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

Proceeding	92052150
Party	Plaintiff Wonderbread 5
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

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

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

MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT

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Pursuant to Federal Rule of Civil Procedure 12(c) and Trademark Rule of Procedure 2.127(d), Petitioner WONDERBREAD 5, a California general partnership (“Petitioner”) moves for a judgment on the pleadings as to its Petition for Cancellation. In the event that the Board determines that this Motion incorporates matters outside of the pleadings, Petitioner respectfully requests that it treat this Motion for Judgment on the Pleadings as a motion for summary judgment. *See Dunkin Donuts v. Metallurgical Exoproducts Corp.*, 840 F.2d 917 (Fed. Cir. 1988).

I. INTRODUCTION

By this motion Petitioner seeks a judgment on the pleadings, or in the alternative, a summary judgment, cancelling Registration Number 3691948 for the Word Mark WONDERBREAD 5 (the “Mark”). The grounds for cancellation are: (a) the Mark is likely to be confused with a mark previously used and not abandoned by Petitioner and (b) fraudulent procurement.

Petitioner is a decade-plus old musical group named Wonderbread 5, based in the San Francisco Bay Area and comprised of the following members: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor (individually and collectively the “Band”). The Band has operated under that name, Wonderbread 5, performing both in California, across the country and out of the country, since its inception in 1996. Respondent is a former member of the Band, who was terminated from the Band on or about March 9, 2009. Petition, ¶ 6. Three days later, Registrant filed the subject trademark application, without the knowledge or consent of the Band. Petition, ¶7.

After filing a trademark application for the subject Mark, Registrant filed a Complaint in

San Francisco Superior Court against the Band (the “Complaint”) alleging various causes of action in connection with Registrant’s interest in the Band. *See* Petitioner’s Request for Judicial Notice (“RJN”), Ex. A. In the Complaint, Registrant admitted that the Band began using the WONDERBREAD 5 mark in commerce in November 1996. Complaint, ¶¶ 24, 25. He further admitted that the Mark was coined by another Band member, not by Registrant. *Id.* Registrant alleged no use of the Mark apart from his membership in the Band.

The lawsuit settled, following the Band’s payment to Registrant of \$30,000 in compensation for all of Registrant’s interest in the Band. Accordingly, Registrant has no rights in the Band or its trademark, and his fraudulently procured registration of the Mark should be cancelled.

II. STATEMENT OF FACTS

Days after he was terminated from the Band, Respondent filed an application for registration of the WONDERBREAD 5 mark in connection with “[e]ntertainment services in the nature of live musical performances.” Petition, ¶ 7, Ex. A. Respondent filed this application as an individual (as opposed to as a member of a general partnership or other entity). *Id.* Respondent filed this application without the knowledge or consent of the Band. *Id.*

On June 17, 2009, Respondent filed a Complaint against the Band, its individual members, and its agent and manager in San Francisco Superior Court, alleging various causes of action, all in connection with Registrant’s involvement in and entitlements from his connection with the Band. Petition, ¶ 8, Ex. B. In the Complaint, Registrant admitted the following facts:

- Wonderbread 5 “is a California General Partnership, either formally or ostensibly, that was formed in 1996 and that at all times herein mentioned was and is doing

business in California.” Complaint, ¶ 11.

- “Finally, it was McDill, Plaintiff believes who suggested ‘Wonderbread’ . . . Shortly thereafter, the number 5 was appended to ‘Wonderbread’ and the Band members all agreed on the name ‘Wonderbread 5.’” Complaint, ¶ 24;
- “The Band’s first live performance was on a Thursday evening in November 1996.” Complaint, ¶ 25;
- “The Band was a long-standing institution in the Bay Area and abroad with shows booked out a year in advance. WB5 had performed in over 12 states and 3 foreign countries with private engagements booked for Mexico, Puerto Rico and Canada.” Complaint, ¶ 26;
- “On Tuesday, March 10, 2009 . . . Adams advised Plaintiff that . . . ‘you’re out of the Band.’” Complaint, ¶¶ 78-79;
- “On Thursday, March 12, 2009, Plaintiff received an email letter from Barry Simons, a lawyer, on behalf of the members of the Band advising Plaintiff that Plaintiff was no longer a member of the Band and that the Band ‘shall continue to perform and conduct business under the name ‘Wonderbread 5.’” Complaint, ¶ 85;
- “Plaintiff, through counsel, issued two demands to WB5 and its individual partners . . . for an accounting and copies of the books and records of the partnership business . . . and requesting a buyout.” Complaint, ¶ 91;

In sum, Registrant admitted in his state court pleading that the Band is a general partnership, that the Band created and operated under the WONDERBREAD 5 mark and used

the Mark in interstate commerce, that Respondent was fired from the Band on or about March 10, 2009, and that Respondent expected to be bought out of his interest in the Band.

Nowhere in his 37-page complaint did Registrant claim ownership of the Mark. Further, during the course of discovery, Registrant concealed that he had registered the Mark despite a document request directed to that subject and a sworn deposition. Counsel Decl., ¶ 3, Ex. A.

On September 3, 2009, the Band served Registrant with an Offer to Compromise, pursuant to California Code of Civil Procedure section 998. Petition, ¶ 10; Counsel Decl., ¶ 4, Ex. B. Section 998 is a California statute, similar to FRCP 68, which promotes settlement by allowing a party to make an offer to compromise before trial. *See* Petition, Exhibit C. Following service of that Offer, counsel for the Band informed counsel for registrant, in writing, that the Offer constituted “the [B]and’s offer to pay for your client’s ‘interest’ in the [B]and.” Petition, ¶ 11, Ex. D; Counsel Decl., ¶ 5, Ex. C.

Registrant accepted the Band’s Offer to Compromise on October 1, 2009. Petition, ¶ 12, Ex. E; Counsel Decl., ¶ 6, Ex. D. The Band remitted payment to Registrant on October 8, 2009, and Registrant dismissed his complaint, with prejudice, on October 22, 2009, thereby releasing all claims in and to the Band. Petition, ¶ 12, Ex. F; RJN, Ex. B; Counsel Decl., ¶ 7.

The Band filed this Petition for Cancellation on March 1, 2010. Counsel Decl., ¶ 8, Ex. E. Registrant filed his answer on April 8, 2010. Counsel Decl., ¶ 9, Ex. F. The answer asserts no affirmative defenses. *Id.*

III. ARGUMENT

A. Legal Standard

After the Answer has been filed, a party may move for judgment on the pleadings under FRCP 12(c) and (h)(2) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) Rule 504. A Rule 12(c) motion applies the same standard as a Rule 12(b)(6) motion to Dismiss. *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F. 3d 1138, 1160 (10th Cir. 2000). In reviewing such motion, the Court must accept all well-pled allegations as true and view those allegations in the light most favorable to the non-moving party. *Id.*

A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board may take judicial notice. TBMP, Rule 504.02. The decider of a motion for judgment on the pleadings may also consider documents attached to the pleadings as well as unattached documents that (a) appear in the record of the case (*Porous Media Corporation v. Pall Corporation*, 186 F. 3d 1077, 1079 (8th Cir, 1999) or (b) are referred to in the pleadings and are central thereto, so long as authenticity is undisputed (). Here, Petitioner has attached as Exhibits A through D of its Counsel Declaration as well as Exhibits A through B of its Request for Judicial Notice certain documents attached to and/or referenced in its Petition for Cancellation. There should be no dispute as to their authenticity since these are documents which were served and/or filed on or by Registrant in his state court lawsuit against the Band.

