

ESTTA Tracking number: **ESTTA544201**

Filing date: **06/20/2013**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

|         |  |             |               |
|---------|--|-------------|---------------|
| Name    | Ms. Jaime Keeling  |             |               |
| Entity  | Individual   | Citizenship | UNITED STATES |
| Address | 16 HANCOCK ST APT 4<br>Brooklyn, NY 11216<br>UNITED STATES |             |               |

|                      |   |  |  |
|----------------------|---|--|--|
| Attorney information | Adam Davids<br>Adam Davids & Associates, PLLC<br>799 Broadway, Suite 527<br>New York, NY 10003<br>UNITED STATES<br>adam@adamdavids.com Phone:646-415-9007 |  |  |
|----------------------|---|--|--|

**Registration Subject to Cancellation**

|                 |  |                   |            |
|-----------------|--|-------------------|------------|
| Registration No | 4334491  | Registration date | 05/14/2013 |
| Registrant      | Hars, Eve<br>923 3/4 N Beaudry Ave<br>Los Angeles, CA 90012<br>UNITED STATES |                   |            |

**Goods/Services Subject to Cancellation**

|   |
|---|
| Class 041. First Use: 2006/12/00 First Use In Commerce: 2006/12/00<br>All goods and services in the class are cancelled, namely: Presentation of live show performances |
|---|

**Grounds for Cancellation**

|   |   |
|---|---|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Abandonment                                     | Trademark Act section 14                    |
| Priority and likelihood of confusion            | Trademark Act section 2(d)                  |
| Other   | Title of a Creative Work - In re Posthuma   |

**Mark Cited by Petitioner as Basis for Cancellation**

|                                       |   |                  |      |
|---------------------------------------|---|------------------|------|
| U.S. Application/<br>Registration No. | NONE                                    | Application Date | NONE |
| Registration Date                     | NONE                                    |                  |      |
| Word Mark                             | POINT BREAK LIVE!                       |                  |      |
| Goods/Services                        | Presentation of live show performances. |                  |      |

|             |  |
|-------------|--|
| Attachments | Petition For Cancellation - PBL 6-20-13 (FE).pdf(1149214 bytes ) |
|-------------|--|

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

|           |               |
|-----------|---------------|
| Signature | /Adam Davids/ |
| Name      | Adam Davids   |
| Date      | 06/20/2013    |

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

|               |   |                                 |
|---------------|---|---------------------------------|
| JAIME KEELING | ) |                                 |
| Petitioner,   | ) | In the Matter of Trademark Reg. |
|               | ) | No. 4,334,491                   |
|               | ) |                                 |
| v.            | ) | Cancellation No. _____          |
|               | ) |                                 |
|               | ) |                                 |
| EVE HARS      | ) | For the Mark: Point Break Live! |
| Registrant    | ) | Registered May 14, 2013         |

**PETITION FOR CANCELLATION**

Petitioner Jaime Keeling (“Petitioner”), a United States individual with an address at 16 Hancock Street, Apartment 4, Brooklyn, NY 11216, believes that it is or will be damaged by the above-identified registration, and hereby petitions to cancel the same. Grounds for cancellation are set forth below:

**BACKGROUND**

1. Petitioner created the live theater piece “Point Break Live!” (the “Play”) a parody of the Katherine Bigelow directed action film in 2003, prior to its premiere at the Little Theater in Seattle in August 2003. See **Exhibit A** attached hereto.
2. Petitioner has been offering or licensing performances of the Play since its premiere in 2003.
3. The Play has become well-known throughout the United States and abroad. Attached as **Exhibit B** are various current and former productions of the Play produced or authorized by Petitioner.

4. On August 26, 2007, Registrant contacted Petitioner to inquire about obtaining rights for New Rock Productions, LLC, a company owned by Registrant, to mount a production of the Play in Los Angeles.

5. On September 24, 2007, Petitioner licensed performances of the Play to New Rock Productions, LLC, a company co-owned by Registrant (the "License Agreement"). See **Exhibit C** attached hereto.

6. On January 4, 2008, Petitioner registered the copyright in the Play with the United States Copyright Office with Registration Number PAu003337717. See **Exhibit D** attached hereto.

7. In early January 2008, under patently false pretenses, later upheld by a jury verdict, Petitioner breached the license agreement for the Play and on December 15, 2010, a complaint was filed by Petitioner against, amongst others, Petitioner. See **Exhibit E** attached hereto.

8. On September 18, 2012, Registrant filed the application to register the trademark "Point Break Live!" with the U.S. Patent and Trademark Office, claiming its use in commerce under Section 1(a) for "Presentation of live show performances" in International Class 41.

9. On December 7, 2012 a jury trial was concluded and judgment was entered in Petitioner's favor on January 10, 2013.

10. On January 10, 2013, the United States District Court Southern District of New York granted a motion to "permanently enjoin defendants [including Registrant] along with their respective officers, directors, principals, agents, representatives, servants, employees, affiliates, successors, or assigns, and any person or entity acting on their behalf or in concert or participation with them from infringing Jaime Keeling's copyright by publicly performing, copying, distributing, displaying, marketing, advertising, or offering to license (a) the state play known as *Point Break LIVE!*, (b) Keeling's copyrighted script for *Point Break LIVE!*, and (c)

any script defendants have used to stage *Point Break LIVE!* in the past or engaging in any other activity constituting an infringement of Keeling's copyright in *Point Break LIVE!*" (the "Court Order") See **Exhibit F** attached hereto.

11. On May 14, 2013, a trademark registration was granted for "Point Break Live!" (the "Mark") in favor of Registrant based on the Mark's use in commerce.

12. Upon information and belief, on at least two separate occurrences in June 2013, Registrant has sent cease and desist letters stating that Registrant has a valid trademark in the Mark and that a venue and a crowd-sourcing website were each infringing Registrant's rights in the Mark when Petitioner attempted to use the name of the Play with these third parties.

#### FIRST BASIS FOR CANCELLATION – TITLE OF A CREATIVE WORK

13. Registrant repeats and realleges all allegations contained in Paragraphs 1 to 12 and by this reference incorporates them here.

14. Section 1202.08 of the Trademark Manual of Examining Procedure states the well-established rule that "[t]he title, or a portion of a title, of a single creative work must be refused registration under §§1, 2, and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052, and 1127, unless the title has been used on a series of creative works. The title of a single creative work is not registrable on either the Principal or Supplemental Register. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) ("the title of a single book cannot serve as a source identifier"); *In re Cooper*, 254 F.2d 611, 615-16, 117 USPQ 396, 400 (C.C.P.A. 1958), *cert. denied*, 358 U.S. 840, 119 USPQ 501 (1958) ("A book title ... identifies a specific literary work ... and is not associated in the public mind with the publisher, printer or bookseller...."); *In re Posthuma*, 45 USPQ2d 2011 (TTAB 1998) (holding the title of a live theater production unregistrable)."

15. In support of its registration, Registrant attached a specimen of use with nothing to indicate that the Mark is a source of the good, merely that it is the title of the Play. The specimen itself clearly states that the Mark is “[t]he longest running show in LA.”

16. Point Break Live is the title the Play, unregistrable under *In re. Posthuma* and cases since *In re Cooper*, dating back over fifty years, which stand for the well-established rule that a title cannot serve as a source-identifying trademark function.

