership
7 things.

8 MR. CARLIN: Well, I'll object to the extent it
9 calls for questions about tax returns, on the
10 taxpayer's privilege; and instruct him not to answer.
11 Anything else, he can answer.

12 MR. SWYERS: Okay. Just to be clear, my question
13 was, have you filed anything. Not what's in those
14 files. But just, have you filed anything, in essence,
15 with any government entity, saying that you're a
16 partnership.

17 And you're instructing him not to answer that
18 question, when you're contending this is a partnership?
19 I just want that clear on the record.

20 MR. CARLIN: I'm objecting to the extent it calls
21 for questions about filing tax returns. It's clearly
22 on the record.

23 MR. SWYERS: What is your objection? I'm not
24 asking for what's in the tax returns; I'm simply
25 asking: Have you filed any papers with any government

1 entity alleging that you are a partnership? And you're
2 telling him not to answer that?

3 MR. CARLIN: No. I'm saying to the extent it is
4 asking for questions about filing tax returns, I'm
5 instructing him not to answer.

6 He can ask about -- he can answer for any
7 other documents he may or may not have filed with any
8 other governmental entity. I don't see any purpose in
9 continuing to argue this point. If you want to make a
10 motion to compel, you may.

11 MR. SWYERS: Q. What, if any, documents have you
12 filed with any governmental entity, state or federal,
13 setting forth that you had a partnership; that this
14 Wonderbread 5 entity is a partnership?

15 MR. CARLIN: And again I'll instruct you not to
16 answer on the grounds of taxpayer privilege to the
17 extent this may implicate any tax filing --

18 MR. SWYERS: That was a broader question. And so
19 if you want to limit him and say don't answer in regard
20 to his taxes, now you're taking this out to he's not
21 going to answer anything in regard to any documents.
22 And that's a much broader objection, Mr. Carlin.

23 MR. CARLIN: Can you answer the question?

24 MR. SWYERS: You won't basically give us a theory
25 as to how you're even a partnership.

1 MR. CARLIN: Well, I --

2 MR. SWYERS: And now I ask a question, okay: Show
3 me that you're a partnership. And you say, "Don't
4 answer the question"?

5 MR. CARLIN: Well, let me point out that
6 Mr. Gilles alleged in his Complaint that he was
7 informed and believes and alleges --

8 MR. SWYERS: If I may, we're not talking about
9 Mr. Gilles's Complaint.

10 MR. CARLIN: Hey, don't interrupt me.

11 MR. SWYERS: We are talking about the partnership
12 that you started off today speaking about. I'm allowed
13 to find that out. I'm allowed to cross-examination
14 him. He said he's part of a partnership with this
15 Wonderbread 5 alleged band, and I'm simply asking
16 questions, and you're saying don't answer them.

17 MR. CARLIN: Don't interrupt me. Plaintiff is
18 informed -- this is -- I'm reading from Exhibit 4, the
19 Complaint filed by Pat Gilles on June 17th, 2009.
20 Paragraph 11, "Plaintiff is informed and believes, and
21 on that basis alleges, that defendant Wonderbread 5,
22 which is composed of Jeffrey Fletcher, John McDill,
23 Thomas Rickard, Christopher Adams, Michael Taylor and
24 Jay Siegan," according to Mr. Gilles, "is a California
25 general partnership."

1 So your own client has alleged that it's a
2 general partnership.

3 MR. SWYERS: My client isn't on the stand right
4 now; yours is. I'm allowed to ask him these questions.

5 MR. CARLIN: Well, okay. But, you know, don't
6 give me this about, you know, you have doubts as to
7 this partnership. Your own client alleged it's a
8 partnership. So let's not play that game.

9 So I've -- I've given you my objection. You
10 can ask him, subject to that objection, your question.

11 MR. SWYERS: Thank you. And if he wants to strike
12 it later, and if you have any grounds, you may.

13 Q. Back to you, Mr. Siegan.

14 Mr. Siegan, what, if any, documents have you
15 filed with any state or federal entity setting forth
16 that the current entity, Wonderbread 5, is a
17 partnership?

18 MR. CARLIN: And with the understanding that I've
19 instructed him not to answer as regards to tax
20 documents.

21 So, apart from tax documents, have you filed
22 any other documents pertaining to Wonderbread 5 as a
23 general partnership?

24 THE WITNESS: No.

25 MR. SWYERS: In regard to both of your

1 instructions not to answer so far today, we'll reserve
2 the right, at your cost, to recall the witness, you
3 know, should we file a motion to compel later and it be
4 determined that the objections were unfounded. Okay.

5 Q. As the manager of the band, are you required
6 to keep any specific types of bank accounts for the
7 band?

8 A. No.

9 Q. Are you required to keep a trust account for
10 funds for the band paid by clients?

11 A. No.

12 Q. All right. I want to direct your attention
13 next to your actual website.

14 If you could kindly take a look at that for
15 us. I believe you already had an exhibit placed in
16 front of you earlier today by Mr. Carlin.