A judgment on the pleadings may be granted where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment on the substantive merits of the controversy, as a matter of law. *Baroid Drilling Fluids*,

Inc. v. SunDrilling Products, 24 USPQ2d 1048 (TTAB 1992). If a motion for judgment on the pleadings presents matters outside the pleadings and such matters are not excluded by the Board, the motion may properly be treated as a motion for summary judgment under F.R.C.P. 56; TBMP 504.03.

B. Respondent is Bound By the Admissions in His State Court Complaint

Where a party to a prior legal action obtained a settlement or judgment, that party cannot assert a contradictory position in a subsequent action against the same defendant. Rather, under the principle of judicial estoppel, the pleadings and other representations to the court in the first action are binding in subsequent suits, and attempts by the plaintiff to refute his earlier admissions cannot overcome a motion for judgment on the pleadings, or for summary judgment. *E.g., Scarano v. Central Railroad Co. of New Jersey*, 203 F.2d 510 (3d Cir. 1953). Therefore, Respondent must be bound in this action by the admissions in his state court complaint, which establish that there is no dispute of material fact, and Petitioner is entitled to judgment as a matter of law.

In *Scarano*, an injured railroad employee filed suit against his employer under the Federal Employers' Liability Act, claiming that he was permanently, totally disabled from performing his occupation. The parties settled that suit. *Scarano*, 205 F.2d at 511. Shortly after the settlement was reached, the employee asked the employer to reinstate him to his former job. When the employer refused, he filed suit alleging breach of the collective bargaining agreement. *Id.*

The trial court granted the employer's motion for summary judgment, holding that the doctrine of judicial estoppel precluded the employee's claim for reinstatement and lost wages. *Id.* at 512-14. That is, plaintiff's claim in the previous proceeding (*i.e.*, that he was, and would

continue to be, unable to perform his job) could not be reconciled with his claim for a second recovery less than a month later, premised on the assertion that he had been rehabilitated and was therefore entitled to reinstatement.

The court explained that under judicial estoppel, “a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or a successive series of suits. ... A plaintiff who has obtained relief from an adversary by asserting and offering proof to support one position may not be heard later ... to contradict himself in an effort to establish against the same adversary a second claim inconsistent with his earlier contention. Such use of inconsistent positions would most flagrantly exemplify that playing fast and loose with the courts which has been emphasized as an evil the courts should not tolerate.” *Id.* at 513 (internal citations and punctuation omitted). The *Scarano* court therefore upheld summary judgment for the employer.

The doctrine of judicial estoppel applies to “prevent the perversion of the judicial process” in situations in which the strict requirements of collateral estoppel are not met, such as where the material facts were not fully litigated but rather were established (even impliedly) pursuant to a settlement agreement. See *In re Cassidy*, 892 F.2d 637, 643 (7th Cir. 1990) (quoting *Scarano*). Accord *Matamoros v. Tort Claims Trust*, 1999 WL 24612 (E.D. La. Jan. 15, 1999) (affidavit filed in bankruptcy proceeding indicating the amount to which plaintiff in a subsequent civil action claimed to be owed was a judicial admission, binding in the civil suit).

C. The Undisputed Facts and Allegations in the Pleadings Show that the Mark is Identical to a Mark Previously Used and Not Abandoned by the Band

A trademark registration should be cancelled where the registered mark is likely to be

confused with a mark previously used by another and not abandoned. Lanham Act, section 2(d); *Signal Cos. v. Sodel, Inc.*, 217 U.S.P.Q. 173 (TTAB 1982). Where an identical mark is used for the same goods and services, likelihood of confusion follows as a matter of law. *Brookfield Communications, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999) (“In light of the virtual identity of marks, if they were used with identical products or services likelihood of confusion would follow as a matter of course.”).

Here, the Mark is identical to the Band’s name, which Registrant admits has been used in commerce since 1996. *See* Complaint, ¶¶ 11, 25, 26; Petition, ¶¶ 3-5. The Mark was registered in connection with “[e]ntertainment services in the nature of live musical performances.” Petition, ¶ 7, Ex. A. Registrant admits that the Band used the Mark in the nature of live musical performances since 1996. *See* Complaint, ¶¶ 24, 25.

Any use of the Mark during Registrant’s membership in the Band, i.e. until March 2009, is use by the Band partnership, not by Registrant individually – just as alleged in Respondent’s state court complaint. *See* Complaint, ¶¶ 24-26. As set forth below, upon Registrant’s departure from the Band, he no longer had the right to use the Band name, which has continued to be used by the remaining band members (*See* Complaint, ¶¶ 89, 92). Accordingly, Registrant’s registration of the Mark for musical performances, in his individual capacity and after his termination from the Band, constituted registration of a mark identical to the Band’s previously used and not abandoned mark.

Upon a band member’s departure from the band, the law is established that the band’s name and trademark remains with the band and does not transfer to the leaving member. *Robi v. Reed*, 173 F.3d 736, 740 (9th Cir. 1999) (“members of a group do not retain rights to use the

group's name when they leave the group"); *See also Kingsmen v. K-Tel Int'l, Ltd.*, 557 F. Supp. 178 (S.D.N.Y. 1983) (holding that former lead singer of a musical group did not have the right to use the group's name after his departure from the group); *Giammarese v. Delfino*, 197 U.S.P.Q. 162, 163 (N.D. Ill. 1977) (former band member enjoined from performing under band name). Consequently, when Registrant was terminated from the Band on March 10, 2010, he no longer possessed the right to use the Band's name, which remained with the Band.

Moreover, Registrant's allegations in his state court complaint confirm that the Mark was developed, owned and used by the Band's general partnership, not by Registrant individually:

- Wonderbread 5 "is a California General Partnership, either formally or ostensibly, that was formed in 1996 and that at all times herein mentioned was and is doing business in California." Complaint, ¶ 11.
- "Finally, it was McDill, Plaintiff believes, who suggested 'Wonderbread' . . . Shortly thereafter, the number 5 was appended to 'Wonderbread' and the Band members all agreed on the name 'Wonderbread 5.'" Complaint, ¶ 24;
- "The Bands [sic] first live performance was on a Thursday evening in November 1996." Complaint, ¶ 25;
- "The Band was a long-standing institution in the Bay Area and abroad with shows booked out a year in advance. WB5 had performed in over 12 states and 3 foreign countries with private engagements booked for Mexico, Puerto Rico and Canada." Complaint, ¶ 26.

