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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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Date	04/01/2014
Attachments	Appendix A to Petitioner's Trial Brief.pdf(176674 bytes) Appendix B to Petitioner's Trial Brief.pdf(51858 bytes) Appendix C to Petitioner's Trial Brief.pdf(103137 bytes)

Appendix A

Petitioner's Objections to Evidence

I. General Objections:

- A. Petitioner objects to entirety of Trial Deposition of Patrick Gilles, dated December 11, 2013, on the grounds that Registrant failed to properly and timely serve pretrial disclosures (attached hereto) pursuant to 37 CFR § 2.123(c) by serving said disclosures at an incorrect address and to the attention of an attorney who was no longer employed by Phillips, Erlewine & Given LLP at the time of service, and hereby moves to strike the entire testimony from evidence pursuant to § 2.123(e)(3).
- B. Petitioner objects to each and every exhibit proffered by Registrant during Trial Deposition of Patrick Gilles, dated December 11, 2013, and all testimony relating or referring to any and all such exhibits on the grounds that Registrant failed to disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness pursuant to 37 CFR § 2.121(e), and hereby moves to strike same from evidence pursuant to 2.123(e)(3).

II. Specific Objections:

Petitioner hereby objects to the following exhibits and incorporates by reference, in addition to each objection below, the general objections asserted above:

1. Exhibit 2: Screen Print from the Wonderbread 5 Facebook Page.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds Registrant failed to produce this document in discovery (36:1-6).

2. Exhibit 3: Printout, Wonderbread5.com band page, Bates stamped WB0042.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (37:6—38:5).

3. Exhibit 4: Printout, Wonderbread5.com "Bookus" page, Bates stamped WB0047.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (41:5-8).

4. Exhibit 5: E-mail chain, the top e-mail on the first page dated April 3, 2009, to Jay Siegan from Patrick Gilles, four pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (42:2-8).

5. Exhibit 7: Excerpt from email dated June 5, 2005 from Jeffrey Fletcher to Patrick Gilles and others, 2 pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds Registrant failed to produce this document in discovery. (45:9-20).

6. Exhibits 8 and 8a: Undated email from Steve to Pat, Bates stamped 000024; Undated email from Jeffrey Fletcher to Patrick Gilles, Bates stamped 000030.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (48:1-11).

7. Exhibits 9 and 9a: E-mail chain, the e-mail on the first page dated February 15, 2008, from Greg Van Gaver to Patrick Gilles, Bates stamped 000021 through 000023; E-mail chain, the top e-mail on the first page undated, to Pat from Greg Van Gaver, Bates stamped 000025 and 000026.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (49:10—50:18).

8. Exhibits 10, 10a, 10b, 10c: E-mail dated October 29, 2007, to Teresa Nevarez from Patrick Gilles, Bates stamped 000018; E-mail dated November 5, 2007, to Teresa Nevarez from Patrick Gilles, Bates stamped 000011; E-mail chain, the top e-mail on the first page dated October 26, 2007, to Teresa Nevarez from Patrick Gilles, Bates stamped 000012 through 000016; E-mail chain, the top e-mail on the first page undated, to Patrick Gilles from Teresa Nevarez, Bates stamped 000019 and 000020.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that they are not complete documents pursuant to Federal Rule of Evidence 106 (50:18—52:4).

9. Exhibit 11: Two-page e-mail dated December 10, 2005, to Jacqie Loia and others from Jay Siegan.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds Registrant failed to produce this document in discovery (53:20—54:1).

10. Exhibit 12: E-mail chain, the top e-mail on the first page dated May 1, 2006, to Patrick Gilles from Jeffrey Fletcher, two pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds Registrant failed to produce this document in discovery (54:17-20).

11. Exhibit 13: E-mail dated October 3, 2006, to Patrick Gilles from Jay Siegan, one page.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106; and on the grounds Registrant failed to produce this document in discovery (54:17-20 & 56:3-8).

12. Exhibit 14: One-page letter dated 6/19/01 to Patrick from Jay Siegan, with one page attached, Bates stamped 000003 and 000004; copy of first page also attached, no Bates stamp.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (58:17-18).

13. Exhibit 15: Copy of Jay Siegan Presents Pay Stubs 5748 and 5753, one page.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (60:16-22).

14. Exhibit 16: Documents headed "Wonderbread5.com Deposits" dated July 9, 2001, Bates stamped 000006 through 000009.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a

general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (61:10-11).