17 A. Correct.

18 Q. Thank you.

19 As I'm looking at it, it's a four-page exhibit
20 that Mr. Carlin's office was kind enough to produce to
21 my office slightly prior to this proceeding. And I
22 think it's Page 4, as I'm numbering it, that shows
23 Wonderbread 5. I think 1 would be what I would call
24 your home page.

25 Am I numbering this correctly for us?

1 A. Yes.

2 Q. Okay. So just so we're on the same,
3 literally, page.

4 So 1 would be the home page. The second page
5 would be "Artists," which would be sort of a group, or
6 a montage shot. The third page would be "Our Clients."
7 And then the fourth page would be the Wonderbread 5's,
8 I'll call it, page.

9 Is that roughly accurate?

10 A. Roughly.

11 Q. Just for purposes of identification alone.
12 Okay. So we're looking at the same page.

13 So looking at Page 4, what we've roughly
14 identified as the Wonderbread 5 page, who was
15 responsible for posting the content to your website,
16 Mr. Siegan?

17 A. Me.

18 Q. Okay. Did you actually post the video that
19 appears on this page of the actual website?

20 A. I don't recall who posted the video
21 specifically. I believe the video was being hosted on
22 another website.

23 Q. Is this -- okay. Then we'll go to some
24 technical aspects.

25 Are you the webmaster of this Web page, or

1 this website?

2 A. Can you define webmaster?

3 Q. Sure. And I don't mean it in some
4 super-technical term, just are you the gentleman who
5 actually writes the script that we see and then posts
6 the html code that makes the pictures appear on the
7 website?

8 A. Can you repeat the question?

9 Q. Sure. Are you the gentleman who actually
10 provides the content for the website and/or writes the
11 html code that makes the pictures appear on the
12 website?

13 MR. CARLIN: Objection. Compound.

14 MR. SWYERS: Forgive me. I'm not going to
15 instruct the witness. That's a preserved objection.

16 Q. Can the witness answer?

17 A. I do not write html code.

18 Q. Maybe I'll take this from a broader
19 perspective. Who owns the website?

20 A. I do.

21 Q. Okay. Thank you. Who posts the content to
22 the website?

23 A. The content is consolidated from various other
24 sites, along with --

25 Q. Who --

1 A. -- content that is upload. Direct --

2 Q. All right.

3 A. -- via the website.

4 Q. Maybe I'll just focus in on this one
5 particular issue.

6 How is -- how is this Wonderbread 5 video
7 appearing on your website?

8 A. I don't technically know the answer on how
9 html 5 code works.

10 Q. Okay. But can we generally agree you or
11 someone under your control is allowing this to exist on
12 your website?

13 A. Yes.

14 Q. Thank you. Are you familiar with this video?

15 A. Yes.

16 Q. Are you familiar as to whether or not my
17 client, Mr. Gilles, appears in this video or any part
18 of it?

19 A. As per Mr. Gilles's request, I believe that he
20 was edited out of the video.

21 Q. Do you recall when that was?

22 A. A few years back. Don't know the specific
23 date.

24 Q. Now, if I may, we've heard a lot of names in
25 this case. But it would be wonderful to put faces with

1 actual names.

2 Looking at the gentleman who appears in, I
3 think it's the white afro wig, dead center, who is
4 this?

5 A. I'm sorry, can you repeat the question?

6 Q. Sure. Who is the gentleman appearing in the
7 -- I think it's a white afro wig? I don't know if
8 yours is in color. But I believe that's what it is.
9 Who is the gentleman in the center with the microphone?

10 A. Jeffrey Fletcher.

11 Q. Thank you. And as I'm looking at the picture,
12 to the left, with sunglasses and sort of long hair, who
13 would that be? Coming in from the side on the left.

14 A. That would be John McDill.

15 Q. Okay. And continuing clockwise, the drummer
16 who is upside down, who is that?

17 A. I don't believe he's actually upside down, I
18 think it's a special effect.

19 Q. Okay. But in the picture -- yes. A special
20 effect he's upside down. I'm just trying to get an
21 identification on the next gentleman. Who is that?

22 A. Thomas Rickard.

23 Q. Okay. And then, finally, as we continue
24 clockwise, the gentleman with the -- like he's the only
25 one wearing a hat. The gentleman with the hat on. Who

1 is that?

2 A. That's the other core member, Chris Adams.

3 Q. Thank you. Now, you're generally familiar
4 with this video that appears on your website, correct?

5 A. Generally.

6 Q. Okay. Are you familiar with who is performing
7 the vocals on this video that's on your website?

8 A. I can't say I could -- tell you exactly who
9 did the vocals for what on this.

10 Q. Well, let me ask. Is it Jeff Fletcher who
11 performs all the vocals?

12 A. My understanding is it is Jeff and others
13 performing the vocals. And I'm not certain exactly the
14 composition of the vocal mix. I wasn't there for the
15 recording, so I don't know.

16 Q. Okay. So if I told you it's Pat Gilles in
17 whole or in part doing lead vocals on your website to
18 this day, to this moment, you would not be able to say
19 yes or no to that?