17. The Mark, Point Break Live!, is a title of live theatrical performance and merely descriptive a live performance of a play based on the film, Point Break.

#### SECOND BASIS FOR CANCELLATION – FRAUD

18. Registrant repeats and realleges all allegations contained in Paragraphs 1 to 16 and by this reference incorporates them here.

19. On September 18, 2012, Registrant filed the application to register the trademark “Point Break Live!” with the U.S. Patent and Trademark Office, under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051 which included a sworn declaration under penalty of perjury by Ms. Eve Hars or was made by Registrant’s correspondent attorney at The Trademark Company under the instruction of Registrant (the “Section 1(a) Declaration”).

20. The Section 1(a) Declaration states in the relevant portion “he/she believes the applicant to be the owner of the trademark/service mark to be registered; ... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce ... when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake or to deceive.”

21. In September 2007, five years before she filed the trademark registration, Registrant entered into the License Agreement for the Play, entitled “Point Break Live!”.

22. Upon information and belief, Registrant filed this registration to confuse or deceive consumers as Registrant had full knowledge of a Petitioner's senior rights, if any, in and to the title to the Play that Registrant had licensed five years prior to the registration.

23. The U.S. Patent and Trademark Office relied upon Registrant's material false statements in allowing the registration of Registrant's Mark. The U.S. Patent and Trademark Office would not have allowed Registration No. 4,334,491 absent Registrant's knowingly false statements.

#### THIRD BASIS FOR CANCELLATION – ABANDONMENT

24. Registrant repeats and realleges all allegations contained in Paragraphs 1 to 22 and by this reference incorporates them here.

25. On September 18, 2012, Registrant filed with the U.S. Patent and Trademark Office a trademark registration under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051 which included a sworn declaration under penalty of perjury by Ms. Eve Hars (the "Section 1(a) Declaration").

26. In support of its Section 1(a) Declaration, Registrant attached a specimen of use from the licensed production of the Play, under the License Agreement.

27. However, Registrant cannot use the Mark in commerce without being in violation of the Court Order.

28. The Court Order compels the abandonment of Registrant's Mark.

#### FOURTH BASIS FOR CANCELLATION – PRIORITY OF USE AND LIKELIHOOD OF CONFUSION

29. Registrant repeats and realleges all allegations contained in Paragraphs 1 to 26 and by this reference incorporates them here.

30. Since prior to the filing date in the Registrant's registration, Petitioner has been using the name Point Break Live! in connection with Petitioner's play of the same name.

31. Since prior to the claimed first use date in Registrant's registration, Petitioner has been using the name Point Break Live! in connection with Petitioner's play of the same name.

32. The description of goods and services stated in the Registrant's registration is identical or closely related to Petitioner's presentations.

33. The Mark so resembles the title of Petitioner's play as to likely cause confusion, or to cause mistake, or to deceive when used in connection with the play listed in Registrant's registration.

34. Upon information and belief, by sending cease and desist letters to any third party in connection with Petitioner's play, Registrant is attempting to cause confusion, or to cause mistake, or to deceive consumers in connection with the play listed in Registrant's registration.

35. The registration of the Mark is causing injury to Petitioner's business and its right to produce the Play under its copyrighted name, which copyright was obtained five years prior to Registrant's registration of the Mark, such registration is inconsistent with Petitioner's rights and will continue to cause injury to Petitioner until the registration is cancelled.

36. Registrant is maliciously and falsely attempting to obtain by this registration what she was unable to obtain in court.

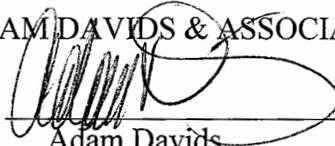
[The remainder of this page is intentionally left blank.]

WHEREFORE, Petitioner believes that it is damaged by Registration No. 4,334,491 and prays that the registration for Registrant's Mark be cancelled and for such other and further relief as the Trademark Trial and Appeal Board deems appropriate.

Petitioner requests that all communications be directed to Adam Davids & Associates, PLLC, Attention: Adam Davids, Esq., 799 Broadway, Suite 527, New York, New York, 10003.

Dated: New York, New York  
June 20, 2013

ADAM DAVIDS & ASSOCIATES, PLLC

By:  \_\_\_\_\_

Adam Davids

Attorney for Petitioner  
799 Broadway, Suite 527  
New York, New York 10003  
(646) 415-9007  
adam@adamdavids.com

**EXHIBIT A**

**POINT BREAK LIVE!  
PREMIERE AND REVIEW**

# POINT BREAK LIVE!!!

Yes, the movie that grabbed the hearts of extreme sports enthusiasts in 1991 is now brought to the third dimension for 2003! The film has 5 (five!) back-breaking action sequences and the play promises no less. POINT BREAK follows the story of an unlikely pair, Johnny (Keanu Reeves) Utah, former quarterback for the Ohio Buckeyes-turned-very FBI agent and Bodhi (Swayze) Sattva, murderous yet mellow bank-robbing surf guru. Watch them hang ten, sky dive, commit armed robbery, party, explore their Zen-like kamikaze nature, swap lovers, fight, shoot at each other, ignite gas stations, kidnap innocents, and eventually sky dive again...this time with only one parachute and a gun. Will they make it?



## YOU ARE KEANU! BEAUTY CONTEST

The Stranger and WigglyWorld Studios are looking for a few good Keanus (8, to be exact) to portray the role of Special Agent Johnny Utah in one of eight performances of the Most Exciting Stage Adaptation EVER.

### CONTEST RULES:

Here's the deal: To enter, just stop by the WigglyWorld Booth at this weekend's Capitol Hill Block Party (July 12-14), and we'll take your shirt off, snap a Polaroid, and record your best Keanu-voice reading the instructions off a tub of Nivea® face cream. Then, we will pass on the "evidence" to a panel of crack Point Break Enthusiast—including Stranger Files Critic Dave Schneider, Gossip Columnist Adrian Ryan, Wax-on Brazilian Waxer Extraordinaire Annie Uhler, and hot, hot City Councilwoman Judy Nicastro, who will select and schedule our 8 winners. These winners will then be required to Perform the role of Johnny Utah for one public performance each at the World Theatrical Premiere of POINT BREAK LIVE, July 31-August 10. ENTRIES must be PRSSABLY LITERATE and possess a HOT BOO.

WINNERS ANNOUNCED 7/23/03 IN THE STRANGER.

# POINT BREAK LIVE!




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Thursday, June 20, 2013

59°F Seattle, WA Mostly Cloudy



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## 'Point Break Live!' takes its cue from the ridiculous

By JOE ADCOCK, SEATTLE POST-INTELLIGENCER THEATER CRITIC  
Published 10:00 pm, Friday, August 22, 2003

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The worse it gets, the better it gets. The mooning is rude. But written on the offending butt is a polite "thank you!" The surfing and sky-diving scenes are ostentatiously tacky. But -- you tell me -- where and when has either surfing or sky diving been performed before on stage?

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The car chase is on film, which is a cop-out. But such a chase! After crashing in and out of a cardboard Walgreens, one of the vehicles collides with a paper service station gas pump, resulting in an Iraq-worthy conflagration.

The tsunami in Australia is a composite of flapping blue cloth and impressionistic waves on a movie screen. But actors spray the audience with copious blasts from water rifles, which makes up in wetness for what the scene lacks in nature's grandeur.