15. Exhibit 18: Copy of State of California Limited Liability Company Articles of Organization, with one page attached, Bates stamped 00001 and 00002.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (64:6-7).

16. Exhibit 19: E-mail chain, the first e-mail dated August 23, 2004, to Jeffrey Fletcher and others from Tommy Rickard, two pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (68:15-23).

17. Exhibit 20: E-mail chain, the top e-mail dated April 18, 2007, to Patrick Gilles from Jeffrey Fletcher, Bates stamped 000028.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (76:10-11).

18. Exhibit 21: Screen print from Wonderbread 5 Facebook page, Bates stamped WB0101.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106; and on the grounds that it is not relevant (77:11-16, 80:24—81:3).

19. Exhibit 22: Screen print from Wonderbread 5 Facebook page, Bates stamped WB0119.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106; and on the grounds that it is not relevant (78:18-23, 80:24—81:3).

20. Exhibit 23: Screen print from Wonderbread 5 Facebook page, Bates stamped WB0072.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106; and on the grounds that it is not relevant (80:22—81:3).

21. Exhibit 24: Screen print from Wonderbread 5 Facebook page, Bates stamped WB0157.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106; and on the grounds that it is not relevant (82:14-17).

22. Exhibit 25: Two-page e-mail dated August 20, 2008, to Patrick Gilles and others from Jeffrey Fletcher.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (89:22—90:2).

23. Exhibit 26: E-mail chain, the top e-mail on the first page dated March 8, 2009, to Patrick Gilles from Jay Siegan, two pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (92:3-7).

24. Exhibit 27: E-mail dated June 12, 2006, to Patrick Gilles from Tommy Rickard, two pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (100:19-25).

25. Exhibit 28: One-page letter dated September 15, 2009, to Douglas B. Wroan, Esq., from David M. Given, with one page attached.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as

exhibits during the testimony; and on the grounds that Registrant misstated the contents of the document (103:6-22).

26. Exhibit 29: Document entitled "United States of America, United States Patent and Trademark Office," Bates stamped 000032.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (105:24-25).

27. Exhibit 30: Two-page letter dated March 29, 2012, to David M. Given from Matthew H. Swyers, with three pages attached.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; and on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony (106:17-18).

28. Exhibit 31: Printout of advertisement for the Wonderbread 5, Bates stamped 000047.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (108:7-8, 115:20-22, 119:9-15).

29. Exhibit 32: Printout of advertisement for the Wonderbread 5, Bates stamped 000048.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (109:2-3, 115:20-22, 119:9-15).

30. Exhibit 33: Printout of YouTube search, Bates stamped 000049.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (110:4-5, 115:20-22, 119:9-15).

31. Exhibit 34: Printout of YouTube search, Bates stamped 000050.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as

exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (111:1-2, 115:20-22, 119:9-15).

32. Exhibit 35: Printout of Jay Siegan Presents Presents website, Bates stamped 000051.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (111:21-22, 115:20-22, 119:9-15).

33. Exhibit 36: Printout from Wonderbread 5 Facebook page, Bates stamped 000052.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (113:3-4, 115:20-22, 119:9-15).

34. Exhibit 37: Printout of Wonderbread5.com Google search, Bates stamped 000053.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (113:20-21, 115:20-22, 119:9-15).

35. Exhibit 38: Printout of Wonderbread5.com video, Bates stamped 000054.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (114:15-16, 115:20-22, 119:9-15).

36. Exhibit 39: Printout of Joel Nelson website page, Bates stamped 000055.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (115:4-5, 115:20-22, 119:9-15).

37. Exhibit 41: Printout from eMusicConnection.com's website, Bates stamped 000058.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as

exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (117:6-7, 119:15).

39. Exhibit 42: Printout of Myspace/Wonderbread 5 music page, Bates stamped 000059.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that the line of questioning and related documents is irrelevant (117:22-23, 119:15).

40. Exhibit 44: Group exhibit, copies of Wonderbread 5 promotional media, 19 pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (121:8-16).

41. Exhibit 45: Three-page e-mail dated October 10, 2013, to Pat from Jay.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery; and on the grounds that it is not a complete document pursuant to Federal Rule of Evidence 106 (130:21—131:2, 131:21-22).

42. Exhibit 46: E-mail chain, the top e-mail on the first page dated April 3, 2009, to Jay Siegan from Patrick Gilles, four pages.