20 A. I would not.

21 Q. Just continuing this line, if I may. What, if
22 any, permission do you have from Mr. Gilles to use his
23 voice or his vocals on your website today?

24 A. I'm sorry, can you repeat the question?

25 Q. Absolutely. Do you have permission from Mr.

1 Gilles to use his vocals on your website?

2 MR. CARLIN: I'm going to object that it's not
3 relevant to the -- to this proceeding.

4 MR. SWYERS: Thank you.

5 Q. You can answer. Do you have permission?

6 A. I don't have any written permission for Pat's
7 vocals on my website, that I know of.

8 Q. And, specifically, Mr. Gilles has never given
9 you permission to use his vocals on your website; you
10 would agree with me, correct?

11 A. I would not agree with you.

12 Q. Where in writing has Mr. Gilles given you
13 permission to use his vocals on the website?

14 A. I never heard an objection until a few years
15 back from Mr. Gilles regarding it. In fact, for many
16 years he encouraged me to have his vocals on my
17 website.

18 Q. Back when he was performing with
19 Wonderbread 5, correct?

20 A. I'm sorry; can you repeat the question.

21 Q. Your comment was for many years Mr. Gilles
22 encouraged you to use his vocals on your website.

23 And I just was asking: In what time frame was
24 that? My specific question was, "Back when he was
25 still performing with Wonderbread 5, correct?"

1 A. Correct.

2 Q. Since he has been not allowed to perform with
3 what you're calling Wonderbread 5, what, if any,
4 permission do you have from Mr. Gilles to continue to
5 use his likeness or his vocals on your website?

6 MR. CARLIN: Well, I'll object that it assumes
7 facts not in evidence that his likeness or vocals are
8 actually used on the website at this point.

9 MR. SWYERS: I can rephrase again. I don't have a
10 problem. Thank you.

11 Q. Assuming that there is likeness or vocals on
12 the website today, what, if any, permission do you have
13 from Mr. Gilles to use those likenesses or vocals on
14 the website?

15 A. I don't have any written permission from
16 Patrick Gilles.

17 Q. You say "written"; you're limiting it to
18 written.

19 Do you have any other type of permission from
20 Mr. Gilles?

21 A. Not that I know of.

22 Q. Thank you.

23 What are middles? Are you familiar with that
24 term, Mr. Siegan?

25 A. Can you repeat the question.

1 Q. Sure. Have you ever heard of something called
2 a "middle"; "middles"?

3 A. A middle?

4 Q. Yeah.

5 A. I've heard of the middle of something. I know
6 the word "middle."

7 Q. I'm sorry. Allow me to ask it in a different
8 way.

9 Other promoters or booking agents in other,
10 you know, states, are -- to the best of your knowledge,
11 are they ever referred to as "middles" or something to
12 that effect?

13 A. Not that I know of.

14 Q. Okay. Do you ever have other booking agents
15 contact you to book the Wonderbread 5?

16 A. Yes.

17 Q. And do those -- from time to time, are you
18 aware of any of those other agents utilizing
19 promotional materials of the Wonderbread 5 on their own
20 websites?

21 A. Many years back, I requested every agent I
22 could find to remove my bands from their websites for
23 other strategic reasons. So I don't wish to have my
24 bands on other people's websites.

25 Q. Okay. Are you aware, today, of anyone else

1 that has Wonderbread 5, any rendition, pre-2009 to
2 today, on their website for booking purposes?

3 A. I'm not. But I suspect that they pop up here
4 and there, and it's out of my control.

5 MR. SWYERS: Okay. Off the record for a moment,
6 please.

7 (Discussion off the record.)

8 MR. SWYERS: I literally have only a few more
9 minutes. Are we back on the record?

10 MR. CARLIN: Yes.

11 MR. SWYERS: Q. Mr. Siegan, are you generally
12 familiar with the website located at Wonderbread5.com?

13 A. Can you repeat the question.

14 Q. Sure. Are you generally familiar with the
15 website located at Wonderbread5.com? And I'll be happy
16 to spell it for the record if you all would like.

17 A. Please.

18 Q. Okay. Wonderbread 5; W-o-n-d-e-r-b-r-e-a-d,
19 the roman (sic) numeral 5, dot-com.

20 Are you familiar with the website there?

21 A. I haven't looked at it in a while, but I have
22 some familiarity around it.

23 Q. Are you listed anywhere on the website, based
24 upon your familiarity?

25 A. Last I checked, I am indeed listed on it.

1 Q. Now, if you recall, I believe you're listed on
2 the home page under "booking information.

3 Does that ring a bell?

4 A. It doesn't ring a bell specifically where I
5 was listed.

6 Q. Okay. Do you have any knowledge as to whether
7 or not you're mentioned anywhere on the website as a
8 manager?

9 A. I don't recall whatsoever.

10 Q. Okay. If I were to say or represent to you
11 that you're only represented as a booking agent on
12 their website, could you contradict that?