"Point Break Live!" is a travesty version of a 1991 action adventure movie starring Keanu Reeves and Patrick Swayze. The show was scheduled for a two-week run at the Northwest Film Forum's Little Theatre on Capitol Hill. So great was the audience response that the production has been extended two more weeks.

Which means that eight additional Reeves stand-ins had to be recruited. Directors Jamie Hook and Jaime Keeling have based their production on A Concept: To represent Keanu Reeves, an actor must be untrained and unrehearsed. He must be pushed from place to place by production assistants. He must read his lines (not seen until the play's in progress) from cue cards. Only thus can that irresistible Reeves vacancy be emulated.

Not all volunteers can rival the qualities that made Reeves MTV's most desirable male of 1992. But Wilbert Williams, the guy I saw in the lead last Thursday night, was plucky in both adventure and combat scenes. And he spoke much more clearly than most of his more experienced fellow performers.

A standing-room-only crowd in a 60-seat playhouse doesn't indicate universal appeal. "Point Break Live!" does, however, give a novel twist to such crowd-pleasers as pointless danger, gratuitous violence and sensational death.

The story, by the way, has to do with a maverick lawman (Reeves) who hunts down a bank-robbing gang led by a surfer guru (Swayze). In the guru role, Peter Carrs displays pecs and abs, distant gaze and distressed hair that in no way suffer by comparison with the Swayze originals.

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Weekend showtimes

### From Around the Web

- **Amanda Knox's days might be numbered** (allvoices)
- **Canada's Former Defence Minister Claims that Aliens Are Real** (Vice)
- **This adorable puppy comes with a surprise** (Share Cute Pet Pictures)
- **Top 5 Least Intelligent Dog Breeds** (Reader's Digest)
- **People Who Hate Life Right Now (30 Pics)** (Bite.ca)
- **20 Gifs Of Epic Stunts And Amazing Physical Feats** (Bite.ca)

### We Recommend

- Diesel makes 'Guilty' a pleasure
- Family flair: This Seattle household bonds over a love of fashion
- 'Harry Potter VI' to be released November 2008
- Hope eventually shines in 'Our Country's Good'
- Article - seattlepi.com
- **August Wilson, 1945-2005: Playwright gave voice to black experience**



### Entertainment Photos

Displaying 1-3 of 21



'Sopranos' stars: Where are they now?



Then and Now: '90s Pop Stars



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**EXHIBIT B**

**SAMPLES OF RECENT AND PAST PRODUCTIONS**

NORTHWEST FILM FORUM and  
OLYMPIA FILM FESTIVAL present:

# POINT BREAK LIVE!

The Olympia Premiere  
Theatrical Adaptation of the  
1991 Extreme-Sports Blockbuster!

CONCEIVED AND ADAPTED BY JAIME KEELING  
DIRECTED BY JAMIE HOOK AND JAIME KEELING  
PRODUCTION DESIGN/TECHNICAL DIRECTION BY JOHN DESHAZO



NORTHWEST FILM FORUM and  
OLYMPIA FILM FESTIVAL present:

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The Olympia Premiere  
Theatrical Adaptation of the  
1991 Extreme-Sports Blockbuster!

CONCEIVED AND ADAPTED BY JAIME KEELING  
DIRECTED BY JAMIE HOOK AND JAIME KEELING  
PRODUCTION DESIGN/TECHNICAL DIRECTION BY JOHN DESHAZO



## **POINT BREAK LIVE!**

**Adapted by Jaime Keeling**

**Directed and Produced by Jaime Keeling and Jaime Hook**

The movie that grabbed the hearts of extreme sports enthusiasts in 1991 is now brought to the stage for 2003! The film had no less than 5 action sequences and the play promises no less. POINT BREAK follows the story of an unlikely pair, Johnny (Keanu) Utah, former quarterback for the Ohio Buckeyes turned sexy FBI agent and Bodhi (Swayze) Sattva, bank robbing surf guru. Watch them hang ten, sky dive, commit armed robbery, party, explore their Zen-like Kamikaze nature, swap lovers, fight, shoot at each other, explode gas stations, kidnap innocents, and eventually sky dive again...this time with only one parachute and a gun. Will they make it? Yes.

In an effort to authentically reproduce Mr. Reeves astounding acting style, the role of Keanu Reeves will be played by the unrehearsed winner of the YOU ARE KEANU BEAUTY CONTEST held at Oly Fest's own ALL FREAKING NIGHT. This unrehearsed winner, aided by our lovely Production Assistants and cue cards, will with his/her little preparation play a convincingly similar Keanu Reeves in the starring role of Johnny Utah. Contestants must be PASSABLY literate.

**WARNING:** It is mandatory that YOU watch POINT BREAK: THE MOVIE as much as possible before attending POINT BREAK: THE PLAY. This will greatly improve your experience. **ALSO:** upon entering the theater, be prepared to receive your PB2003 SURVIVAL KIT, containing rain slicker, earplugs, money, and other implements of defense!

"The worse it gets, the better it gets." -Seattle Post Intelligencer

### Cast:

JOHNNY UTAH -CONTEST WINNER

BODHI-SATTVA—PETER CARRS

PAPPAS -SPENSER HOYT

HARP—GEORGE KLOSS

TYLER/SURFER BOY -JULIA WOHLSTETTER

ROACH—ZACK CARLSON

SURFERS—THE CLONE PRESS, BRANDON AND TRAVIS NAKAMURA

PRODUCTION ASSISTANTS—CARA AND ADRIENNE STACY

DIRECTOR OF PHOTOGRAPHY—MICHAEL BOLESZAW KLAPORT

ROSIE/SURF GUITAR—TOBY SUTTON

Crew:

Stage hands—Wesley Hottot, Jen Bay

Animation—Web Crowell

Film Shot and Directed—Adrienne Stacy

Kidnapped Innocent—Maggie Brown

Thugs—Toby Sutton and David Wingo

Set Painting and Dressing—Susannah Anderson

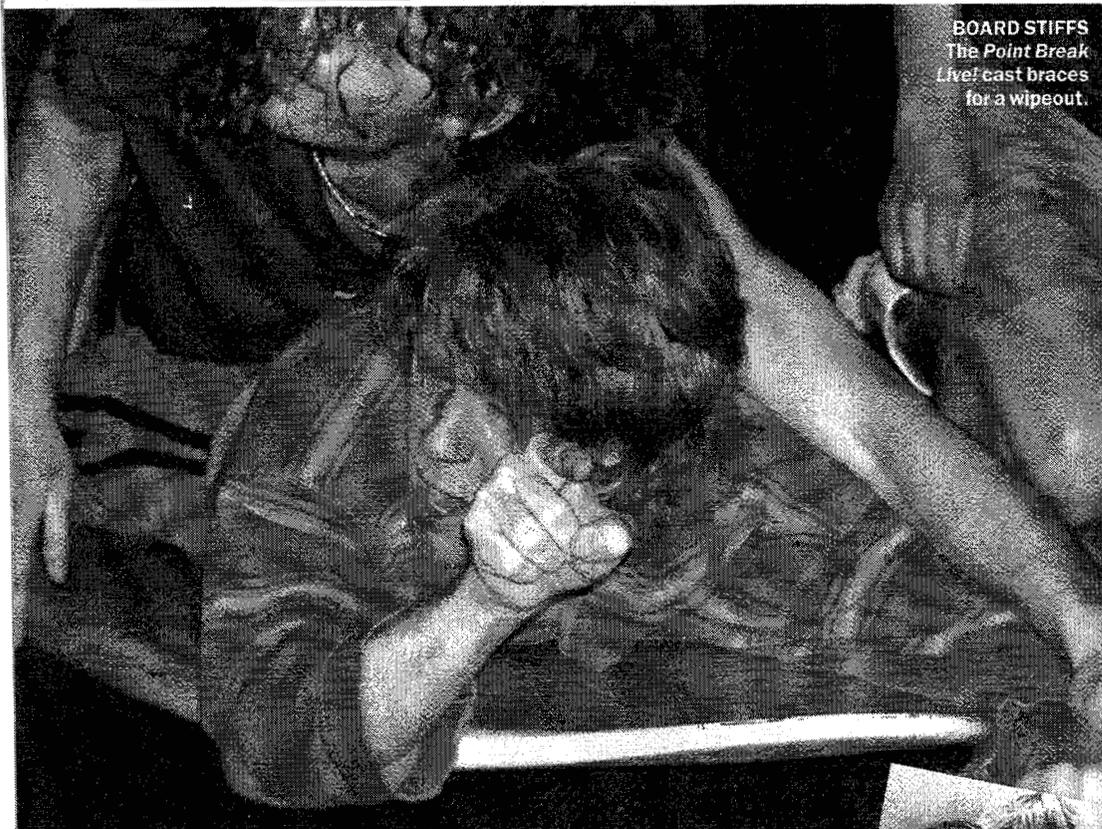
Graphic Designer—Dave Hanagan

Cue Cards—Ashley Bellouin

Beer Wrangler—Michael Seiwerath

Rigging Wrangler—Susie Purves

Costumes—Lisa Jack



**BOARD STIFFS**  
The *Point Break Live!* cast braces for a wipeout.

## Brainless wave

*Point Break Live!* surfs away on your inner Keanu

**P**oint *Break Live!*—a stage adaptation of the schlocky, adrenaline-fueled 1991 flick about a group of surfers who rob banks—is, fittingly, packed with stunts. But its biggest is pulled off minutes before the start of each show. Instead of casting an actor in the role of FBI agent Johnny Utah, played in the film by Keanu Reeves, director Jamie Hook plucks an audience member from the crowd and has him or her read the lines off cue cards. It's the best way to approximate Reeves's particular brand of spectacularly bad acting. "You have to embody blankness," Hook says. "You have to look like you've just been dropped into the room and have no idea what's going on." But it's not like he's lampooning Reeves exactly. "I have tremendous respect for his generosity. He's the inverse of talented assholes like Al Pacino, who you watch and think, 'I could never do that.'"

The successful low-budget production, which Hook, 35, coadapted with Jamie Keeling, makes its NYC debut at Galapagos this week, after

performances in Seattle in 2003 and Minneapolis in 2005. It grew out of a drunken challenge to stage a blockbuster that could deliver Hollywood-style thrills—something that Hook deems lacking in today's theater world. "A bunch of people onstage talking obtusely about aesthetics isn't a genuinely cathartic experience," he says.

Survival kits with rain ponchos, moist towelettes and assorted things "to help live out the ride" will be sold at the shows (along with meatball sandwiches, which were featured in the film). Still, viewers are advised not to wear nice clothes—they'll likely get wet. —*Alison Rosen*

***Point Break Live!* plays Fridays and Saturdays at Galapagos Art Space, Friday 10 to February 25. Purchase tickets at [www.smarttix.com](http://www.smarttix.com).**



## STATE OF THE UNION

**W**hat does it take to stay married for 48 years? According to Manhattan couple Mike and Juliette Levinton, it takes shared interests, a willingness to compromise and an unerring knack for knowing when to pick your battles. The Levintons are featured with other long-wedded couples in "As Long as We Both Shall Live," photographer Robert Fass's exhibit currently at the 92nd Street Y. The Levintons' relationship began at a creative-writing seminar at Brooklyn College in the 1950s. "I think what got us together, was my [joking] pronouncement that I was



looking to marry a rich girl," recalls Mike. "But I wasn't. And Juliette wasn't looking for a rich guy, so it was a good fit." Complicating their blossoming connection was the fact that Juliette lived on the Lower East Side, while Mike resided in the Bronx. "My friends were telling me, 'This is dumb, you could find somebody closer,'" Mike says. But he did all the commuting. "You came downtown," Juliette reminds him. Mike knows, all these years later, that those subway tokens were well spent. "Juliette is a nice person," he says, "so it worked out." —*HH*

"As Long as We Both Shall Live: Long-Married Couples in America" is at the 92nd Street Y through February 23. For viewing hours, call 212-415-5500.

### QUOTE OF THE WEEK

"When the geriatric guy goes to the loo, Outback's lady starts making out with the Anna Nicole-alike." See page 24.

PHOTOGRAPHS BY LEFT TO RIGHT: COURTESY OF JAMIE HOOK; COURTESY OF ROBERT FASS



Home › Point Break Live Panama!

# Point Break Live Panama!

June 20th – 29th, 2013

Created by: Jaime Keeling

Directed by: Rob Getman & Giancarlo Benedetti



## The Story

Fresh faced FBI agent Johnny Utah is assigned his first case, hunting and capturing the Ex Dictators, a group of bank robbing, adrenalin junkie, big wave surfers that have eluded the FBI for years and have yet to leave a hint of their true identities. Once Utah identifies the soul surfing Bodhi as the leader of the Ex Dictators he finds himself locked into a friendship like none he has ever known. He ultimately must decide whether he will follow his sworn duty to the FBI or honor the new philosophy he has learned from Bodhi of living life to the fullest at all costs.

## The Twist

Point Break Live Panama is like no other live stage

performance ever seen in Panama. Since finding an actor that can capture the "brilliance" of Keanu Reeves is impossible, we have decided to do the next best thing... choose an actor from the audience with no rehearsal time and no acting experience what so ever. This is the only way to truly capture that Keanu style of acting. Each performance will begin with the auditioning of **volunteers from the audience**. The volunteers will be given short lines they must repeat in their best Johnny Utah impression. By way of the Applause -o-meter, the audience will choose their leading man. The chosen actor will then be guided through the show by the Personal Assistant (PA) who will lead him through the performance and feed him the lines by cue cards. The honest/confused response and terrible reading style of this audience member is the closest we can get to matching the famous Keanu Reeves.