Petitioner objects on the grounds that pretrial disclosures were neither properly nor timely served; on the grounds that Registrant failed to adequately disclose by providing a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony; and on the grounds that registrant failed to produce this document in discovery (131:19—132:5).

Appendix B

Representative Examples of Registrant’s Contradictory Testimony¹

Fact/Issue	Complaint	8/11/09 Depo	5/9/13 Depo	12/11/13 Depo	Other Evidence
Formation of Band	Gilles and Fletcher equally formed band: Gilles and Fletcher were together at a San Francisco club called “The Faultline” and “[d]uring this conversation, Plaintiff [Gilles] and Fletcher decide to form a Jackson 5 tribute band (¶¶ 18-20).	Fletcher approached Gilles about forming band: During a meeting at The Faultline, Fletcher approached Gilles “with the idea of just doing Jackson 5 songs [...] modeled after a band [...] in Southern California [...] and I said I would consider being a part of that band” (41:22—42:7).	Gilles approached Fletcher about forming band: “And I approached Fletcher to continue the cover band [Flesh Weapons] because I was in a cover band doing Jackson 5 songs for eight years before [...], I needed new people” (9:4-8).	Gilles and Fletcher equally formed band: “[O]ne night specifically, at the Faultline Jeff had sang with [Flesh Weapons], and we were talking after and, in a real organic conversation, we had talked about just doing Jackson 5 songs. [...] And this is just me and Jeff [...]. And so then in that one evening, we had formulated the vision of the band” (17:15—18:15).	Fletcher approached Rickard in September 1996 or ‘97 and told him that McDill, Brooks, and Gilles were starting a Jackson 5 tribute band and asked Rickard to join (Rickard Deposition 7:14—8:3); Fletcher approached Brooks about joining a Jackson 5 tribute band (Brooks Deposition 7:4-8, 17:23—18:2).
Selection of Name	Gilles suggested “Cinco de Blanco” and “Jackson de Blanco,” “ Another member brought up the word “Whitebread,” then “Whitebread 5.” Finally it was McDill, Gilles believes, who suggested ‘Wonderbread’ to replace “Whitebread. [...] [T]he Band members all agreed on Wonderbread 5” (¶ 24).	Gilles suggested “Whitebread,” McDill suggested “Wonderbread.” Gilles states: “I don’t know who to give credit to the number 5 to” and that “this sort of happened [...] in a group setting with a lot of ideas being put in, and it happened very organically” (48:12—49:9).	Gilles “had named the band Whitebread 5 prior to” the selection of “Wonderbread 5;” the name “evolved” during a meeting at which, according to Gilles, only he, McDill, and Rickard were present. McDill came up with “Wonderbread.” Subsequently, all members “floated it around and no one objected” (13:1—14:7).	“Two days” after Fletcher’s and Gilles’s meeting at The Faultline, Gilles “brought the name to [Fletcher] ‘White Bread Five,’” and Fletcher agreed Whitebread 5 would be “a placeholder.” When the whole group got together for first rehearsal, Gilles brought up “Cinco de Blanco” and “Jackson de Blanco,” McDill brought up “Wonderbread” and Gilles brought up “Wonderbread 5” (20:23—21:6, 25:6—26:11).	Registrant “absolutely [did] not” conceive of the Mark alone (Rickard Deposition 8-10); Fletcher alone approached Brooks with a couple of options for the name (“Wonderbread 5” and “Jacksons del Blanco”) and Brooks preferred Wonderbread 5 (Brooks Deposition 9:13—10:18)

¹ As noted in Petitioner’s Main Brief on the Case and in Appendix A, Petitioner objects to Registrants 12/11/13 Testimony Deposition in its entirety. Petitioner does not waive such objection by citing to portions of that Deposition here.