The Complaint further shows that Registrant expected to be bought out of his interest in the Band. Complaint, ¶ 91 ("Plaintiff, through counsel, issued two demands to WB5 and its

individual partners . . . for an accounting and copies of the books and records of the partnership business . . . and requesting a buyout.”). And this is precisely what happened. The Band, pursuant to California’s statutory offer of settlement procedure, offered Registrant \$30,000 for his interest in the Band, which he accepted. Registrant then dismissed his case with prejudice.

Petition, ¶ 12, Ex. F.

Because Registrant no longer has any interest in the band name or any right to perform under the band name and because any use by Registrant of the Mark individually post-dates the Band’s use of the Mark, Registrant’s registration should be cancelled on the grounds that it is identical to a mark previously used and not abandoned by Petitioner.

D. Respondent Cannot Create A Genuine Issue of Material Fact By Contradicting His Prior Admissions

Respondent admitted in his state court complaint all the facts necessary to demonstrate that Petitioner is entitled to judgment in its favor. Respondent cannot attempt to create a genuine issue of material fact by contradicting the admissions made in his state court complaint. *Mo. Housing Dev. Comm’n v. Brice*, 919 F.2d 1306, 1315 (8th Cir. 1990) (affidavit presented in opposition to motion for summary judgment attempting to contradict prior admissions in pleadings does not raise genuine issue of fact). To permit him to allege contradictory facts would allow a perversion of this tribunal’s process. *Cassidy*, 892 F.2d at 643.

For example, in *Franks v. Nimmo*, 796 F.2d 1230 (10th Cir. 1986), plaintiff attempted to defeat summary judgment by presenting his own declaration describing alleged representations purportedly made by several defendants. However, the statements in the declaration were clearly and unequivocally contradicted by his own previous testimony. *Id.* at 1236-37. Moreover, both the previous testimony and the declaration concerned information readily available to the plaintiff

at the time of the testimony (as opposed to information that was only discovered after the plaintiff testified). The court held that the plaintiff had engaged in “an attempt to create a sham fact issue” and disregarded the declaration in granting defendants’ motion for summary judgment. *Id.*

Any attempt by Respondent here to create a fact issue will be no less a sham. All the relevant information regarding the allegations in the complaint was available to him when he filed the complaint; just as in *Franks*, many of Respondent’s admissions concerned conversations in which he was a participant. *See id.* at 1237. *See also* Complaint, ¶ 24 (discussing, based on a conversation in which Respondent participated, who coined the Band name), Complaint ¶¶ 25, 26 (discussing the Band’s longstanding use of the Mark, based on Respondent’s personal participation in such use). Thus, the Board should disregard any attempts by Respondent to contradict his prior admissions.

Because Respondent has admitted every fact necessary to establish that Petitioner is entitled to judgment as a matter of law, and because he cannot create a disputed issue of fact by contradicting those admissions, no discovery could salvage his position. Therefore, to the extent that he requests additional time to conduct discovery before responding to this motion, pursuant to F.R.C.P. 56(f), that request should be denied.

Further, Trademark Rule 2.127(d) requires that all proceedings in this matter not directly related to this motion be immediately suspended. *Opryland USA Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 852 (Fed. Cir. 1992). As such, Petitioner requests that the Board’s suspension order provide that Petitioner need not respond to the discovery already served by Respondent – none of which has any bearing on the outcome of this motion – pending the resolution of this motion. *See Leeds Techs. Ltd. v. Topaz Commc’ns Ltd.*, 65 U.S.P.Q.2d 1303 (TTAB 2002)

(holding that once dispositive motion is filed, parties have good cause to cease working on outstanding discovery, and suspending proceedings retroactively to the date the dispositive motion was filed).

E. The Undisputed Facts and Allegations in the Pleadings Show that Petitioner Fraudulently Procured the Subject Registration

If fraud can be shown when procuring a registration, the entire registration or application is void. *Medinol Ltd. v. Nuro Vasx, Inc.*, 67 U.S.P.Q. 2d 1205, 1208 (TTAB 2003). Fraudulent procurement of a trademark application exists when the Applicant “makes material misrepresentations of fact in its declaration which it *knows or should know* to be false or misleading.” *Medinol* supra, 67 U.S.P.Q. 2d at 1209. It is not necessary to have any type of intent to commit the fraud. *Hachette Filipacchi Presse v. elle Belle, Inc.*, 85 U.S.P.Q. 2d 1090, 1094 (TTAB 2007).

It is crucial that the statements applicants make in a trademark application be truthful because, when examining the application, the Trademark Office does not have the ability to verify whether certain goods listed in an application are used in commerce by the applicant. Truthful statements in a trademark application “are essential to the integrity of the application and the registration process.” *Grand Canyon West Ranch LLC v. Hualapai Tribe*, 88 U.S.P.Q. 2d 1501, 1509 (TTAB 2008).

Here, Registrant declared, under penalty of perjury, in his March 12, 2009 trademark application that “no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion , or to cause mistake or to deceive.” Petition, ¶18, Ex. A. Registrant’s state court complaint shows

this declaration to be a lie. In the Complaint, Registrant admits that he was fired from the Band on March 10, 2009, two days before he filed his trademark application. Complaint, ¶¶ 78-79 (“On Tuesday, March 10, 2009 . . . Adams advised [Registrant] that . . . ‘you’re out of the Band.’”). Registrant further admits that on March 12, 2009, the same day he filed his trademark application, he received a letter from the Band’s attorney “advising [Registrant] that [Registrant] was no longer a member of the Band and that the Band ‘shall continue to perform and conduct business under the name ‘Wonderbread 5.’” Complaint, ¶ 85.

In sum, Registrant’s own pleading admits that at the time he filed and continued to prosecute his trademark application, he knew that (1) he had been fired from the Band and (2) the Band intended to continue performing under its name without Registrant. Registrant’s declaration that to the best of his knowledge no other person or entity had the right to use the Mark in commerce is therefore patently false. In representing to the Board that he had an individual right to the Mark and that no other entity had a right to use the Mark in commerce, while knowing that the Mark belonged to the Band, not Registrant and that Registrant was no longer a member of the Band, Registrant committed fraud on the USPTO. Accordingly, the instant registration should be cancelled.

IV. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Board grant its Motion for Judgment on the Pleadings, or in the Alternative, for Summary Judgment.

Respectfully submitted,

WONDERBREAD 5

Dated: July 30, 2010

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CERTIFICATE OF SERVICE

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

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Dated: July 30, 2010

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

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

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

**PETITIONER’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, FOR SUMMARY
JUDGMENT**

Pursuant to Federal Rule of Evidence 201 and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) Rules 504.02 and 704.12, Petitioner WONDERBREAD 5, a California general partnership (“Petitioner”) hereby requests that the Board take judicial notice of the following pleadings:

1. Registrant’s California state court complaint against Petitioner, filed on June 17, 2009 in San Francisco Superior Court. A true and correct copy of said Complaint is attached hereto as **Exhibit A**. A copy was also attached as Exhibit B to the Petition for Cancellation.

2. Registrant's Request for Dismissal, filed on October 22, 2009. A true and correct copy of said pleading is attached hereto as **Exhibit B**. Said dismissal was also attached as Exhibit H to the Petition for Cancellation.