### The Cast

- Adrian Benedetti
- Rob Getman
- Marco Sarria
- Jose Miguel Navarro
- Melanie Gilpin Lee
- HB Twohy
- Monica Porras
- Val Monique
- Ana Gabriela Martinez
- Tony Loew

### How to Reserve your Tickets

Make a Reservation by clicking here

*Point Break Live! © 2003 Point Break Live, Inc.*

**Make a reservation**

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**EXHIBIT C**  
**LICENSE AGREEMENT**

# "POINT BREAK LIVE" PRODUCTION AGREEMENT

|   |                                       |  |
|---|---------------------------------------|--|
|   | <b>DATE:</b>                          | September 24, 2007   |
| By and between  | <b>"Creator":</b>                     | Jaime Keeling<br>16 Hancock St #4 Brooklyr., NY 11216  |
| and   | <b>"Producer":</b><br><b>address:</b> | <b>New Rock Productions, LLC</b><br>46 Ave B #14 NYC 10009   |
|   | <b>"Project":</b>                     | "POINT BREAK LIVE"   |
|   | <b>"Commencement Date":</b>           | September 24, 2007   |
|   | <b>"Venue":</b><br><b>located at:</b> | Charlie O's at the Alexandria Hotel<br>501 S. Spring Street Los Angeles, CA 90013  |
|   | <b>"Theatrical Run":</b>              | up to 40 performances<br>(add'l performances must be requested in writing and approved by Creator)<br>Oct 12-Dec15, 2007 Fri & Sat at 9pm<br>(no shows Thanksgiving weekend) |
| Paid to Creator   | <b>"Minimum Guarantee":</b>           | \$1,600  |
|   | <b>"Creator's Percentage":</b>        | 5.00% of total gross   |
| <del>No clause in this Contract may be deleted or altered without the mutual consent of both parties.</del> |                                       |  |

Agreement made this: September 23, 2007 between Jaime Keeling (hereinafter called the Creator) 16 Hancock St Apt 4 Brooklyn New York 11216 and New Rock Productions, LLC (hereinafter called the Producer) 46 Ave B #14 NYC 10009 Whereas the Creator is the author and sole owner of the Project entitled POINT BREAK LIVE (hereinafter called the Project); and whereas the Producer wishes to produce and publicly perform the Project.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1.1 Right to Produce**

The Creator hereby grants to the Producer the right to mount a production of the Project at Charlie O's at the Alexandria Hotel (hereinafter called the Venue) 501 S. Spring Street Los Angeles, CA 90013 for the specified dates of October 12, 2007 to December 15, 2007 for up to the specified number of 40 performances. Any additional performances exceeding 40 will need to be requested in

writing by the Producer to the Creator for approval.

Any additional performances, use or production of the Project not during the term of this agreement is strictly prohibited absent separate agreement between the parties.

The parties hereto agree that if, due to unforeseen circumstances, these dates cannot be met, the right to produce will be extended a further period of up to 30 days from the stated date of the first public performance.

**2. Royalty** Royalties shall be paid by the Producer to the Creator at a rate to be agreed upon by the parties, based on a percentage of the gross box office, including credit card charges, group sales, online sales, and sales from goods (e.g. survival kits, T-shirts and other souvenirs) and services (meatball sandwiches, beer etc.) related to the Project. The agreed

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percentage for the royalties herein is 5.00%. The guaranteed minimum shall be an advance against royalties but shall not be refunded in the event the Project is not produced within the term stated within this Agreement, or if the amount of royalties to be paid in terms of this Agreement do not equal the basic guaranteed minimum. The Producer guarantees that a minimum royalty of \$1,500 will be paid to the Creator, and that such guaranteed minimum shall be paid in the following manner:

a) \$1,500 upon the signing of this Agreement; payment sent certified USPS post, marked no later than three days after the signing of the agreement or agreement will be null and void.

b) certified mailed to: Jaime Keeling  
511 W 25<sup>th</sup> St STE 901 NYC 10001

The Producer shall furnish the Creator a duly certified bi-weekly statement of the box office and all other related income from goods and services at the same time that royalties are paid. In this case four performances shall constitute as bi-weekly. If the payment of the balance of royalties is late, the Producer agrees to pay the Creator 2% per month interest on the balance of royalties owing. Full payment of royalties shall be made no later than 10 days following the end of the run of the Project.

4. Artistic Decisions

The Creator will be consulted on all major artistic decisions by the Producer such as choice of director, cast, designer, musical director and choreographer for the Project.

5. Billing The Creator will be credited as follows: Created by Jaime Keeling.

The Producer shall cause the Creator to receive billing as the creator of the Project on a separate line immediately preceding, or following the title of the Project in all programs, house boards, billboards, advertising, throwaways and paid announcements of the Project. No names except the title of the Project and the name of the Producer may be larger or more prominent than the Creator's name. There shall be no exceptions to the foregoing without the Creator's consent. When

biographies are present in the program, the Producer shall include a biography of the Creator. Such biography shall have been approved by the Creator, and it is the Creator's responsibility to provide such information to the Producer.

5. Tickets

The Creator shall receive upon request two complimentary tickets for opening performance, and an additional two complimentary tickets per week during the run, subject to availability of seats.

6. Exclusivity During the period commencing with the date on which the Creator has signed this Agreement continuing to the closing date of the production, the Creator shall not license or assign any third party rights to the Project granted herein within a 100 mile radius of the Producer's performance venue, unless the Creator shall have received the Producer's prior consent to do so.

7. Right to Extend

The Creator grants to the Producer the exclusive option to extend the run of the Project beyond the closing date, as long as the run is continuous. The royalty percentage for this extension shall be the same as for the original run.

8. Term The term of the agreement shall commence on the Commencement Date and terminate upon December 15, 2007 or the closing night performance whichever is first.

9. Goods Producer shall provide, upon request by Creator, at least two of any items or products produced in relation to the Project i.e. t-shirts, souvenirs etc.

10. Audio and Video Recording Archival: The Creator agrees that the Producer may record the production of the Project for archival purposes. The resulting recording may only be played in private, for reference purposes such as, but not limited to, private screening for promotion of future productions. Advertising: The Producer shall have the right to authorize one or more radio and/or television presentation of excerpts not to exceed two minutes, from the production of the Project. Promotion: The Producer shall have the right to make a finished, edited

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recording of excerpts of the production of the Project for purposes such as, but not limited to, demonstrating the nature of the work, and promoting it to potential sponsors, donors, investors and performance sponsors. The Producer will guarantee that the recording will remain under its control, and may not be broadcast commercially. Other Uses: The use or preparation of recorded material by the Producer in a format different from those contemplated in this clause is prohibited without the permission of the Creator.

In any instance where a third party wishes to record the production, the Producer shall:

- (a) inform the Creator; and
- (b) inform the third party that the Creator is the copyright owner of the Project, and inform them of how to contact the Creator.
- (c) not permit such a recording without written agreement from the Creator.

11. Documentation Producer shall provide, upon request by Creator, a copy of any documentation of the Theatrical Run or production of the Project i.e. video, film, radio/television broadcast, written reviews, print ads, postcards, posters, programs etc.

(i) Documentation should be mailed to: Jaime Keeling 511 W 25<sup>th</sup> St STE 901 NYC 10001

12. Payment Disputes Royalties: In the event of any dispute as to box office receipts for any given period of time, the Creator is entitled to have all the related books of account of the Producer examined independently upon advance notice in writing to the Producer. The Producer shall pay all costs of the independent examination up to and not exceeding \$100. If the box office receipts as reported by the independent accountant exceed those reported by the Producer then the Producer shall pay all the costs of the independent examination and pay the correct amount.

13. Force Majeure If the performance of the obligation of either party is delayed or interrupted or prevented by reason of an act of God, fire, flood, war, public disaster, strikes or labour difficulties, governmental

enactment, regulation or order, illness of a principal performer in the Project (certified by a doctor), or any other cause beyond either party's control, such party shall not be liable to the other therefore. Notwithstanding the above it is understood and agreed that whenever possible liability for the performance of any obligation herein shall not be terminated but merely suspended for a period of time based on the duration of the event that caused the delay, interruption, or prevention and the effects thereof, following which time the provisions of this Agreement shall continue.