<p>First Use in Commerce</p>	<p>The Band’s first live performance was on a Thursday evening in November 1996 at the same club, The Faultline, at which Fletcher and Gilles decided to form the Band together. Gilles “secured this first performance for Wonderbread 5 because of [his] personal relationship with the Faultline owners” (¶ 25).</p>	<p>The Band’s first live performance was on Thanksgiving 1996 at The Faultline; Gilles believes Fletcher “booked” the first live performance or contacted the owner of the club to schedule the performance, but later states he does not know “who booked it” (49:16—50:7).</p>	<p>The Band’s first live performance was at The Faultline in late 1996 (10:2-5, 14:9-13, 94:2-4); Gilles contends he “booked the band’s very first gig at Faultline” (41:14-17, 147:16-17). Gilles contends that it was he who had “final decision-making authority on the logo” (160:15-17).</p>	<p>The Band’s first live performance was at The Faultline in November 1996; Gilles contends that he was the one who booked that first performance (29:24—30:12);</p>	<p>The Band’s first live performance was at The Faultline around Thanksgiving in 1996 or ’97; it was “probably [Fletcher] or [Gilles]” who booked the first show (Rickard Deposition 8:4-16); Brooks created the logo (Brooks Deposition 10:11-18, 16:18—17:4).</p>
<p>Conversations with Band Members Re: Termination</p>	<p>On March 10, 2009, Adams told Gilles over the telephone “We all decided, you’re out of the Band” and advised him not to attend the performance scheduled for the following day. Gilles told Adams that the Band could “not just unilaterally decide to remove Plaintiff from the Band” and that he would indeed attend the scheduled performance on March 11. Gilles contends that Adams threatened him with the possibility of physical force should Gilles attempt to attend the scheduled</p>	<p>On or about March 10, 2009, Adams called Gilles to inform him of the Band’s decision to terminate him, and Gilles responded: “You can’t do that;” Gilles explained that he meant only that he could only be kicked out of the Band in compliance with the “California corporate code” because the Band was “a partnership” and Gilles was “a partner;” Gilles does not mention being threatened during this conversation with Adams (186:10—</p>	<p>Gilles contends that he does not remember any details from the March 10, 2009 conversation with Adams (64:7-24).</p>	<p>Gilles claims that during the conversation he had with Adams on March 10, 2009, Adams also threatened Gilles with implied physical force should he attempt to attend: “If you show up [at the performance scheduled for the next day], we will stop you. You will never make it to the stage” (94:7-22); Gilles claims he also told Adams “I’m running this band” during this conversation (93:17—94:94:4).</p>	<p>During the March 10, 2009 call to Rickard, Gilles begged Rickard to let him stay in the Band, apologizing repeatedly and saying he would do anything necessary to stay in the Band (Rickard Deposition 50:1-18). During the March 10, 2009 call to Siegan, Gilles seemed “frantic,” “angry,” and “vengeful,” and threatened to kill other Band members’ families, as well as to “ruin the band’s lives [and] go after everyone as much as he could” (Siegan Deposition 33:13—24:4, 41:2-9).</p>

	<p>performance, saying “it could get physical.” Gilles also spoke with Siegan and Rickard on March 10, 2009: the former “acted surprised” and the latter “advised [Gilles] not to attend” (¶¶ 78-81).</p>	<p>187:14); Following the Adams conversation, Gilles called Rickard, who Gilles described as “more comforting,” and Rickard told Gilles he could come to the next performance in order to talk (188:22—189:15).</p>			
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Appendix C

California Corporations Code § 16202

(a) Except as otherwise provided in subdivision (b), the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received for any of the following reasons:

(A) In payment of a debt by installments or otherwise.

(B) In payment for services as an independent contractor or of wages or other compensation to an employee.

(C) In payment of rent.

(D) In payment of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(E) In payment of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(F) In payment for the sale of the goodwill of a business or other property by installments or otherwise.

California Corporations Code § 16203

Property acquired by a partnership is property of the partnership and not of the partners individually.

California Corporations Code § 16401

(a) Each partner is deemed to have an account that is subject to both of the following:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits.

(2) Subject to Sections 16306 and 16957, charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and, subject to Sections 16306 and 16957, is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner that gives rise to a partnership obligation under subdivision (c) or (d) constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 16301.

California Corporations Code § 16404

(a) The fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subdivisions (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners includes all of the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property or information, including the appropriation of a partnership opportunity.

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner regarding performance or enforcement are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

California Corporations Code § 16701

Except as provided in Section 16701.5, all of the following shall apply:

(a) If a partner is dissociated from a partnership, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subdivision (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subdivision (b) of Section 16807 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 16602, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 16702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subdivision (c).

(f) If a deferred payment is authorized under subdivision (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subdivision (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subdivision (e) or (f) shall be accompanied by all of the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation.
- (2) The latest available partnership balance sheet and income statement, if any.
- (3) An explanation of how the estimated amount of the payment was calculated.
- (4) Written notice that the payment is in full satisfaction of the

obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subdivision (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 16405, to determine the buyout price of that partner's interest, any offsets under subdivision (c), or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subdivision (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subdivision (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subdivision (g).