13 A. No.

14 Q. Is there anywhere that you're listed as the
15 manager of the band whatsoever?

16 A. In the entire -- entire universe of documents
17 and websites?

18 Q. Have you been listed as a manager on any
19 website?

20 A. I would venture to guess yes.

21 Q. Can you tell me where?

22 A. Not at the moment.

23 MR. SWYERS: Okay. At this juncture, I have
24 nothing further.

25 MR. CARLIN: All right. Just a moment. Let me

1 take a minute and look at my notes, and then we'll see.

2 MR. SWYERS: Are you guys going to leave us live
3 on the phone here, off the record?

4 MR. CARLIN: No. I'll -- I'll put you on the --
5 you'll go off the record.

6 MR. SWYERS: While we're off the record, are you
7 just going to put us on hold there?

8 MR. CARLIN: Yeah. We're off the record now.
9 I'll put you on hold. I'll put it on mute.

10 MR. SWYERS: Thank you.

11 (Brief recess.)

12 MR. CARLIN: So I don't have any further
13 questions.

14 MR. SWYERS: Wait. Okay. Wait. Now I can hear
15 you. Sorry about that. You broke up there for a
16 second. I'm sorry. Please continue.

17 MR. CARLIN: No. I don't have any further
18 questions. So that will conclude the --

19 MR. SWYERS: Okay. So I guess we're done, then.
20 I don't have anything further as well.

21 MR. CARLIN: That will conclude the deposition.

22 (Whereupon, the deposition concluded
23 at 12:57 o'clock p.m.)

24 ---oOo---

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CERTIFICATE OF WITNESS

---oOo---

I, JAY SIEGAN, hereby declare under penalty of perjury that I have read the foregoing deposition testimony; and that the same is a true and correct transcription of my said testimony except as I have corrected pursuant to my rights under Section 2025 (Q)(1) of the California Code of Civil Procedure.

Jay Siegan
Signature

11-6-13
Date

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO)

3 I, JOAN MARTIN, a Certified Shorthand Reporter
4 of the State of California, duly authorized to
5 administer oaths pursuant to Section 8211 of the
6 California Code of Civil Procedure, do hereby certify
7 that

8 JAY SIEGAN,
9 the witness appearing via conference call in the
10 foregoing deposition, was by me duly sworn to testify
11 the truth, the whole truth and nothing but the truth in
12 the within-entitled cause; that said testimony of said
13 witness was reported by me, a disinterested person, and
14 was thereafter transcribed under my direction into
15 typewriting and is a true and correct transcription of
16 said proceedings.

17 I further certify that I am not of counsel or
18 attorney for either or any of the parties in the
19 foregoing deposition and caption named, nor in any way
20 interested in the outcome of the cause named in said
21 caption.

22 Dated the 17th day of October, 2013.

23
24
25

JOAN F. MARTIN
CSR No. 6036 (California)

1 Jay Siegan
c/o Alexander Tuzin, Esquire
2 50 California Street, Suite 3240
San Francisco, California 94111
3

Date: Monday, October 21, 2013
4 Re: Wonderbread 5 vs. Gilles
Deposition Date: Tuesday, October 8th, 2013
5

6 Dear Mr. Siegan,

7 Please be advised the original transcript of your
deposition is ready for your review. Pursuant to CCP
8 Section 2025.520(a), you have 30 days following the
date of this notice to read, correct and sign your
9 transcript unless the attending parties and the
deponent agree on the record, or otherwise in writing,
10 to a longer or shorter time period. The deponent may
change the form or the substance of the answer to a
11 question, and may either approve the transcript of the
deposition by signing it, or refuse to approve the
12 transcript by not signing it. You are not required by
law to read and sign your deposition transcript. All
13 parties will be informed of the corrections. The
original transcript will then be sealed and sent to the
14 examining attorney pursuant to the applicable law.

15 You may either come to our office to read and sign the
original transcript, or you may contact your attorney
16 or the attorney who arranged for you to be present at
your deposition. If they have ordered a copy of the
transcript, you may review their copy and make
17 corrections by submitting, signing and returning the
attached form. If you choose to review your transcript
18 at our office, please call first to make an
appointment.

19 Should you have any question regarding these
20 instructions, please call.

21 Sincerely,

22 NOGARA REPORTING SERVICE
5 Third Street, Suite 415
23 San Francisco, California 94103
(415) 398-1889
24

25 cc: Original deposition
All counsel

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D1 Siegan

Business	
Order #	
Exhibit	4
Consisting of	Pages
Date	10.8.13
JOAN BLAIR	



ARTISTS

OUR FEATURED ARTISTS FOR SPECIAL EVENTS. FROM DANCE BANDS TO ROCK LEGENDS, INNOVATORS TO PEOPLE WHO MAKE YOU THINK. ENJOY THIS DIVERSE LIST OF TALENT. BE SURE TO SELECT THE CATEGORY BELOW TO HELP YOU FIND WHAT YOU SEEK.

ALL

DANCE BANDS

DUO

HEADLINERS

LEGENDS OF THE 80S

SPEAKERS

TRIBUTE ACTS





OUR CLIENTS

WE'VE PROVIDED ENTERTAINMENT FOR A DIVERSE LIST OF ORGANIZATIONS, COMPANIES, AND NON-PROFITS.