14. Not a Partnership This Agreement This Agreement shall not in any way constitute or be deemed to constitute a partnership between the parties hereto. Neither party shall incur any debts or make any commitments for the other.

15. Indemnification Producer shall indemnify, defend, and hold harmless Creator and her/his agents, directors, officers, employees, and relations (the "Indemnitees") from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorney's fees, disbursements and other charges (whether incurred in connection with any action or proceeding between Creator and Producer and any Indemnitee(s) or in connection with any action or proceeding between a third party and any Indemnitee(s), or otherwise), that are, have been, could have been, or may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of or relating to any act or omission by the Producer or any of its principles, agents, employees, contractors, licensees or invitees (in the case of each of the foregoing, however characterized) (each a "Producer Party" and, collectively, the "Producer Parties") or any default hereunder. Without limiting any other provision of this Agreement, this provision shall survive the termination of this Agreement. Neither Creator, nor any of the Indemnitees, shall be liable for (a) any damage to property of Producer or of others entrusted to Creator or his/her relations or for the loss of or damage to any property of Creator, (b) any injury or damage to persons

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or property or money owed by any cause of whatever nature; (c) to the extent not covered by a) and b) herein, any injury, damage or money owed for which Producer would have been reimbursed under policies of insurance required by the terms of this Agreement to be maintained by Producer (i) had Producer not failed to procure or maintain such policies of insurance or (ii) had Producer not failed to procure or maintain such policies of insurance within the required limits; and (d) any injury to or interruption of the Project for any reason. Without limiting any other provision of this Agreement, this provision shall survive the termination of this Agreement.

16. Insurance Producer is solely liable for the production of the project. At all times during the Term of this agreement, Producer, at its expense, shall carry or cause to be carried any type of insurance required by any union and/or the particular circumstances of the Project, including, but not limited to, the location of production. In no event shall Creator be responsible to provide, obtain, pay for, consult, or advise as to the any insurance as such is solely the responsibility of the Producer.

17. Notices All Notices, demands, and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by Federal Express courier or by registered or certified mail, return receipt requested, with postage prepaid, to the other party, at their addresses first above written, or at such other addresses as they may designate by notice given hereunder.

18. Entire Agreement 18.1 This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement has been entered into after full investigation. 18.2 All prior oral or written statements, representations, promises, understandings, and agreements of the parties are merged into and superseded by this agreement, which alone fully and completely expresses their agreement.

19. Changes Must Be In Writing 19.1 No delay or omission by either party in

exercising any right shall operate as a waiver of such right or any other right. 19.2 This Agreement may not be altered, amended, changed, modified, waived or terminated in any respect or particular unless the same shall be in writing signed by the party to be bound. 19.3 No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

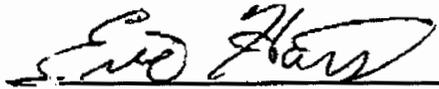
20. Captions And Exhibits The captions in this Agreement are for convenience only and are not to be considered in construing this agreement. The Exhibits annexed to this agreement are an integral part of this agreement, and where there is any reference to this agreement it shall be deemed to include said Exhibits.

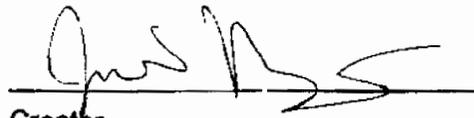
21. Governing Law, Invalidity and Choice of Forum 21.1 This agreement shall be governed by and construed in accordance with the laws of the State of New York. 21.2 If any provisions of this agreement shall be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this agreement. 21.3 Producer, knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submits to personal jurisdiction in the State of New York over any suit, action or proceeding arising from or relating to this agreement, (ii) agrees that any such action, suit or proceeding may be brought in any state or federal court of competent subject matter jurisdiction sitting in New York County, New York (iii) submits to the jurisdiction of such courts, and (v) agrees that it will not bring any action, suit or proceeding in any other forum.

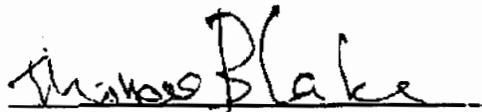
22. Binding Effect This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

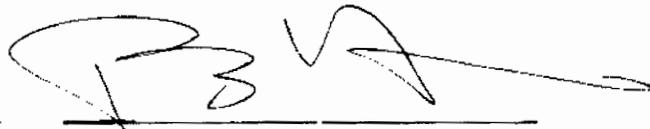
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IN WITNESS WHEREOF, the parties hereto have executed the present Agreement.

  
Producer

  
Creator

  
Witness

  
Witness

~~SEP~~ October 12, 2007  
Date

10/12/2007  
Date

**EXHIBIT D**

**COPYRIGHT REGISTRATION**

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

Registration Number:

PAu 3-337-717

Effective date of registration:

January 4, 2008

Title \_\_\_\_\_

Title of Work: Point Break Live

Completion/ Publication \_\_\_\_\_

Year of Completion: 2003

Author- \_\_\_\_\_

Author: Jaime Keeling

Author Created: text

Work made for hire: No

Citizen of: United States

Year Born: 1977

Copyright claimant \_\_\_\_\_

Copyright Claimant: Jaime Keeling

16 Hancock Street, #4, Brooklyn, NY, 11216, United States

Limitation of copyright claim \_\_\_\_\_

Material excluded from this claim: text (screenplay, scripts, other)

Previous registration and year: PAu001462494 1991

New material included in claim: all other text

Certification \_\_\_\_\_

Name: Adam Davids

Date: January 3, 2008

Correspondence: Yes

**EXHIBIT E**  
**COMPLAINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE GRIESA

-----X  
JAIME KEELING,

Plaintiff,

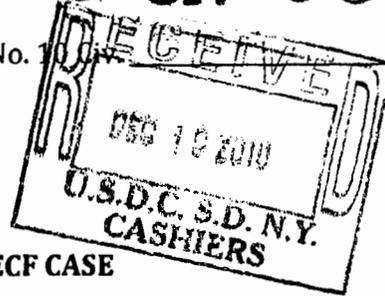
v.

NEW ROCK THEATER  
PRODUCTIONS, LLC,  
a New York limited liability  
company, EVE HARS, and  
ETHAN GARBER,

Defendants.  
-----X

**10 CIV 9345**

No. 10



ECF CASE

Jury Trial Demanded

**COMPLAINT**

Plaintiff Jaime Keeling, through her attorneys, alleges as her complaint against Defendants New Rock Theater Productions, LLC ("New Rock"), Eve Hars, and Ethan Garber as follows:

**NATURE OF THE ACTION**

1. This is a civil action seeking damages for direct and vicarious copyright infringement, breach of contract, and tortious interference with contract. As explained below, Plaintiff Jaime Keeling is the author and owner of the copyrights in the script for "Point Break LIVE!", a stage play that is a parody of the motion picture "Point Break." In 2007, Keeling negotiated a production agreement with Defendant Eve Hars, the owner of Defendant New Rock, that allowed New Rock to stage a two-month run of performances in Los Angeles in late 2007. Point Break LIVE! was a hit. Defendant Ethan Garber, an investor in New Rock's production of Point Break LIVE!, decided that New Rock

should breach its agreement with Keeling. He wrongfully persuaded New Rock to repudiate the production agreement, to take the position that Keeling had no rights in the script to Point Break LIVE!, and to refuse to pay her the royalties it owes from the performances it produced. Since early 2008, New Rock has continued to stage the play without Keeling's permission and without compensating her for its use of her script. New Rock has put on hundreds of unauthorized performances of Point Break LIVE! in Los Angeles, where it has become a local institution, and has staged performances in San Francisco, Chicago, and Louisville as well. New Rock has engaged in widespread and repeated copying, distribution, and public performance without permission of the script for the stage play "Point Break LIVE!" (the "Script") owned by Plaintiff Jaime Keeling, contrary to copyright laws and in violation of the terms of the Production Agreement.