Judicial pleadings are proper subjects of a request for judicial notice. *See Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir. 2000) (taking judicial notice of complaint in another lawsuit when ruling on motion to dismiss). Here, the Complaint and Request for Dismissal serve to assist the understanding of the factual and legal issues in this proceeding, including Petitioner's prior use of the Mark and Registrant's fraudulent representations in procuring the instant registration.

Respectfully submitted,

Dated: July 30, 2010

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Exhibit A

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SUMMONS ISSUED
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San Francisco County Superior Court

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GORDON PARK-LI, Clerk
BY: Elis Butt
Deputy Clerk

5 Attorney for Plaintiff, Patrick Gilles

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

9 PATRICK GILLES, an individual, on)
behalf of himself,)
10)
11 Plaintiff,)
12 vs.)
13 JEFFREY FLETCHER, an individual;)
JOHN MCDILL, an individual; THOMAS)
14 RICKARD, an individual;)
CHRISTOPHER ADAMS, an individual;)
15 MICHAEL TAYLOR, an individual; JAY)
SIEGAN, an individual; JAY SIEGAN)
16 PRESENTS, an unknown business)
entity; and WONDERBREAD 5, a)
17 California general partnership;)
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)

19 CASE MANAGEMENT CONFERENCE SET

20 NOV 20 2009 - 9:30 AM

21 DEPARTMENT 212

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28 Plaintiff Patrick Gilles alleges as follows:

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 FACTUAL BACKGROUND AND ALLEGATIONS

2 COMMON TO ALL CLAIMS FOR RELIEF

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

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

11 16. Defendant Fletcher was a frequent attendee at many of
12 the shows of The Fabulous Flesh Weapons and Plaintiff would
13 often invite Fletcher up on stage with Plaintiff to sing Jackson
14 5 songs and Journey songs because of Fletcher's uniquely high
15 voice and gracious demeanor at the shows. Plaintiff considered
16 Fletcher a friend and a fan of the band.

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

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

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

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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

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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.

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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.

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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.

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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.

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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
25 (Against All Defendants)

26 109. Plaintiff realleges and incorporates by reference
27 herein each of the facts and allegations in Paragraphs 1 through
28 108 above, inclusive, as though fully set forth herein.

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 STATUTE
22 California Corporation Code Section 16401
23 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
Siegan, JSP and WB5)

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.

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

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 STATUTE
17 California Corporation Code Section 16403
18 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
19 Siegan, JSP and WB5)

20 124. Plaintiff realleges and incorporates by reference
21 herein each of the facts and allegations in Paragraphs 1 through
22 123 above, inclusive, as though fully set forth herein.

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

26 126. Defendants and each of them violated California
27 Corporations Code Section 16403 because they wrongfully denied
28 Plaintiff access to the books and records of the partnership
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 WE5)

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

7 132. Plaintiff realleges and incorporates by reference
8 herein each of the facts and allegations in Paragraphs 1 through
9 131 above, inclusive, as though fully set forth herein.

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

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

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

21 136. As a direct and proximate result of the statutory
22 violation, Plaintiff has been forced retain counsel to bring
23 this action to enforce Plaintiffs rights under the statue and
24 has suffered and will continue to suffer severe injury and
25 damages, costs and expenses in an amount according to proof
26 trial but in an amount not less than \$1,000,000.00.
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TENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Civil Code Section 3344
(Against All Defendants)

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

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

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

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

PRAYER FOR RELIEF

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

A. On the First Cause of Action

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

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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, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
9. For costs of suit and for such other and further relief as the court deems proper.

B. 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, 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.

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, 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.

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.

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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.

I. On the Ninth 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.

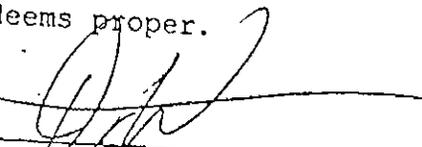
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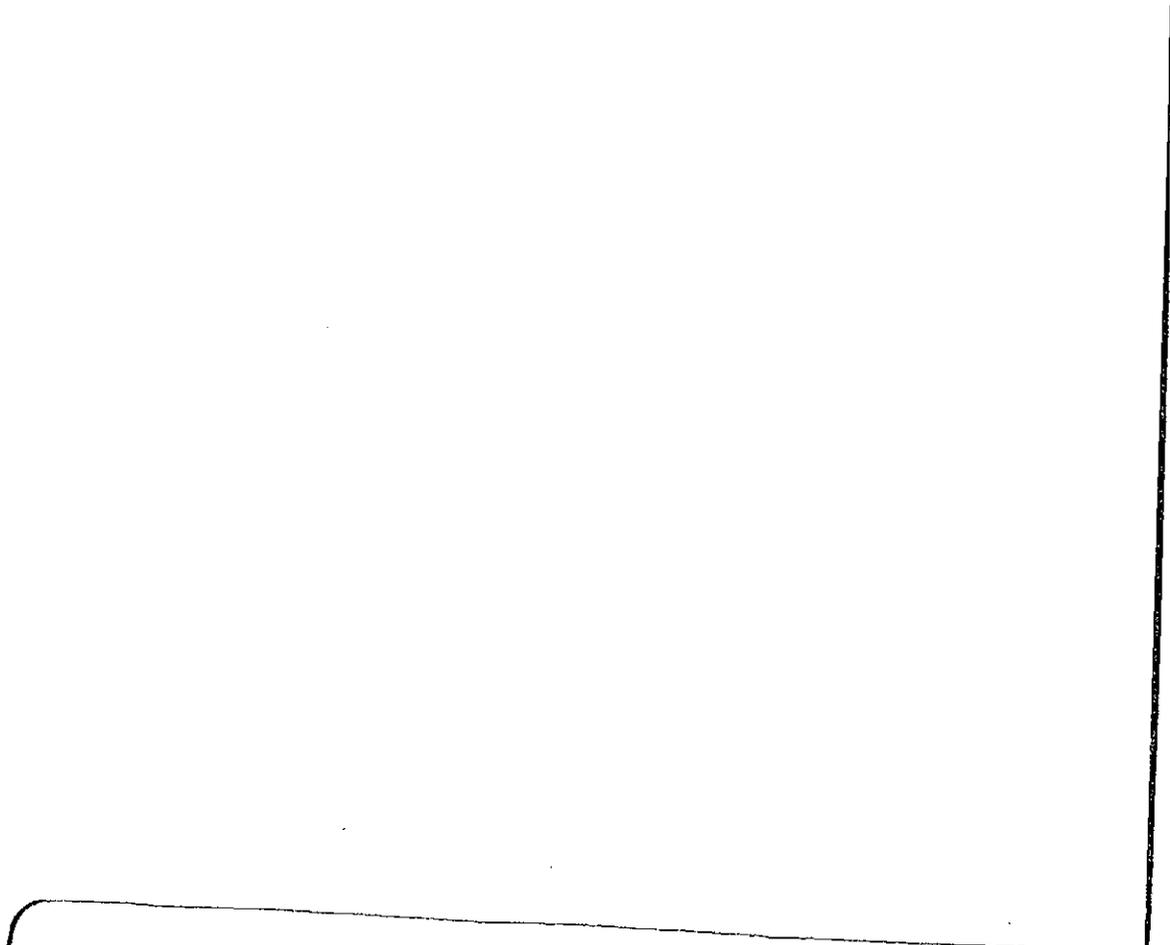
8. For attorney fees under Cal. Corporations Code Section 16701(i) and costs of suit and for such other and further relief as the court deems proper.