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Berkshire Hathaway
Boeing
Cardinal Health
Citigroup
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SF Zoo

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City of Hope
Doctors Without Borders
Feed the Children
Greenspace
Habitat for Humanity
March of Dimes
Mayo Foundation
Metropolitan Museum of Art
Museum of Fine Arts
New York Public Library
Salvation Army
San Francisco 49ers Foundation
SPMOMA
Susan G. Komen For The Cure
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Microsoft
Panasonic
Samsung
Skype
Sony, Inc.
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StubHub
Square
Symantec
Trader Joes
Uber
VMWare
Victorias Secret
Vimeo
Virgin America
Virgin Atlantic
Yahoo
Zynga





WONDER BREAD 5
NAPA VALLEY, CA

WONDER BREAD 5



ARTIST INFO

Wonder Bread 5 consistently amazes crowds wherever they go and they've travelled far and wide as one of the most in-demand dance bands for weddings, fundraisers and festivals. From Mexico to the Bahamas, the Hamptons to Napa Valley, Wonder Bread 5 is a non-stop fun dance machine for events.

Rooted in Northram, California, the band has consistently packed nightclubs and theaters in the San Francisco Bay Area. Their commitment to non-profit work has been unparalleled, with the band performing hundreds of fundraisers and galas, helping raise millions of dollars in their local community and beyond.

Disco married up with 80s rock, metal anthems thrown in with current pop hits, new wave and classic rock — the band is incompatible with their witty, high energy show and is perfect for all ages.

Wonder Bread 5 are available internationally for weddings, fundraisers, corporate functions and other special events. To inquire about pricing and availability of Wonder Bread 5, or to

[Song List](#)

BOOK WONDER BREAD 5



LINKS ~ SOCIAL



High Res Photos — Google Folder
Song List — Google Doc

AWARDS



SONG LIST

35 - 1



State of California
Bill Jones
Secretary of State

LIMITED LIABILITY COMPANY
ARTICLES OF ORGANIZATION

A \$70.00 filing fee must accompany this form.
IMPORTANT - Read instructions before completing this form.

File # 2900273 10007

FILED
in the office of the Secretary of State
of the State of California

OCT 13 2000

B. Jones

BILL JONES, Secretary of State

This Space For Filing Use Only

1. Name of the limited liability company (and the name with the words "Limited Liability Company," "Ltd. Liability Co.," or the abbreviations "LLC" or "L.L.C.")
Wonderbread's Com LLC

2. The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea limited liability company act.

3. Name the agent for service of process and check the appropriate provision below:
Patrick Gilles which is
 an individual residing in California. Proceed to item 4
 a corporation which has filed a certificate pursuant to section 1505. Proceed to item 5

4. If an individual, California address of the agent for service of process:
Address: 900 SIMMONS Lane
City: Novato State: CA Zip Code: 94945

5. The limited liability company will be managed by (check one)
 one manager more than one manager single member limited liability company all limited liability company members

6. Other matters to be included in this certificate may be set forth on separate attached pages and are made a part of this certificate. Other matters may include the latest date on which the limited liability company is to dissolve.

7. Number of pages attached, if any

8. Type of business of the limited liability company. (For informational purposes only)
Entertainment and Merchandising Company

9. DECLARATION: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.
[Signature] Patrick Gilles
Signature of Organizer Type or Print Name of Organizer

10-09-00
Date

10. RETURN TO:
NAME Wonderbread's Com
FIRM
ADDRESS POB 10715
CITY/STATE San Rafael, CA 94901
ZIP CODE

SEC/STATE (REV. 12/99) FORM LLG-1 - FILING FEE \$70.00
Approved by Secretary of State



Witness
Sigau
Exhibit
Consisting of 3 Pages
Date 10-8-13
JOAN MARTIN

000001

State of California



SECRETARY OF STATE

I, BILL JOHNS, Secretary of State of the State of California, hereby certify

That the attached transcript of [redacted] was prepared by and in this office from the record on file of which it purports to be a copy and that it is full true and correct.

IN WITNESS WHEREOF I execute this certificate and affix the Great Seal of the State of California this [redacted]

OCT 23 2000

[Handwritten signature]



11-2
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California Secretary of State Debra Bowen

Secretary of State

Administration Elections

Business Programs

Political Reform

Archives

Registries

Other Services

privacy All people's interests
Account
without clear restrictions

000003

Business Entities (BE)

- Online Services
- Business Search
- Disclosure Search
- E-File Statements
- Mail Processing Times

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Annual/Biennial Statements

Filing Tips

Information Requests
(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- Business Resources

- Tax Information

- Starting A Business

- International Business Relations Program

Customer Alert
(misleading business solicitations)

Business Entity Detail

Data is updated weekly and is current as of Friday, April 16, 2010. It is not a complete or certified record of the entity.