#### **JURISDICTION AND VENUE**

2. **Jurisdiction.** This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (acts of Congress related to copyright), as this action involves claims brought under federal law, the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* This Court has supplemental jurisdiction over the state law causes of action asserted in this Complaint pursuant to 28 U.S.C. § 1367 because the state law claims form part of the same case or controversy as the federal law claim.

3. Defendant New Rock consented to personal jurisdiction and venue in the Southern District of New York in paragraph 21 of the Agreement. Upon information and belief, this Court also has personal jurisdiction over Defendant New Rock pursuant to

N.Y. C.P.L.R. § 301 because New Rock is organized under the laws of the State of New York with its principal place of business in New York, New York.

4. Upon information and belief, personal jurisdiction is appropriate as to Defendant Hars because she committed tortious conduct within New York that caused injury to Plaintiff in New York, and because she has transacted business within New York.

5. Upon information and belief, personal jurisdiction is appropriate as to Defendant Garber because he is domiciled in New York, because he committed tortious conduct causing injury to Plaintiff in New York, and because he regularly does business within New York.

6. Venue. Venue in this Court is proper pursuant to 28 U.S.C. Sections 1391(b) and 1400(a).

#### **THE PARTIES**

7. Plaintiff Jaime Keeling is a citizen of New York who resides in New York, New York.

8. On information and belief, at all relevant times herein, Defendant New Rock Theater Productions, LLC has been and remains a limited liability company organized under the laws of the New York with its principal place of business at 46 Avenue B, New York, New York 10009.

9. On information and belief, Defendant Eve Hars resides in Los Angeles, California.

10. On information and belief, Defendant Ethan Garber resides in New York.

## **STATEMENT OF FACTS**

11. In late 1999 or early 2000, while enrolled at St. John's College in Annapolis, Maryland, Keeling conceived of a play, a parody of the 1991 motion picture "Point Break."

12. "Point Break" is an action film directed by Kathryn Bigelow that starred Keanu Reeves, Patrick Swayze, and Gary Busey. In the film, former jock and current FBI agent Johnny Utah (Keanu Reeves) goes undercover to infiltrate a group of surfing "adrenaline junkies" led by Bodhi (Patrick Swayze). The FBI suspects that the group is also a gang of masked bank robbers.

13. Keeling staged her play informally, performing at house parties or in her dormitory at St. John's with her roommates and other friends playing the characters from the film. The play lampooned Point Break's action film clichés and the over-the-top performances of Reeves and Swayze.

14. After graduating from St. John's in 2001, Keeling moved to Seattle, Washington to work for the Northwest Film Forum ("NWFF"), a nonprofit film arts organization. In 2003 she decided to produce performances of her play at NWFF's Little Theater in Seattle.

15. Keeling revised her script and the stage directions for her play, which she called "Point Break LIVE!" (the "Script"). Building on Keeling's college productions, the Script incorporates various new elements: cameramen pretend to film the movie "Point Break," with the video they shoot of the performance projected live on a monitor above the stage; an actor (initially, Ms. Keeling herself) playing Kathryn Bigelow, the

director of Point Break, introduces the show by directing the audience; water guns and gouts of fake blood spray across the stage and onto the audience; bank robber characters pretend to rob audience members and fire blanks over their heads; and audience members are provided with "survival kits" that include rain parkas, earplugs, fake money, and a guide to "surviving" Point Break LIVE! The Script also incorporated a now-celebrated twist: the lead character, Johnny Utah, is not played by a cast member. Instead, a non-actor is selected from volunteers and plays Utah for the performance, donning a costume—a wetsuit—and performing his lines by reading them from cue cards provided continuously by bikini-clad assistants.

16. Keeling's script for "Point Break LIVE!" was registered by the U.S. Copyright Office on January 4, 2008, under registration number PAu 3-337-717. A true copy of the registration certificate for the script is annexed as Exhibit A.

17. Keeling produced the Little Theater production of Point Break LIVE! with Jamie Hook, the co-founder of NWFF and, at the time, the Board President of NWFF. The Seattle production ran for about one month in the summer of 2003 to a sold-out theater.

18. In November 2003, Point Break LIVE! was invited to the Olympia Film Festival at the Capitol Theater in Olympia, Washington, where Keeling staged another successful production of the play.

19. On August 26, 2007 Defendant Eve Hars, the owner of New Rock, contacted Keeling to inquire about obtaining rights for New Rock to use the Script to stage a production of Point Break LIVE! in Los Angeles.

20. During her discussions with Keeling, Hars told Keeling that Ethan Garber was an outside investor in New Rock's production of Point Break LIVE!. She explained that Garber had requested references and other information he could use to confirm that Keeling was the author of the Script. Keeling provided the requested information, and Hars later told Keeling that Garber had contacted the executive director of NWFF and was satisfied that Keeling had created Point Break LIVE!.

21. On September 24, 2007, Keeling and New Rock entered into a production agreement (the "Production Agreement") pursuant to which Keeling granted New Rock the right to stage up to 40 performances of Point Break LIVE! in Los Angeles between October 12, 2007 and December 15, 2007. A true and correct copy of the Production Agreement is attached as Exhibit B.

22. As part of the Production Agreement, New Rock agreed to pay Keeling a minimum guarantee of \$1,500 as an advance against royalties of five percent of the gross box office revenues. Exhibit B, ¶ 2.

23. New Rock paid Keeling the \$1,500 minimum guarantee but, on or about December 20, 2007, Hars informed Keeling that a lawyer for Ethan Garber, the investor in New Rock's production of Point Break LIVE!, had convinced her that Keeling had no rights in the Script and not to pay Keeling the royalties it owed her under the Production Agreement.

24. New Rock refused to abide by the terms of the Production Agreement, and a lawyer representing New Rock wrote in early January 2008 that Keeling

did not have any rights in Point Break LIVE! because it is a parody and that the Production Agreement was therefore invalid.

25. On information and belief, Garber obtained a significant ownership stake in New Rock in or around late December 2007, while Hars continued to own approximately 50 percent of New Rock.

26. On information and belief, New Rock has staged numerous productions of Point Break LIVE! in Los Angeles during 2008, 2009, and 2010. New Rock has not compensated Keeling for its use of the Script in any of those productions.

27. On information and belief, New Rock has also staged productions of Point Break LIVE! in San Francisco, California; Louisville, Kentucky; and Chicago, Illinois. New Rock has not compensated Keeling for its use of the Script in any of those productions.