J. On the Tenth Cause of Action

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

Dated: June 16, 2009

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



Flag this message

Wonderbread 5

Thursday, March 12, 2009 9:07 PM

From: "Barry Simons" <barry@yourmusiclawyer.com>

View contact details

To: "Patrick Gilles" <patrickgilles@yahoo.com>

Cc: Jeffreyafletcher@me.com, jmcDill@mac.com, tommy@tommyrickard.com, chlp@wonderbread5.com, jay@jaysleganpresents.com

Dear Pat:

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

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

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

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

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

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

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

Thank you very much for your cooperation regarding this matter.

Barry Simons

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

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

barry@yourmusiclawyer.com
www.yourmusiclawyer.com

Exhibit B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DOUGLAS B. WROAN (SBN 177051) THE WROAN LAW FIRM, INC. 5155 West Roscomans Avenue, Suite 229 HAWTHORNE, CA 90250 TELEPHONE NO.: (310) 973-4291 FAX NO. (Options): (310) 973-4287 E-MAIL ADDRESS (Optional): DWROAN@Wroanlawfirm.com ATTORNEY FOR (Name): Plaintiff, Patrick Gilles	FOR COURT USE ONLY ENDORSED FILED Superior Court of California County of San Francisco OCT 22 2009 GORDON PARK-LI, Clerk BY: MICHAEL RAYBAY Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse	
PLAINTIFF/PETITIONER: Patrick Gilles DEFENDANT/RESPONDENT: Jeffrey Fletcher et. al.	
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Fraud, Breach of Contract - A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	CASE NUMBER: CGC-09-489573

VIA FAX COPY

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) With prejudice (2) Without prejudice

b. (1) Complaint (2) Petition
 (3) Cross-complaint filed by (name): on (date):
 (4) Cross-complaint filed by (name): on (date):
 (5) Entire action of all parties and all causes of action
 (6) Other (specify):*

2. (Complete in all cases except family law cases.)

Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: October 20, 2009

DOUGLAS B. WROAN

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

"If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed."

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(SIGNATURE)

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(SIGNATURE)

(To be completed by clerk)

4. Dismissal entered as requested on (date): OCT 22 2009
 5. Dismissal entered on (date): as to only (name):
 6. Dismissal not entered as requested for the following reasons (specify):
 7. a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to be conformed means to return conformed copy

Date: OCT 22 2009 Clerk, by M. RAYBAY, Deputy

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 CIV-110 (Rev. July 1, 2009)

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.,
 Gov. Code, § 82037(c); Cal. Rules of Court, rule 3.1350
 www.courtinfo.ca.gov

American LegalNet, Inc.
 www.FormsWorkFlow.com

CERTIFICATE OF SERVICE

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

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

Dated: July 30, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

|||

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|||

Exhibit A

1 David M. Given (State Bar No. 142375)
2 Feather D. Baron (State Bar No. 252489)
3 PHILLIPS, ERLEWINE & GIVEN LLP
4 50 California Street, 35th Floor
5 San Francisco, California 94111
6 Telephone: (415) 398-0900
7 Facsimile: (415) 398-0911
8 dmg@phillaw.com
9 fdb@phillaw.com

10 Attorneys for Defendants

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 PATRICK GILLES, an individual, on behalf
14 of himself,

15 Plaintiff,

16 v.

17 JEFFREY FLETCHER, an individual; JOHN
18 MCDILL, an individual; THOMAS
19 RICKARD, an individual; CHRISTOPHER
20 ADAMS, an individual; MICHAEL
21 TAYLOR, an individual; JAY SIEGAN, an
22 individual; JAY SIEGAN PRESENTS, an
23 unknown business entity; and
24 WONDERBREAD 5, a California general
25 partnership; and DOES 1-10, inclusive,

26 Defendants.

CASE NO. CGC-09-489573

**NOTICE OF DEPOSITION OF
PLAINTIFF PATRICK
GILLES**

27 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

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

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

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

DATED: July 24, 2009

PHILLIPS, ERLEWINE & GIVEN LLP

By: 
Feather D. Baron
Attorneys for Defendants

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PROOF OF SERVICE

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

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

NOTICE OF DEPOSITION OF PLAINTIFF PATRICK GILLES

was addressed to:

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

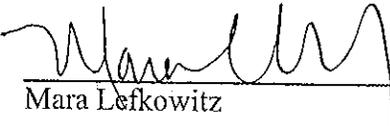
BY FIRST CLASS MAIL: I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices as indicated above.

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

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

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

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


Mara Lefkowitz

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3

4

5 PATRICK GILLES, an individual,
on behalf of himself,

6

Plaintiff,

7

vs. No. CGC-09-489573

8

JEFFREY FLETCHER, an
9 individual; JOHN MCDILL, an
individual; THOMAS RICKARD,
10 an individual; MICHAEL TAYLOR,
an individual; JAY SIEGAN, an
11 individual; JAY SIEGAN
PRESENTS, an unknown business
12 entity; and WONDERBREAD 5, a
California general partnership;
13 and DOES 1-10, inclusive,

14 Defendants.

15

Deposition of

16 PATRICK E. GILLES

17 Tuesday, August 11, 2009

18 Volume I

19

20

21 REPORTED BY: CINDY TUGAW, CSR #4805

22

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

25

1 Q. Why?

2 A. The band was functioning at a very high
3 level, profiting, had just finished a all-important
4 series of assets that had been requested by the
5 manager for nearly four years, including a video,
6 Web site, song lists, outfits.

7 Q. Anything else?

8 A. Well, when I say "assets," photographs,
9 photo session, all the assets the manager, Jay
10 Siegan, had requested since 2004 were completed in
11 early 2009.

12 Q. Anything else that you can remember?

13 A. I can't think of any other assets.

14 Q. Were you happy in the band in March of
15 2009 when you were asked to leave?

16 A. Yes.

17 Q. And you thought the band was functioning
18 well at that time?

19 A. Yes.

20 Q. And you thought that you were a part of
21 that?

22 A. Yes.

23 MR. GIVEN: So can we put what's been marked
24 as Defendants' Exhibit 1 in front of the witness.

25 Q. Now, you've seen this document before,

1 Mr. Gilles?

2 A. Oh, yes. Yes.

3 Q. This is your deposition notice, right?

4 A. Correct.

5 Q. And on Page 2 of the deposition notice is
6 a request for documents. Do you see that?

7 A. Yes.

8 Q. And you've come here today with some
9 documents for us, and we'll get into that in a
10 second. What I wanted to ask you first is what did
11 you do to make available to us today the documents
12 that we've asked for in this deposition notice?