Entity Name:	WONDERREADS.COM LLC
Entity Number:	200029330027
Date Filed:	10/13/2000
Status:	PENDING CANCEL
Jurisdiction:	CALIFORNIA
Entity Address:	900 SIMMONS LN
Entity City, State, Zip:	NOVATO CA 94945
Agent for Service of Process:	PATRICK GILLES
Agent Address:	900 SIMMONS LN
Agent City, State, Zip:	NOVATO CA 94945

* Indicates the information is not contained in the California Secretary of State's database.

* Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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**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.
:
:
Patrick Gilles,
:
:
Registrant.:

Cancellation No. 92052150

AFFIDAVIT OF PATRICK GILLES

Comes now Patrick Gilles, the Registrant in the above-referenced matter, and states as follows:

My name is Patrick Gilles, I am 18 years of age or older and I attest to the following based upon my personal knowledge:

1. I was a founding member of the band known as Wonderbread 5 that used the subject trademark at issue to identify, among other things, our live music performance from 1996 until I was kicked out of the band in 2009.

2. Specifically, Jeffrey Fletcher and I decided to form the band in 1996.

3. The decision to name the band Wonderbread 5 was a group decision resulting from the collaboration of my and Mr. Fletcher's suggested alternative names for the group.

4. For the first four years the band known as Wonderbread 5 rehearse at my home at my expense.

5. I took it upon myself to form the band's limited liability corporation with the California Secretary of State without objection from the other band members.

6. My house served as the official address of record for the band's corporate address.

Witness my hand and seal this 10th day of August 2013.
Patrick Gilles

Patrick Gilles
Date 10-8-13



7. I was the only one authorized to act on behalf of the band's LLC with the state.
8. I was in charge of marketing the band in the nature of purchasing stickers, buttons, and t-shirts.
9. I also shot over forty (40) promotional videos for the band in an effort to drive the band's name recognition and bookings.
10. I secured the bands first bank account and was the exclusive member of the band with signatory access to the band's bank account.
11. I also took care of radio spots and advertising for the Petitioner during my 13 plus years with the band before being forced out in 2009.
12. In short, I undertook significant if not the majority of the managerial functions of the band from 1996 until being forced out in 2009.
13. The California civil case settlement was for lost wages incurred as a result of not receiving income from lost work due to being kicked out of the band.
14. I never intended to deceive the U.S. Patent and Trademark Office when I filed for the subject trademark application. I believed then as I do today that I am the rightful owner of the trademark.



Patrick Gilles

7/18/11
Date

COUNTY OF Marin

STATE OF CALIFORNIA

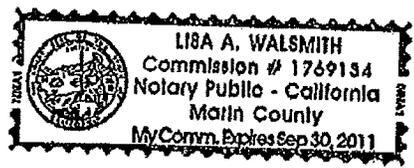
BEFORE ME, the undersigned authority, this 18th day of July 2011, personally appeared Mr. Patrick Gilles, who after being first duly sworn, states that he is the person who provided the information above and that the information provided herein is true and correct, and who is personally known to me or who has produced Ca. Drivers license as identification and who did take an oath.

Notary Public: Lisa A. Walmsmith (signature)

Notary Public: Lisa A. Walmsmith (Typed/Printed name of Notary Public)

Commission No. 1769134

My Commission Expires: Sept. 30, 2011



ORIGINAL

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SUMMONS ISSUED
FILED
San Francisco County Superior Court

JUN 17 2009

GORDON PARK-LI, Clerk

5 Attorney for Plaintiff, Patrick Gilles BY: Elias Butt Deputy Clerk

6 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF SAN FRANCISCO

9 PATRICK GILLES, an individual, on)
behalf of himself,)

10 Plaintiff,)

11 vs.)

12 JEFFREY FLETCHER, an individual;)
13 JOHN MCDILL, an individual; THOMAS)
RICKARD, an individual;)
14 CHRISTOPHER ADAMS, an individual;)
MICHAEL TAYLOR, an individual; JAY)
15 SIEGAN, an individual; JAY SIEGAN)
PRESENTS, an unknown business)
16 entity; and WONDERBREAD 5, a)
California general partnership;)
17 and DOES 1-10, inclusive,)

18 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 INFLECTION 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)

21 CASE MANAGEMENT CONFERENCE SET

22 NOV 20 2009 - 9:00 AM

23 DEPARTMENT 212

24
25
26
27
28 Plaintiff Patrick Gilles alleges as follows:

COMPLAINT

Plaintiff
 Deft 4
 Exhibit
 Consisting of 41
 Date 10.8.13
 3200

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

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

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

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

18 10. Plaintiff is informed and believes, and on that basis
19 alleges, that Defendant Jay Siegan Presents ("JSP") is an
20 unknown business entity, that at all times herein mentioned was
21 doing business in California with its principal place of
22 business located at 1655 Polk Street, Suite 1, San Francisco, CA
23 94109.

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

1 principal place of business located at 1655 Polk Street, Suite
2 1, San Francisco, CA 94109. Alternatively, Plaintiff is informed
3 and believes and therefore alleges that Wonderbread 5 ("WB5" or
4 "the Band") is a joint venture with its principal place of
5 business located at 1655 Polk Street, Suite 1, San Francisco, CA
6 94109.