28. On information and belief, Garber continues to hold financial interests in New Rock's infringing productions of Point Break LIVE!.

29. New Rock has never obtained approval from Keeling to stage performances of Point Break LIVE! other than the initial October through December 2007 productions specified in the Production Agreement.

**FIRST CAUSE OF ACTION**  
**DIRECT OR VICARIOUS COPYRIGHT INFRINGEMENT**

(against Defendants New Rock, Hars, and Garber)

30. Keeling repeats and realleges the allegations of Paragraphs 1 through 29 as if fully set forth herein.

31. The Script is an original work of authorship and copyrightable subject matter under the laws of the United States, and has been published in conformity with the Copyright Act and all laws governing copyrights.

32. Keeling holds a valid and exclusive registered copyright to the Script that is the subject of this action, which is evidenced by the copyright registration certificate referenced by Exhibit A.

33. At all times relevant hereto, Keeling has been and still is the owner of all copyright rights in and to the Script, and has never assigned, licensed or otherwise transferred its copyright rights to Defendants New Rock, Hars, or Garber, or dedicated them to the public, except to the extent of the license in the Production Agreement.

34. Since in or about January 2008, Defendant New Rock has repeatedly copied, distributed, and publicly performed the Script in several cities across the United States without Keeling's authorization.

35. Defendant New Rock has earned revenues from infringing public performances of the Script. Point Break LIVE! is a hit. On information and belief, New Rock's gross box office revenues from its productions of Point Break LIVE! are more than \$1 million dollars in gross box office revenues. In addition, upon information and belief, Defendant New Rock has exploited the Script in other ways, including, but not limited to, merchandising, sale of "survival kits," and by other means.

36. Defendants, with knowledge of Keeling's ownership of the copyright in and to the Script, willfully infringed Keeling's rights by continuing to distribute and

otherwise exploit the Script after formally being placed on notice of Keeling's rights in the Script.

37. Defendants' conduct as alleged above was never authorized, licensed, permitted or ratified by Keeling or her agents.

38. The actions and conduct by Defendants as described above infringe upon the exclusive rights of Keeling granted by Section 106 of the Copyright Act, 17 U.S.C. § 106, to reproduce, distribute, and publicly perform the Script.

39. Such actions and conduct by Defendants constitute copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501.

40. Defendants Hars and Garber had the right and ability to control the infringing acts of New Rock.

41. Defendants Hars and Garber, the co-owners of New Rock, obtained and continue to obtain a direct financial benefit from the infringing activities of New Rock.

42. As a result of the copyright infringement described above, Keeling is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

**SECOND CAUSE OF ACTION  
BREACH OF CONTRACT**

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(against Defendant New Rock)

43. Keeling repeats and realleges the allegations of Paragraphs 1 through 42 as if fully set forth herein.

44. By reason of the conduct set forth above, Defendant New Rock has breached the Production Agreement.

45. New Rock has breached the Production Agreement by refusing to pay Keeling the royalties due under the agreement.

46. New Rock has committed additional breaches of the Production Agreement: it has not obtained approval to produce additional performances of Point Break LIVE!, Exhibit B, ¶ 1; has not provided required statements of box office and other related income from goods and services, *id.*, ¶ 3(b); has not paid Keeling interest on the royalties it owes her, *id.*; and has not correctly credited Keeling in programs and advertising, *id.*, ¶ 4.

47. Keeling is entitled to obtain from Defendant New Rock all damages flowing from that breach in accordance with the Production Agreement and New York law.

**THIRD CAUSE OF ACTION**  
**TORTIOUS INTERFERENCE WITH CONTRACT**

(against Defendant Garber)

48. Keeling repeats and realleges the allegations of Paragraphs 1 through 47 as if fully set forth herein.

49. The Production Agreement is a valid and binding agreement between Keeling and New Rock.

50. On information and belief, Defendant Garber was fully aware at all times of the existence and terms of the Production Agreement.

51. Defendant Garber intentionally and without justification procured New Rock's breach of the Production Agreement.

52. On information and belief, Garber took steps to procure New Rock's breach of the Production Agreement before he acquired an ownership interest in New Rock.

53. Keeling has been damaged by New Rock's breach of the Production Agreement in an amount to be determined at trial.

54. Accordingly, the participation of Defendant Garber in the wrongful scheme to violate Keeling's rights constitutes tortious interference with Keeling's Production Agreement with New Rock.

55. Keeling is entitled to obtain from Defendant Garber all damages flowing from that breach in accordance with New York law.

#### **JURY TRIAL DEMAND**

56. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury.

#### **RELIEF REQUESTED**

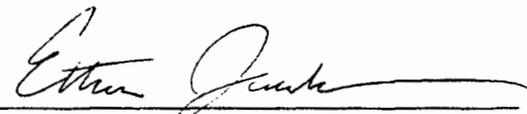
WHEREFORE, Plaintiff Keeling prays for the following relief:

1. An order permanently enjoining Defendants from infringing Keeling's copyrights in the Script pursuant to Section 502 of the Copyright Act, 17 U.S.C. § 502.
2. An award of Defendants' profits and for damages in such amount as may be found, or for statutory damages of not less than \$750 or more than \$30,000 pursuant to 17 U.S.C. Section 504(c)(1) or, upon a finding of willful infringement pursuant to 17 U.S.C. Section 504(c)(2), up to \$150,000;
3. Costs pursuant to 17 U.S.C. Sections 505;
4. Reasonable attorneys' fees, pursuant to 17 U.S.C. Sections 505;

5. Damages from Defendant New Rock in accordance with the Loan Documents and New York law;
6. Damages from Defendants Garber and Hars in an amount to be determined at trial;
7. Prejudgment interest on the amount of any award to Plaintiff; and
8. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 15, 2010

COVINGTON & BURLING LLP

By: 

Andrew A. Ruffino  
Ethan Jacobs

The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Telephone: (212) 841-1000  
Facsimile: (212) 841-1010  
Email: ejacobs@cov.com

Attorneys for Plaintiff  
JAIME KEELING

*Of Counsel:*

COVINGTON & BURLING LLP  
Simon J. Frankel  
One Front Street, 35th Floor  
San Francisco, California 94111  
Telephone: (415) 591-6000  
Facsimile: (415) 591-6091

**EXHIBIT F**  
**COURT ORDER**

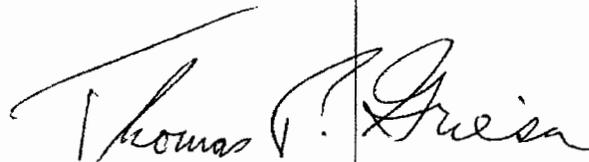


*LIVE!* in the past or engaging in any other activity constituting an infringement of Keeling's copyright in *Point Break LIVE!*

The motion is granted in its entirety. Defendants along with their respective officers, directors, principals, agents, representatives, servants, employees, affiliates, successors, or assigns, and any person or entity acting on their behalf or in concert or participation with them are enjoined from engaging in any activity, including the examples listed above, constituting an infringement of Keeling's copyright in *Point Break LIVE!*.

So ordered.

Dated: New York, New York  
January 10, 2013

A handwritten signature in black ink, reading "Thomas P. Griesa". The signature is written in a cursive style with a large, sweeping initial "T".

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Thomas P. Griesa  
U.S. District Judge