13 A. I searched my e-mail. I searched my
14 physical folder where I had one folder that had
15 Wonderbread 5 documents in it. I searched my
16 computer hard drive, my current existing computer
17 hard drive for any documents or photos.

18 Q. Anything else?

19 A. I looked for records within my house and
20 found nothing. I have moved three times and owned
21 three homes since the beginning of the band but
22 could not find anything other than what I've brought
23 today.

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

25 Where did you find that?

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

2 Q. And did the folder have a name at the top
3 that said "Wonderbread 5," is that how you knew --

4 A. Yes.

5 Q. -- that it pertained to this?

6 A. Yes.

7 Q. And did you go through that entire filing
8 drawer to see if there were any other files or
9 papers that pertained to the band?

10 A. I did, yes.

11 Q. And you didn't find anything?

12 A. No.

13 Q. You mentioned looking for e-mails. How
14 did you search for e-mails?

15 A. In a Yahoo folder that I had assigned the
16 name Wonderbread 5. And a search in my general
17 folders, I did a search in general folders. I
18 didn't find anything else.

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

20 A. Patrickgilles@yahoo.com.

21 Pat@patrickgilles.com.

22 Q. Are those the only two?

23 A. Yes.

24 Q. So you went through the Yahoo folder that
25 was assigned the name Wonderbread 5?

1 A. Yes.

2 Q. And did you produce all of the e-mails in
3 that folder --

4 A. Yes.

5 Q. -- to us today?

6 One thing I should remind you is the court
7 reporter can't take down both of us speaking over
8 each other.

9 A. Was I quick? I'm sorry.

10 Q. Yes, you were. So you should wait until I
11 finish my question and then you can give me your
12 answer.

13 And did you also go through the other
14 folders in your Yahoo account?

15 A. Only by a search but did not individually
16 go through each folder.

17 Q. And what search did you execute?

18 A. I searched WB5, Wonderbread 5, two
19 searches.

20 Q. And did those searches yield any results?

21 A. They did not.

22 Q. So it's fair to say that all of the
23 e-mails that you had in your Yahoo account that
24 pertained to Wonderbread 5 were in a separately
25 designated folder that was assigned the name

1 Wonderbread 5, is that correct?

2 A. Yes.

3 Q. Now, tell me what, if anything, you did to
4 search your e-mail account at pat@patrickgilles.com.

5 A. I have no folders.

6 Q. Did you execute any searches to see if
7 there were any e-mails in that account that
8 pertained to Wonderbread 5?

9 A. I did not.

10 Q. Why not?

11 A. It is a new account, and I was relatively
12 sure that I had never used that e-mail address for
13 band business.

14 Q. When did you start using the account
15 pat@patrickgilles.com?

16 A. 2007 when I purchased the URL
17 patrickgilles.com. It came with free e-mail
18 address.

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

20 A. Yes.

21 Q. What did you use that e-mail account for?
22 If you didn't use it for band business, what did you
23 use it for?

24 A. If anyone clicked on the URL
25 patrickgilles.com, under a Contacts, which is a free

1 service they give you, it would shoot an e-mail to
2 Patrick or -- pat@patrickgilles.com in case anyone
3 wanted to contact me from that Web site.

4 Q. And did anybody contact you via that Web
5 site at this e-mail address, pat@patrickgilles.com,
6 concerning band business?

7 A. No.

8 Q. How about concerning the band generally?

9 A. No.

10 Q. Now, how long have you had the Yahoo
11 account, the patrickgilles@yahoo.com?

12 A. I can only estimate 2000 -- gosh, it's
13 hard for me to remember. 2000, maybe. The
14 millennium, 1999, 2000, 2001.

15 Q. Did you have any e-mail accounts prior to
16 the Yahoo account?

17 A. Yes.

18 Q. What were those?

19 A. I don't recall the exact name, but it was
20 my name -- maybe pgilles. This is -- I'm
21 guessing -- not guessing, but trying to remember,
22 pgilles@earthlink.net.

23 Q. And do you recall how many years you
24 maintained that e-mail account?

25 A. Approximately, five years.

1 Q. And that would have been from about 1995
2 to 1999 or 2000?

3 A. Yes.

4 Q. And do you have any of those e-mails in
5 your computer hard drive or anywhere else?

6 A. No.

7 Q. Stored anywhere else?

8 A. I'm sorry, no.

9 Q. Would there have been e-mails to and from
10 that account that would have pertained to
11 Wonderbread 5?

12 A. I can assume, yes. Yes, could be.

13 Q. That was your only e-mail account for that
14 period from 1995 to about 2000?

15 A. Yes.

16 Q. So other than the patrickgilles@yahoo.com,
17 pat@patrickgilles.com, and pgilles@earthlink.net,
18 are there any other e-mail accounts that you
19 used --

20 A. No.

21 Q. -- or have used?

22 A. No.

23 Q. And you also mentioned that you searched
24 your computer hard drive. What computer did you
25 search?

1 A. I searched my home family's desktop
2 computer. I searched my recently purchased desktop
3 Apple computer.

4 Q. Is that it?

5 A. That's it.

6 Q. Do you have a laptop?

7 A. I do.

8 Q. You didn't search your laptop?

9 A. I did not. It does not -- I don't permit
10 that to go online.

11 Q. So it's fair to say that the laptop
12 doesn't have any e-mail traffic on it?

13 A. Yes.

14 Q. Did you search the laptop for any
15 electronic files pertaining to Wonderbread 5?

16 A. No.

17 Q. Why not?

18 A. I haven't used that laptop -- quite
19 frankly, I didn't think to do so. I don't use it
20 for band business. I do use it to produce videos.

21 Q. So would it have band videos on it?

22 A. Yes.

23 Q. What kind of laptop is it?

24 A. It is a Dell Inspiron 8500, I think.

25 Q. When did you purchase it?

1 A. Approximately, 2005.

2 Q. And have you used it consistently since
3 then?

4 A. No.

5 Q. Why not?

6 A. It is a Windows-based computer, and I used
7 it for video editing. And I switched to a program
8 called Final Cut Pro which is a Apple-based computer
9 program. So the computer was obsolete for myself
10 for those purposes.

11 Q. And when did it become obsolete for those
12 purposes?

13 A. 2007.

14 Q. And you haven't used it since then?

15 A. Yes, I have used it.

16 Q. For what?

17 A. Gaming with my kids. It became relegated
18 to sort of a stand-alone computer for my children to
19 play their DVD games that were windows-based.
20 Webkinz, is the one I can think of now.

21 Q. And when did you purchase the Apple
22 computer?

23 A. 2007 or early 2008.

24 Q. And what kind of computer is that?

25 A. Mac Pro Quad 4.

1 Q. And what do you use the Apple computer
2 for?

3 A. Video editing, some online searching. But
4 I try to keep it off the Internet for fear of any
5 kind of viruses or contamination to my media.

6 Q. Do you receive e-mail on your Apple
7 computer?

8 A. Yes.

9 Q. And did you search that computer to see if
10 there were any e-mails pertaining to Wonderbread 5?

11 A. That is the computer I searched for my
12 Yahoo account online. I also performed the same
13 search on the Windows computer before but didn't
14 save any information. The first search was done on
15 my Windows-based computer.