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

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

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

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

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

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

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

24 25. The Bands first live performance was on a Thursday
25 evening in November 1996 at the same Faultline nightclub in San
26 Rafael. Plaintiff secured this first performance for Wonderbread
27 5 because of Plaintiff's personal relationship with the
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

1 47. The Band checking account reached a balance of over
2 \$14,000 within the first year, but was soon closed because of
3 individual members needing additional funds for living expenses,
4 beginning with Rickard who opted out first.

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

22 62. The outcome of the meeting with the counselor was very
23 positive for all the members. The Band left with a new outlook,
24 and 2006-2009 were without question the most successful and
25 profitable period in the Band's history. The Band was flown to
26 Mexico by Sammy Hagar (lead singer of Van Halen) to perform for
27 2 nights as his private guests in Cabo Wabo. The Band earned an
28 all expense paid vacation and an additional fee of \$10,000 for 2

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

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

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

16 65. The Band would learn new songs by emailing music files
17 and instructions to one another and then work independently from
18 home in preparation for the performance. This system has become
19 the standard practice and has not changed since Rickard's move
20 to Los Angeles in 2006. The Band would rehearse approximately 8-
21 12 times per year between 2005 and 2009.

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

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

28

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

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

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

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

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

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

4 73. The other four members of the Band were not pleased
5 with Plaintiff's decision to no longer utilize Taylor after
6 2007. They still preferred Taylor and expressed their
7 disappointment with Plaintiff for not simply paying Taylor
8 whatever he wanted.

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

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

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

28

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

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

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

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

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

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

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1 83. Taylor had been informed of Plaintiffs wrongful
2 exclusion well before Plaintiff was notified by Adams on March
3 10th.

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

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

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

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

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

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

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

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

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

21
22 FIRST CLAIM FOR RELIEF - CONSTRUCTIVE FRAUD
23 California Civil Code Section 1573
(Against All Defendants)

24 93. Plaintiff realleges and incorporates by reference
25 herein each of the facts and allegations in Paragraphs 1 through
26 92 above inclusive, as though fully set forth herein.

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

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

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

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

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

27

28

1 103. Plaintiff realleges and incorporates by reference
2 herein each of the facts and allegations in Paragraphs 1 through
3 102 above, inclusive, as though fully set forth herein.

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

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

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

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

19 108. As a direct and proximate result of the breach by
20 Defendants, Plaintiff has suffered damages in an amount
21 according to proof at trial but in an amount not less than
22 \$1,000,000.00.

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

25 109. Plaintiff realleges and incorporates by reference
26 herein each of the facts and allegations in Paragraphs 1 through
27 108 above, inclusive, as though fully set forth herein.
28

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

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

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

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

21
22 FIFTH CLAIM FOR RELIEF - INTENTIONAL INFLICTION OF
23 EMOTIONAL DISTRESS
(Against All Defendants)

24 114. Plaintiffs realleges and incorporates by reference
25 herein each of the facts and allegations in Paragraphs 1 through
26 113 above, inclusive, as though fully set forth herein.

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

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

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

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

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

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

20

21

SIXTH CLAIM FOR RELIEF - VIOLATION OF STATUE

California Corporation Code Section 16401

22

(Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
23 Siegan, JSP and WB5)

23

24

120. Plaintiff realleges and incorporates by reference
25 herein each of the facts and allegations in Paragraphs 1 through
26 119 above, inclusive, as though fully set forth herein.

26

27

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

28

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

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

15
16 SEVENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
17 California Corporation Code Section 16403
18 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
19 Siegan, JSP and WB5)

19 124. Plaintiff realleges and incorporates by reference
20 herein each of the facts and allegations in Paragraphs 1 through
21 123 above, inclusive, as though fully set forth herein.

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

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

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

7
8 EIGHTH CLAIM FOR RELIEF - VIOLATION OF STATUE
9 California Corporation Code Section 16404

10 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
11 Siegan, JSP and WB5)

12 128. Plaintiff realleges and incorporates by reference
13 herein each of the facts and allegations in Paragraphs 1 through
14 127 above, inclusive, as though fully set forth herein.

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

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

25 131. As a direct and proximate result of the statutory
26 violations, Plaintiff has been forced retain counsel to bring
27 this action to enforce Plaintiffs rights under the statue and
28 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.

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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.

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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, delegates 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. On the Second Cause of Action

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

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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;

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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. On the Fifth 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 Plaintiffs pain, suffering and emotional distress as well as for sums incurred for services

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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. On the Sixth 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.

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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. On the Seventh 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, delegates 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.

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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, delegates 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.