16 Q. On the Dell Inspiron?

17 A. No, that's the laptop.

18 Q. On the home family desktop?

19 Q. On the home family desktop, that's the
20 online computer. And that was just to investigate
21 and see what was there. Then I researched, knowing
22 what was there, on my Apple desktop, placed them
23 onto a file and took them to Kinko's to be copied.

24 Q. And were there any documents that you
25 found through those searches that you have not

1 produced to us today?

2 A. No.

3 Q. And what type of computer is the home
4 family desktop that you described?

5 A. HP, Hewlett-Packard.

6 Q. And when did you purchase that computer?

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

8 '3.

9 Q. And that, it's fair to say, Mr. Gilles,
10 that that's the computer that you primarily use for
11 online communications?

12 A. The family desktop computer, is that what
13 you're asking?

14 Q. Yes.

15 A. Yes.

16 Q. So just to verify, handing the witness
17 what is marked as Exhibit 2 for identification -- I
18 can take that back -- these were the documents that
19 you handed to me this morning before we started.

20 Is it correct to say that those are all
21 the documents that you found pursuant to the
22 searches that you've just described to us?

23 A. Yes, along with the DVD.

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

25 A. Would you like this back?

1 Q. Sure. Tell me what's on Defendants'

2 Exhibit 3.

3 A. There are graphic -- when I say graphic, I
4 just mean vector-based -- graphics of fliers,
5 posters that were generated by members of the band.
6 There are photographs that I had, for some reason or
7 another been able to save, that date back as early
8 as 2000 -- early 2000s. Those are live photographs,
9 some backstage photographs.

10 There is -- the majority of this disk is
11 approximately a hundred or more photographs of a
12 photo session that took place at my residence, 240
13 Lovell Avenue, that wound up on my computer because
14 the photographer wanted to download and the band
15 wanted to inspect pictures onsite. So those were in
16 my computer as well. And that's all.

17 I use -- most of the photographs that I
18 would view of the band were hosted by the
19 partnership band Web site and third-party Web sites
20 such as Sac Scene, Napkin Nights and some other
21 groups that hosted photos. So I did not personally
22 retain or keep a lot of photographs. These are all.

23 Q. So it's fair to say that the photographs
24 and other material that is embodied in the DVD
25 that's been marked as Defendants' Exhibit 3

1 constitute all of the graphic data that you have
2 that pertains to the band?

3 A. No.

4 Q. What other graphic data is there that is
5 not on this DVD that you have?

6 A. After speaking with you, I have raw
7 footage on videos that were given to me through my
8 camera. I would hand my video camera out to friends
9 or fans of the band to try to capture media assets
10 to later be put on the Web site.

11 Q. Anything else that you can think of now?

12 A. No, not that I can think of. I apologize
13 for the video.

14 Q. How much videotape is there?

15 A. Actual tapes would be maybe eight tapes.
16 They were erased and recycled. If you would like me
17 to estimate what data may be on the computer, I can
18 do that.

19 Q. Sure.

20 A. There may be a total of anywhere from 500
21 megabytes to over two gig -- gigabytes of that same
22 footage in raw form and edited video form, some of
23 which is currently posted and hosted on the business
24 Web site.

25 Q. The band's business Web site?

Exhibit B

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

6 Attorneys for Defendants

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 PATRICK GILLES, an individual, on behalf
of himself,)
12
Plaintiff,)
13
v.)
14 JEFFREY FLETCHER, an individual; JOHN
15 MCDILL, an individual; THOMAS
RICKARD, an individual; CHRISTOPHER
16 ADAMS, an individual; MICHAEL
TAYLOR, an individual; JAY SIEGAN, an
17 individual; JAY SIEGAN PRESENTS, an
unknown business entity; and
18 WONDERBREAD 5, a California general
partnership; and DOES 1-10, inclusive,
19
Defendants.)
20

CASE NO. CGC-09-489573
**DEFENDANTS' OFFER TO
COMPROMISE**
[CCP § 998]

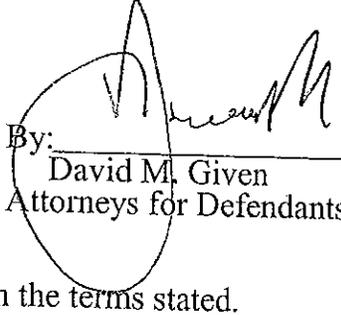
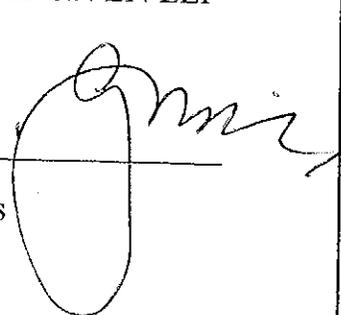
21
22 Pursuant to Code of Civil Procedure § 998, defendants JEFFREY FLETCHER,
23 JOHN MCDILL, THOMAS RICKARD, CHRISTOPHER ADAMS, MICHAEL
24 TAYLOR, JAY SIEGAN, JAY SIEGAN PRESENTS and WONDERBREAD 5
25 (collectively, "defendants"), jointly offer to compromise this dispute for payment to
26 plaintiff in the total sum of THIRTY THOUSAND DOLLARS (\$30,000.01) and ONE
27 CENT, inclusive of reasonable attorney's fees and costs incurred to the date of this offer,
28

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
14 DATED: _____, 2009

THE WROAN LAW FIRM, INC.

15
16 By: _____
17 Douglas B. Wroan
Attorneys for Plaintiff
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PROOF OF SERVICE

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

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

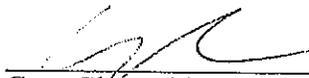
DEFENDANTS' OFFER TO COMPROMISE [CCP § 998]

was addressed to:

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

- BY FIRST CLASS MAIL: I placed the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices as indicated above.
- BY FACSIMILE TRANSMISSION: I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof.
- BY CAUSING PERSONAL SERVICE: I placed the above documents in a sealed envelope. I caused such envelope(s) to be handed to our messenger service to be delivered as indicated above.
- BY OVERNIGHT EXPRESS: I placed the above documents in a sealed envelope. I caused such envelope(s) to be delivered to the above address(es) by overnight express.
- BY PERSONAL SERVICE: I placed the above documents in a sealed envelope. I delivered each of said envelopes by hand to the person(s) listed above.

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



Greg Gheorghiu

Exhibit C

PHILLIPS, ERLEWINE & GIVEN LLP

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

DAVID M. GIVEN
dmg@phillaw.com

September 15, 2009

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

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

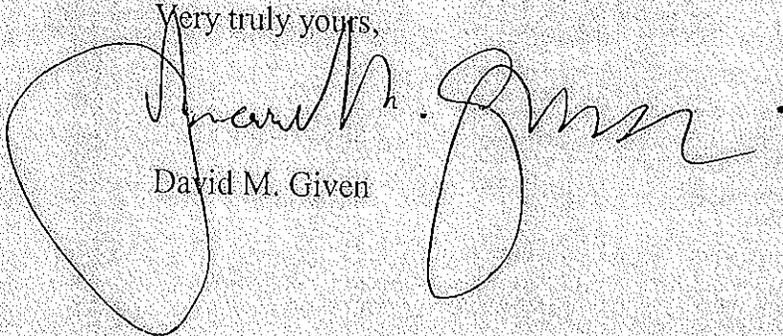
Dear Mr. Wroan:

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

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

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

Very truly yours,


David M. Given

DMG:hs
Encl.

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

C.C.P. §998 Offer of Compromise

Data:

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

2004 - \$51,754

2005 - \$57,755

2006 - \$68,787

2007 - \$56,904

2008 - \$59,308

Average = \$58,902

Assumptions:

Multiplier = 1

Replacement Allocation Reduction = 1/3

Value of Share before Setoffs = \$38,875

Setoffs:

Severance Payment Received = (\$5,000)

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

Damages to Band Caused by Gilles = TBD

Total Est. Value:

Rounded to \$30,000

-END-

Exhibit D

1 David M. Given (State Bar No. 142375)
2 Feather D. Baron (State Bar No. 252489)
3 PHILLIPS, ERLEWINE & GIVEN LLP
4 50 California Street, 35th Floor
5 San Francisco, California 94111
6 Telephone: (415) 398-0900
7 Facsimile: (415) 398-0911
8 dm@phillaw.com
9 fdb@phillaw.com

PHILLIPS, ERLEWINE & GIVEN LLP
RECEIVED

OCT 8 2009



Attorneys for Defendants

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 PATRICK GILLES, an individual, on behalf
12 of himself,

13 Plaintiff,

14 v.

15 JEFFREY FLETCHER, an individual; JOHN
16 MCDILL, an individual; THOMAS
17 RICKARD, an individual; CHRISTOPHER
18 ADAMS, an individual; MICHAEL
19 TAYLOR, an individual; JAY SIEGAN, an
20 individual; JAY SIEGAN PRESENTS, an
21 unknown business entity; and
22 WONDERBREAD 5, a California general
23 partnership; and DOES 1-10, inclusive,

24 Defendants.

CASE NO. CGC-09-489573

**DEFENDANTS' OFFER TO
COMPROMISE**
[CCP § 998]

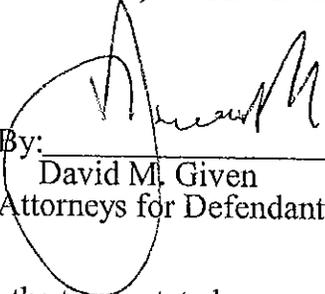
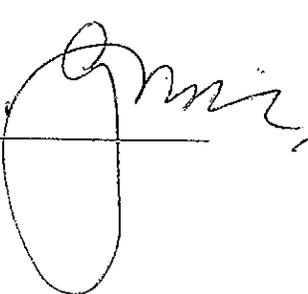
25 Pursuant to Code of Civil Procedure § 998, defendants JEFFREY FLETCHER,
26 JOHN MCDILL, THOMAS RICKARD, CHRISTOPHER ADAMS, MICHAEL
27 TAYLOR, JAY SIEGAN, JAY SIEGAN PRESENTS and WONDERBREAD 5
28 (collectively, "defendants"), jointly offer to compromise this dispute for payment to
plaintiff in the 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,

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

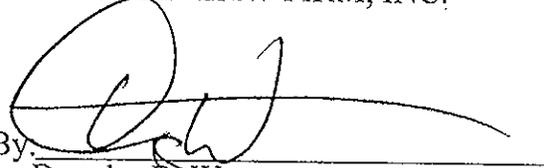
PHILLIPS, ERLEWINE & GIVEN LLP

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

THE WROAN LAW FIRM, INC.

14
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.

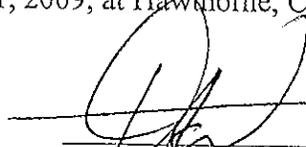
25
26 
27 _____
28 Douglas Wroan

Exhibit E

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

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

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

PETITION FOR CANCELLATION

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

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

As grounds for cancellation, Petitioner alleges the following:

1. Petitioner is a decade-plus old musical group named WONDERBREAD 5, based in the San Francisco Bay Area, and comprised of the following members: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor (individually and collectively the “Band”). Since its inception, the Band has operated as a general partnership.
2. On information and belief, Registrant is an individual residing in Mill Valley, CA.
3. Petitioner has performed and continues to perform under the name WONDERBREAD 5 for over ten years, and during that time, has developed a substantial client and fan base. As a result, the Wonderbread 5 name has become well-known in the San Francisco Bay Area and beyond as referring to the Band.
4. For the past 12 years, the Band has maintained the website located at www.wonderbread5.com as a promotional vehicle and a means of keeping its fans updated about future performances and other news concerning the Band.
5. In light of the Band’s continuous use in commerce of the name WONDERBREAD 5 and the fact that it is universally known by that name, the Band is the rightful owner of the WONDERBREAD 5 mark (the “Mark”).
6. The current registrant of the Mark, Patrick Gilles (“Registrant”), is a former member of the Band. Registrant left the Band on or about March 9, 2009. At that time, Registrant ceased to be a member of the Band or the WONDERBREAD 5 general partnership.

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

Registrant Releases All Interest in the Band

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

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

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

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

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

Registrant's Wrongful Use of the Mark

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

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

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

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

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

Registrant's Fraudulent Procurement of the Mark

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

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

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

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

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

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

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

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

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

Respectfully submitted,

WONDERBREAD 5

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/

David M. Given

Meagan McKinley Ball

50 California Street, 35th Floor

San Francisco, CA 94111

Telephone: (415) 398-0900

Fascimile: (415) 398-0911

Email: dmg@phillaw.com

mmb@phillaw.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

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

Patrick Gilles
240 Lovell Avenue
Mill Valley, CA 94941

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

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

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

Exhibit F

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

RECEIVED

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

APR 12 2010

Wonderbread 5,
:
Petitioner,
:
vs.
:
Patrick Gilles,
:
Registrant.
:

RCP PDB YYC
 ASE FDB FILE
 DMG GAG CALENDAR
Cancellation No. 92052150

ANSWER AND GROUNDS OF DEFENSE

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

ANSWER

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

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Petition for Cancellation and therefore denies the same.
2. Registrant admits the allegations of Paragraph 2.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Petition for Cancellation and therefore denies the same.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Petition for Cancellation and therefore denies the same.
5. Registrant denies the allegations set forth in Paragraph 5 of the Petition for Cancellation and demands strict proof thereof.
6. Registrant denies the allegations set forth in Paragraph 6 of the Petition for Cancellation and demands strict proof thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 8th day of April, 2010.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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

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

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

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

CERTIFICATE OF SERVICE

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

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

Matthew H. Swyers
Matthew H. Swyers

CERTIFICATE OF SERVICE

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

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

Dated: July 30, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/
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Attorneys for Petitioner