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

4 I. On the Ninth Cause of Action

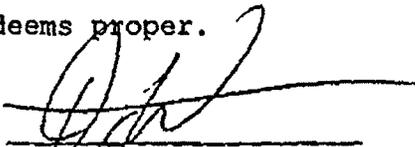
- 5 1. For general and compensatory damages pursuant to
6 Cal. Civil Code Section 3333 and according to
7 proof;
- 8 2. For consequential and lost profits damages in
9 amount not less than \$1,000,000.00 and according to
10 proof;
- 11 3. For the interest provided by law including, but not
12 limited to, Cal. Civil Code Section 3291 and
13 Corporations Code 16701(c);
- 14 4. For an award of damages equal to the profit
15 realized from Defendants conduct, as alleged;
- 16 5. For preliminary and permanent injunctive relief
17 enjoining and restraining Defendants, their
18 assignees, delegates and all persons acting in
19 concert with Defendants and each of them from doing
20 any act which would interfere or otherwise injure
21 Plaintiff to his detriment with respect to his
22 interests in the partnership business, as alleged;
- 23 6. For the imposition of a Constructive Trust over the
24 partnership business and the income derived there
25 from for the benefit of Plaintiff;
- 26 7. For an accounting and purchase of Plaintiffs
27 partnership interest in accordance with the code.
28

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

4 J. On the Tenth Cause of Action

- 5 1. For general and compensatory damages pursuant to
6 Cal. Civil Code Section 3300 and according to
7 proof;
- 8 2. For consequential and lost profits damages in
9 amount not less than \$1,000,000.00 and according to
10 proof;
- 11 3. For an award of damages equal to the profit
12 realized from Defendants conduct, as alleged;
- 13 4. For the interest provided by law including, but not
14 limited to, Cal. Civil Code Section 3289;
- 15 5. For Punitive damages pursuant to Civil Code
16 3344(a);
- 17 6. For immediate injunctive relief prohibiting the
18 Defendants, and each of them, from using or
19 otherwise exploiting Plaintiffs name, voice,
20 likeness or music in association with the Band, its
21 marketing, promotion and performances or any other
22 commercial activity;
- 23 7. For attorney fees pursuant to Civil Code 3344(a)
24 and costs of suit and for such other and further
25 relief as the court deems proper.

26 Dated: June 16, 2009

27 By: 

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

C

C

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:

jeffreyaletcher@me.com, jmcDill@mac.com, tommy@tommyrickard.com, chl@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

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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

PHILLIPS, ERLEWINE & GIVEN LLP
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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,

Defendants' Offer of Compromise - Case No. CGC-09-489573

Witness
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Exhibit
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Number of
Date 10-8-13
Pages

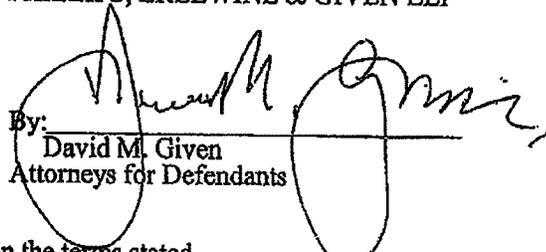
WB0036

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

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

6
7 DATED: September 3, 2009

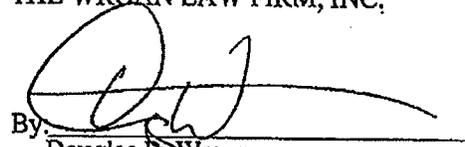
PHILLIPS, ERLEWINE & GIVEN LLP

8
9
10 By: 
11 David M. Given
Attorneys for Defendants

12 Plaintiff accepts the above offer on the terms stated.

13 DATED: 10/1, 2009

14 THE WROAN LAW FIRM, INC.

15
16 By: 
17 Douglas B. Wroan
Attorneys for Plaintiff

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I work in the County of Los Angeles, State of California. I am over the age of 18 years
5 and not a party to the within action; my business address is 5155 West Rosecrans Avenue, Suite
6 229, Hawthorne, California 90250.

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

11 David M. Given
12 Feather D. Baron
13 PHILLIPS, ERLEWINE & GIVEN LLP
14 50 California Street, 35th Floor
15 San Francisco, CA 94111

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

21 **BY FAX TRANSMISSION:** I faxed a copy of the document(s) to the persons at the fax
22 numbers listed in the Service List. The telephone number of the sending facsimile machine was
23 (415) 398-0911. No error was reported by the facsimile machine that I used.

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

 BY PERSONAL DELIVERY: I caused such envelopes/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.

25
26 
27 _____
28 Douglas Wroan

PROOF OF SERVICE

WB0038

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	<u>Wonderbread 5</u>
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
INTERNAL ADDRESS	240 Lovell Avenue
*STREET	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

Witness *Legal*
 Submit
 Consisting of 7 Pages
 Date 10-8-13
 JAMES MARTIN

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)	<u>\\TICRS\EXPORT6\IMAGEOUT6\776\891\77689156\xml1\AP P0003.JPG</u>
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
INTERNAL ADDRESS	240 Lovell Avenue
STREET	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

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

In International Class 041, the mark was first used at least as early as 10/31/1996, and first used in commerce at least as early as 10/31/1996, and is now in use in such commerce. The applicant is submitting 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, consisting of a(n) 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..

Specimen File1

The applicant's current 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

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Wonderbread 5

**WONDER
BREAD** 